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HOUSE BILL 22-1355

BY REPRESENTATIVE(S) Cutter, Bennett, Duran, Froelich, Hooton, Kipp, McCormick, Sirota, Titone, Woodrow, Amabile, Bacon, Benavidez, Boesenecker, Caraveo, Jodeh, Kennedy, Lindsay, Lontine, Michaelson Jenet, Valdez A.;
also SENATOR(S) Priola and Gonzales, Buckner, Danielson, Hansen, Jaquez Lewis, Lee, Pettersen, Story, Winter, Fenberg.

CONCERNING THE CREATION OF THE PRODUCER RESPONSIBILITY PROGRAM
FOR STATEWIDE RECYCLING, AND, IN CONNECTION THEREWITH,
MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 7 to article 17 of title 25 as follows:

PART 7
PRODUCER RESPONSIBILITY PROGRAM
FOR STATEWIDE RECYCLING

25-17-701. Short title. THE SHORT TITLE OF THIS PART 7 IS THE "PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING ACT".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

25-17-702. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

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

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

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

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

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

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

(g) A PRODUCER RESPONSIBILITY PROGRAM IN COLORADO WOULD:

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

(II) ESTABLISH A CLEAR AND UNIFORM STATEWIDE LIST OF READILY

RECYCLABLE MATERIALS;

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

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

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

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

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

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

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

25-17-703. Definitions. AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION" MEANS A NONPROFIT ORGANIZATION DESIGNATED BY THE DEPARTMENT AS AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION PURSUANT TO SECTION 25-17-708 (2)(b).

(2) "ADVISORY BOARD" MEANS THE PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING ADVISORY BOARD CREATED IN

SECTION 25-17-704 (1).

(3) "AMENDED PLAN PROPOSAL" MEANS AN AMENDED PLAN PROPOSAL FOR THE IMPLEMENTATION OF THE PROGRAM SUBMITTED TO THE ADVISORY BOARD AFTER THE ADVISORY BOARD'S INITIAL REVIEW OF THE PLAN PROPOSAL IN ACCORDANCE WITH SECTION 25-17-705 (5).

(4) "COLLECTION" MEANS THE GATHERING AND TRANSPORTATION OF COVERED MATERIALS FROM COVERED ENTITIES FOR THE PURPOSE OF RECYCLING.

(5) "COLLECTION RATE" MEANS THE WEIGHT OF COVERED MATERIALS THAT ARE COLLECTED UNDER THE PROGRAM IN A CALENDAR YEAR DIVIDED BY THE WEIGHT OF COVERED MATERIALS USED FOR PRODUCTS SOLD OR DISTRIBUTED BY PRODUCERS WITHIN OR INTO THE STATE IN THE SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.

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

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

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

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

(9) "COMPOSTABLE" MEANS A COVERED MATERIAL ASSOCIATED WITH ORGANIC WASTE STREAMS THAT IS CAPABLE OF UNDERGOING AEROBIC BIOLOGICAL DECOMPOSITION IN A CONTROLLED COMPOSTING SYSTEM AS DEMONSTRATED BY MEETING ASTM D6400 OR ASTM D6868, OR ANY SUCCESSOR STANDARDS.

(10) "CONSUMER" MEANS ANY PERSON WHO PURCHASES OR RECEIVES COVERED MATERIALS IN THE STATE AND IS LOCATED AT A

COVERED ENTITY.

(11) "CONVENIENCE STANDARDS" MEANS THE STANDARDS FOR THE PROGRAM AS DESCRIBED IN SECTION 25-17-706 (3).

(12) "COVERED ENTITY" MEANS THE FOLLOWING LOCATIONS IN THE STATE FROM WHICH COVERED MATERIALS ARE COLLECTED:

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

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

(13) (a) "COVERED MATERIALS" INCLUDES:

(I) PACKAGING MATERIAL, EXCEPT AS SPECIFIED IN SUBSECTION (13)(b) OF THIS SECTION; AND

(II) PAPER PRODUCTS, EXCEPT AS SPECIFIED IN SUBSECTION (13)(b) OF THIS SECTION.

(b) "COVERED MATERIALS" DOES NOT INCLUDE:

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

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

(III) PRINTED PAPER USED TO DISTRIBUTE FINANCIAL STATEMENTS, BILLING STATEMENTS, MEDICAL DOCUMENTS, OR OTHER VITAL DOCUMENTS REQUIRED TO BE PROVIDED IN PAPER FORM BY APPLICABLE CONSUMER PROTECTIONS LAWS OR OTHER STATE OR FEDERAL LAWS;

(IV) BOUND BOOKS;

(V) BEVERAGE CONTAINERS SUBJECT TO A RETURNABLE CONTAINER DEPOSIT, IF APPLICABLE;

(VI) PACKAGING MATERIAL USED EXCLUSIVELY IN INDUSTRIAL OR MANUFACTURING PROCESSES;

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

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

(IX) PACKAGING MATERIAL USED TO CONTAIN A PRODUCT THAT IS REGULATED UNDER THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", 7 U.S.C. SEC. 136 ET SEQ., AS AMENDED;

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

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

(XII) PACKAGING MATERIAL USED TO CONTAIN A PORTABLE ELECTRONIC DEVICE, AS DEFINED IN SECTION 10-4-1501, THAT HAS BEEN REPAIRED AND RECONDITIONED TO BE SOLD AS A REFURBISHED PRODUCT;

(XIII) PAPER PRODUCTS USED FOR A PRINT PUBLICATION THAT PRIMARILY INCLUDES CONTENT DERIVED FROM PRIMARY SOURCES RELATED TO NEWS AND CURRENT EVENTS;

(XIV) PACKAGING MATERIAL USED TO CONTAIN A PRODUCT THAT IS REGULATED AS INFANT FORMULA, AS DEFINED IN 21 U.S.C. SEC. 321 (z), AS A MEDICAL FOOD, AS DEFINED IN 21 U.S.C. SEC. 360ee (b)(3), OR AS FORTIFIED NUTRITIONAL SUPPLEMENTS USED FOR INDIVIDUALS 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 WORLD HEALTH ORGANIZATION'S "INTERNATIONAL CLASSIFICATION OF DISEASES" (TENTH REVISION), AS AMENDED OR REVISED, OR ANY OTHER MEDICAL CONDITIONS AS DETERMINED BY THE COMMISSION BY RULE; AND

(XV) ANY OTHER MATERIAL THAT, BASED ON AN ANALYSIS BY THE ORGANIZATION OF THE OPERATIONAL AND FINANCIAL IMPACTS OF THE PROPOSED CHANGES AND AFTER CONSULTATION WITH THE ADVISORY BOARD, THE COMMISSION DETERMINES BY RULE TO NOT BE A COVERED MATERIAL.

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

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

(a) RECORD KEEPING;

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

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

(16) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

(17) "FINAL PLAN" MEANS THE PLAN PROPOSAL OR AMENDED PLAN PROPOSAL THAT HAS BEEN DESIGNATED AS THE FINAL PLAN BY THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 25-17-705 (5)(c)(I).

(18) "FRONT RANGE" MEANS THE COUNTIES OF ADAMS, ARAPAHOE,

BOULDER, DOUGLAS, ELBERT, EL PASO, JEFFERSON, LARIMER, PUEBLO, TELLER, AND WELD AND THE CITIES AND COUNTIES OF BROOMFIELD AND DENVER.

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

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

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

(22) "MINIMUM RECYCLABLE LIST" MEANS THE LIST OF COVERED MATERIALS DEVELOPED UNDER SECTION 25-17-706 (1)(a).

(23) "NEEDS ASSESSMENT" MEANS THE ASSESSMENT OF THE STATE'S RECYCLING NEEDS CONDUCTED PURSUANT TO SECTION 25-17-705 (3).

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

(25) (a) (I) "PACKAGING MATERIAL" MEANS ANY MATERIAL, REGARDLESS OF RECYCLABILITY, THAT IS INTENDED FOR SINGLE OR SHORT-TERM USE AND IS USED FOR THE CONTAINMENT, PROTECTION, HANDLING, OR DELIVERY OF PRODUCTS TO THE CONSUMER AT THE POINT OF SALE, INCLUDING THROUGH AN INTERNET TRANSACTION.

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

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

(B) NOT DESIGNED FOR REUSE OR REFILL.

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

(b) "PACKAGING MATERIAL" DOES NOT INCLUDE:

(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; OR

(IV) PACKAGING MATERIALS THAT ARE USED FOR PRODUCTS SOLD OR DISTRIBUTED OUTSIDE THE STATE.

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

(a) FLYERS;

(b) BROCHURES;

(c) BOOKLETS;

(d) CATALOGS;

(e) TELEPHONE DIRECTORIES;

(f) NEWSPAPERS;

(g) MAGAZINES; AND

(h) PAPER USED FOR WRITING OR ANY OTHER PURPOSE.

(27) "PLAN PROPOSAL" MEANS THE PLAN PROPOSAL FOR THE IMPLEMENTATION OF THE PROGRAM SUBMITTED TO THE ADVISORY BOARD IN ACCORDANCE WITH SECTION 25-17-705 (4).

(28) "POSTCONSUMER-RECYCLED-CONTENT RATE" MEANS THE AMOUNT OF POSTCONSUMER RECYCLED MATERIALS USED IN THE PRODUCTION OF COVERED MATERIALS IN A CALENDAR YEAR DIVIDED BY THE AMOUNT OF COVERED MATERIALS USED FOR PRODUCTS SOLD OR DISTRIBUTED BY PRODUCERS WITHIN OR INTO THEIR UNITED STATES MARKET TERRITORY IN THE SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.

(29)(a) "POSTCONSUMER RECYCLED MATERIAL" MEANS ONLY THOSE COVERED 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.

(b) "POSTCONSUMER RECYCLED MATERIAL" INCLUDES RETURNS OF MATERIAL FROM THE DISTRIBUTION CHAIN.

(c) "POSTCONSUMER RECYCLED MATERIAL" DOES NOT INCLUDE WASTE MATERIAL GENERATED DURING OR AFTER THE COMPLETION OF A MANUFACTURING PROCESS.

(30) "PRODUCER" MEANS:

(a) (I) IF THE PRODUCT IS SOLD OR DISTRIBUTED IN THE STATE USING PACKAGING MATERIALS UNDER THE MANUFACTURER'S OWN BRAND OR IS SOLD OR DISTRIBUTED IN THE STATE USING PACKAGING MATERIALS THAT LACK IDENTIFICATION OF A BRAND, THE PERSON THAT MANUFACTURES THE PRODUCT;

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

(III) IF THERE IS NO PERSON DESCRIBED IN SUBSECTION (30)(a)(I) OR (30)(a)(II) OF THIS SECTION WITHIN THE UNITED STATES, THE PERSON THAT

IMPORTS THE PRODUCT USING COVERED MATERIALS INTO THE UNITED STATES FOR USE IN A COMMERCIAL ENTERPRISE THAT SELLS OR DISTRIBUTES THE ITEM IN THE STATE;

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

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

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

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

(d) FOR THE PURPOSES OF PAPER PRODUCTS NOT DESCRIBED IN SUBSECTION (30)(c) OF THIS SECTION:

(I) THE PERSON THAT MANUFACTURES THE PAPER PRODUCT UNDER THE MANUFACTURER'S OWN BRAND; OR

(II) IF THE PAPER PRODUCT IS MANUFACTURED BY A PERSON OTHER THAN THE BRAND OWNER, THE PERSON THAT IS THE OWNER OR LICENSEE OF THE BRAND OR TRADEMARK UNDER WHICH THE PAPER PRODUCT IS USED IN A COMMERCIAL ENTERPRISE, SOLD, OR DISTRIBUTED IN OR INTO THE STATE, WHETHER OR NOT THE TRADEMARK IS REGISTERED IN THE STATE; OR

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

(31) "PRODUCER RESPONSIBILITY DUES" MEANS THE AMOUNTS ESTABLISHED IN SECTION 25-17-705 (4)(i)(II) THAT A PRODUCER PARTICIPATING IN THE PROGRAM PAYS ANNUALLY INTO THE PROGRAM PURSUANT TO SECTION 25-17-709 (1).

(32) "PRODUCER RESPONSIBILITY ORGANIZATION" OR "ORGANIZATION" MEANS THE NONPROFIT ORGANIZATION DESIGNATED TO

IMPLEMENT THE PROGRAM PURSUANT TO SECTION 25-17-705 (1)(b)(II).

(33) "PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING" OR "PROGRAM" MEANS THE PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING CREATED IN ACCORDANCE WITH SECTION 25-17-705.

(34) "PROPRIETARY INFORMATION" MEANS INFORMATION THAT, IF MADE PUBLIC:

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

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

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

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

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

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

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

(b) "RECYCLING" DOES NOT INCLUDE:

(I) ENERGY RECOVERY OR ENERGY GENERATION BY MEANS OF COMBUSTION;

(II) USE AS A FUEL;

(III) USE AS ALTERNATIVE DAILY COVER AS DEFINED IN SECTION 30-20-1402 (1); OR

(IV) LANDFILL DISPOSAL OF DISCARDED COVERED MATERIALS.

(38) (a) "RECYCLING RATE" MEANS THE WEIGHT OF COVERED MATERIALS THAT ARE RECYCLED UNDER THE PROGRAM IN A CALENDAR YEAR DIVIDED BY THE WEIGHT OF COVERED MATERIALS USED FOR PRODUCTS SOLD OR DISTRIBUTED BY PRODUCERS WITHIN OR INTO THE STATE IN THE SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.

(b) THE RECYCLING RATE IS MEASURED AT THE POINT WHERE COLLECTED COVERED MATERIALS HAVE BEEN PREPARED FOR SALE OR DELIVERY TO MATERIAL RECLAIMERS OR END MARKETS AFTER PROCESSING AT A MATERIALS RECOVERY FACILITY OR SIMILAR ESTABLISHMENT THAT SELLS DIRECTLY TO RECLAIMERS OR END MARKETS.

(39) (a) "RECYCLING SERVICES" MEANS SERVICES PROVIDED FOR THE RECYCLING OF COVERED MATERIALS, INCLUDING THE COLLECTION, TRANSPORTATION, AND PROCESSING OF COVERED MATERIALS FROM THE CONSUMER TO THE END MARKET.

(b) "RECYCLING SERVICES" INCLUDES CURBSIDE SERVICES AND DROP-OFF CENTERS.

(40) "RECYCLING SERVICES COSTS" MEANS THE COSTS OF RECYCLING PROGRAMS TO PROVIDE RECYCLING SERVICES, INCLUDING APPLICABLE COSTS RELATED TO:

(a) THE ADMINISTRATION OF RECYCLING PROGRAMS;

(b) CAPITAL IMPROVEMENTS TO RECYCLING PROGRAMS;

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

(d) PUBLIC EDUCATION ABOUT RECYCLING PROGRAMS; AND

(e) DISPOSAL OF NONRECYCLABLE COLLECTED COVERED MATERIALS.

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

(a) BENEFITS THE ENVIRONMENT; AND

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

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

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

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

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

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

25-17-704. Producer responsibility program for statewide recycling advisory board - creation - membership. (1) THE PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING ADVISORY BOARD IS HEREBY CREATED IN THE DEPARTMENT. THE DEPARTMENT MAY SELECT AN IMPARTIAL, THIRD-PARTY FACILITATOR TO CONVENE AND PROVIDE ADMINISTRATIVE SUPPORT TO THE ADVISORY BOARD.

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

(I) THREE VOTING MEMBERS REPRESENTING LOCAL GOVERNMENTS

IN THE STATE, INCLUDING:

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

(B) ONE MEMBER REPRESENTING A COUNTY; AND

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

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

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

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

(V) ONE VOTING MEMBER REPRESENTING A PACKAGING MATERIAL SUPPLIER THAT IS NOT A PRODUCER, WITH THE MEMBER ROTATING TO A PACKAGING MATERIAL SUPPLIER OF A DIFFERENT TYPE OF PACKAGING MATERIAL AFTER EACH NEW TERM;

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

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

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

(IX) ONE VOTING MEMBER REPRESENTING A COMPOST FACILITY;

(X) ONE VOTING MEMBER WHO HAS EXPERIENCE IN ENVIRONMENTAL JUSTICE AND REPRESENTING UNDERSERVED COMMUNITIES;

(XI) ONE VOTING MEMBER REPRESENTING A SOLID WASTE LANDFILL

OR TRANSFER STATION OPERATING AN ON-SITE, PUBLIC-FACING RECYCLING COLLECTION PROGRAM;

(XII) ONE NONVOTING MEMBER REPRESENTING THE DEPARTMENT;
AND

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

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

(II) IN APPOINTING MEMBERS, THE EXECUTIVE DIRECTOR SHALL ENSURE TO THE EXTENT POSSIBLE THE GEOGRAPHIC DIVERSITY OF THE ADVISORY BOARD'S MEMBERSHIP, INCLUDING REGIONS OUTSIDE OF THE FRONT RANGE.

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

(4) THE ADVISORY BOARD SHALL CONVENE ITS FIRST MEETING NO LATER THAN MARCH 1, 2023. AT THE FIRST MEETING, THE VOTING MEMBERS SHALL SELECT A CHAIR AND VICE-CHAIR FROM AMONG THE VOTING MEMBERS FOR A TERM NOT TO EXCEED TWO YEARS, AS DETERMINED BY THE ADVISORY BOARD. THE ADVISORY BOARD SHALL CONDUCT ANNUAL MEETINGS AND MAY CONDUCT MEETINGS MORE FREQUENTLY UPON THE REQUEST OF THE CHAIR OR OF AT LEAST SEVEN OF THE VOTING MEMBERS OF THE ADVISORY BOARD. THE ORGANIZATION MAY PROVIDE TECHNICAL AND STAFF ASSISTANCE TO THE ADVISORY BOARD.

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

ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

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

(7) THE ADVISORY BOARD SHALL:

(a) ADVISE THE ORGANIZATION THROUGHOUT THE NEEDS ASSESSMENT PROCESS IN ACCORDANCE WITH SECTION 25-17-705 (3)(b);

(b) REVIEW THE NEEDS ASSESSMENT REPORTED TO THE ADVISORY BOARD PURSUANT TO SECTION 25-17-705 (3)(c);

(c) REVIEW THE PLAN PROPOSAL SUBMITTED UNDER SECTION 25-17-705 (4);

(d) CONSULT WITH THE ORGANIZATION ON AMENDMENTS TO THE PLAN PROPOSAL AND THE AMENDED PLAN PROPOSAL;

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

(f) REVIEW THE ANNUAL REPORT SUBMITTED BY THE ORGANIZATION UNDER SECTION 25-17-709 (2)(a); AND

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

(8) IN CONSULTATION WITH THE ORGANIZATION, THE ADVISORY BOARD MAY RECOMMEND AMENDMENTS TO THE FINAL PLAN TO THE EXECUTIVE DIRECTOR FOR INCLUSION IN THE ANNUAL REPORT UNDER SECTION 25-17-709 (2)(c).

25-17-705. Producer responsibility program for statewide recycling - needs assessment - plan proposal - rules. (1) (a) ON OR BEFORE JUNE 1, 2023, PRODUCERS OR THEIR DESIGNATED AGENTS SHALL ESTABLISH A NONPROFIT ORGANIZATION TO FULFILL THE REQUIREMENTS OF

THIS PART 7 AND SHALL PROVIDE NOTIFICATION TO THE DEPARTMENT THAT INCLUDES:

(I) THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON RESPONSIBLE FOR ENSURING THE COMPLIANCE OF THE NONPROFIT ORGANIZATION AND PARTICIPATING PRODUCERS WITH THIS PART 7;

(II) A LIST OF PARTICIPATING PRODUCERS; AND

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

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

(I) ACKNOWLEDGE RECEIPT OF THE NOTIFICATION; AND

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

(c) THE ORGANIZATION DESIGNATED BY THE EXECUTIVE DIRECTOR PURSUANT TO SUBSECTION (1)(b)(II) OF THIS SECTION MUST HAVE A GOVERNING BOARD WITH VOTING MEMBERS THAT REPRESENT A DIVERSE RANGE OF PRODUCERS BY SIZE AND TYPE AND REPRESENT PRODUCERS OF DIFFERENT TYPES OF COVERED MATERIALS. THE MEMBERS OF THE GOVERNING BOARD SHALL NOT HAVE MORE THAN ONE MEMBER PER CORPORATE ENTITY. THE GOVERNING BOARD OF THE ORGANIZATION SHALL INCLUDE NONVOTING MEMBERS THAT REPRESENT TRADE ASSOCIATIONS FOR TYPES OF COVERED MATERIALS. THE ORGANIZATION SHALL PROVIDE PUBLIC NOTICE OF ANY BOARD MEETINGS AT LEAST SEVENTY-TWO HOURS BEFORE THE BOARD MEETING.

(2) THE PRODUCER RESPONSIBILITY ORGANIZATION SHALL:

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

(b) CONSULT WITH THE ADVISORY BOARD IN THE DEVELOPMENT OF THE PLAN PROPOSAL PRIOR TO ITS SUBMISSION, INCLUDING IN THE

DEVELOPMENT OF THE COST FORMULAS FOR REIMBURSEMENTS TO SERVICE PROVIDERS PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION;

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

(d) OPERATE AND ADMINISTER THE PROGRAM IN ACCORDANCE WITH THE FINAL PLAN, THE PROVISIONS OF THIS PART 7, AND THE RULES ADOPTED BY THE COMMISSION UNDER THIS PART 7.

(3)(a) ON OR BEFORE SEPTEMBER 1, 2023, THE ORGANIZATION SHALL HIRE AN INDEPENDENT THIRD PARTY APPROVED BY THE EXECUTIVE DIRECTOR TO CONDUCT AN ASSESSMENT OF THE STATE'S RECYCLING NEEDS. THE ORGANIZATION SHALL ISSUE A REQUEST FOR PROPOSALS IN ACCORDANCE WITH THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, AND ANY RULES, FOR THE SELECTION OF THE INDEPENDENT THIRD PARTY. PRIOR TO THE COMMENCEMENT OF THE NEEDS ASSESSMENT, THE ORGANIZATION SHALL CONSULT WITH THE ADVISORY BOARD ON THE SCOPE OF THE NEEDS ASSESSMENT AND PROVIDE ANY NECESSARY RECOMMENDATIONS TO THE THIRD-PARTY CONSULTANT CONDUCTING THE NEEDS ASSESSMENT. THE NEEDS ASSESSMENT SHALL BE INCLUSIVE OF AND ADDRESS THE NEEDS OF ALL GEOGRAPHIC AREAS OF THE STATE. AT A MINIMUM, THE NEEDS ASSESSMENT MUST IDENTIFY:

(I) THE SERVICE AVAILABILITY, CAPACITY, PERFORMANCE, AND GAPS IN RECYCLING SERVICES PROVIDED TO RESIDENTIAL COVERED ENTITIES THROUGHOUT THE STATE AND THE PRICES PAID FOR RECYCLING SERVICES;

(II) THE DOCUMENTED RECYCLING SERVICES COSTS INCURRED BY PUBLIC AND PRIVATE SERVICE PROVIDERS TO PROVIDE RECYCLING SERVICES FOR RESIDENTIAL COVERED ENTITIES;

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

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

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

(VI) THE PROCESSING CAPACITY OF EXISTING INFRASTRUCTURE AND THE ADDITIONAL INFRASTRUCTURE NEEDED TO MEET OR EXCEED THE CONVENIENCE STANDARDS, REDUCE CONTAMINATION, AND IMPROVE THE QUALITY OF RECYCLABLE MATERIALS AND THE PROJECTED SCENARIOS FOR INCREASING THE RECYCLING RATE AND COLLECTION RATE OF COVERED MATERIALS, AS IDENTIFIED PURSUANT TO SUBSECTION (3)(a)(XIII) OF THIS SECTION;

(VII) AN EVALUATION OF THE OPPORTUNITIES AND COSTS OF VARIOUS SERVICE METHODS TO INCREASE RECYCLING RATES OVERALL FOR SPECIFIC COVERED MATERIAL TYPES;

(VIII) A PROPOSED LIST OF COVERED MATERIALS FOR INCLUSION IN THE MINIMUM RECYCLABLE LIST AND ADDITIONAL MATERIALS THAT MAY BE COLLECTED IN DIFFERENT GEOGRAPHIC AREAS THROUGH CURBSIDE SERVICES, DROP-OFF CENTERS, OR OTHER MEANS;

(IX) THE MARKET CONDITIONS AND OPPORTUNITIES FOR THE USE OF RECYCLED COVERED MATERIALS IN THE STATE AND IN DIFFERENT GEOGRAPHIC AREAS OF THE STATE, INCLUDING THE TRANSPORTATION GAPS AND OPPORTUNITIES AFFECTING ACCESS TO MARKETS;

(X) OPPORTUNITIES FOR THE USE OF INNOVATIVE NEW TECHNOLOGIES, INCLUDING ARTIFICIAL INTELLIGENCE TECHNOLOGIES, FOR THE RECYCLING AND REUSE OF COVERED MATERIALS;

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

(XII) EDUCATION NEEDS IN THE STATE WITH RESPECT TO THE EDUCATION NEEDS DESCRIBED IN SECTION 25-17-707; AND

(XIII) AT LEAST THREE PROJECTED SCENARIOS FOR INCREASING THE RECYCLING RATE AND COLLECTION RATE OF COVERED MATERIALS IN THE STATE, INCLUDING RECYCLING RATES AND COLLECTION RATES THAT THE STATE COULD MEET BY JANUARY 1, 2030, AND JANUARY 1, 2035, AND THE OPERATING AND CAPITAL COSTS NEEDED TO REACH EACH PROJECTED SCENARIO, INCLUDING:

(A) A REVIEW AND ASSESSMENT OF THE IMPACT OF THE EXEMPTIONS DESCRIBED IN SECTIONS 25-17-703 (13)(b), 25-17-703 (25)(b), AND 25-17-713 ON THE FEASIBILITY AND SHORT-TERM AND LONG-TERM SUCCESS OF THE PROGRAM;

(B) A REVIEW AND ASSESSMENT OF THE IMPACT OF PRODUCER EXEMPTIONS IN OTHER INTERNATIONAL AND DOMESTIC EXTENDED PRODUCER RESPONSIBILITY PROGRAMS IMPLEMENTED BY A PRODUCER RESPONSIBILITY ORGANIZATION; AND

(C) A DETERMINATION OF WHETHER ANY INDUSTRY SECTOR WOULD BE DISPROPORTIONATELY IMPACTED AS A RESULT OF THE EXEMPTIONS DESCRIBED IN SUBSECTION (3)(a)(XIII)(A) OF THIS SECTION; AND

(XIV) THE CAPACITY, COSTS, AND GAPS FOR COMPOST FACILITIES TO PROCESS AND RECOVER COMPOSTABLE MATERIALS.

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

(c) ON OR BEFORE JANUARY 30, 2024, THE ORGANIZATION SHALL REPORT THE RESULTS OF THE NEEDS ASSESSMENT TO THE ADVISORY BOARD AND THE EXECUTIVE DIRECTOR. THE EXECUTIVE DIRECTOR SHALL POST THE RESULTS OF THE NEEDS ASSESSMENT ON THE DEPARTMENT'S WEBSITE AND PROVIDE PUBLIC NOTICE AND AN OPPORTUNITY TO COMMENT ON THE RESULTS OF THE NEEDS ASSESSMENT. IN FINALIZING THE NEEDS ASSESSMENT, THE EXECUTIVE DIRECTOR SHALL INCLUDE IN THE NEEDS ASSESSMENT A SUMMARY OF ANY COMMENTS RECEIVED PURSUANT TO THIS SUBSECTION (3)(c) AND IDENTIFY ANY SIGNIFICANT CHANGES MADE TO THE NEEDS ASSESSMENT BASED ON SUCH COMMENTS.

(d) ON OR BEFORE MARCH 15, 2024, THE EXECUTIVE DIRECTOR SHALL SUBMIT AND PRESENT THE NEEDS ASSESSMENT TO THE JOINT BUDGET COMMITTEE OR ANY SUCCESSOR COMMITTEE. IN THE SUBMITTAL AND PRESENTATION, THE EXECUTIVE DIRECTOR SHALL IDENTIFY THE PROJECTED SCENARIOS IDENTIFIED PURSUANT TO SUBSECTION (3)(a)(XIII) OF THIS SECTION AND MAKE A RECOMMENDATION AS TO WHICH PROJECTED SCENARIO THE PLAN PROPOSAL SHOULD INCORPORATE. IF THE JOINT BUDGET COMMITTEE APPROVES THE EXECUTIVE DIRECTOR'S RECOMMENDATION, THE ORGANIZATION SHALL IMPLEMENT THAT PROJECTED SCENARIO IN THE PLAN PROPOSAL. IF THE JOINT BUDGET COMMITTEE DOES NOT APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDATION, THE COMMITTEE MAY PROPOSE LEGISLATION TO DIRECT THE ORGANIZATION TO IMPLEMENT A PROJECTED SCENARIO IDENTIFIED PURSUANT TO SUBSECTION (3)(a)(XIII) OF THIS SECTION. IF THE JOINT BUDGET COMMITTEE DOES NOT APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDATION, THE ORGANIZATION SHALL NOT IMPLEMENT A SCENARIO OR PLAN WITHOUT APPROVAL OF THE GENERAL ASSEMBLY ACTING BY BILL.

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

(4) ON OR BEFORE FEBRUARY 1, 2025, THE ORGANIZATION SHALL SUBMIT A PLAN PROPOSAL FOR THE PROGRAM TO THE ADVISORY BOARD,

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

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

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

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

(d) DESCRIBE HOW THE ORGANIZATION WILL NOTIFY AFFECTED PRODUCERS OF THEIR OBLIGATIONS UNDER THIS PART 7;

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

(f) INCLUDE A COMPREHENSIVE LIST OF THE COVERED MATERIALS INCLUDED IN THE PROGRAM IN ACCORDANCE WITH THIS PART 7;

(g) ESTABLISH RECYCLING PRACTICES THAT:

(I) MEET OR EXCEED THE CONVENIENCE STANDARDS;

(II) USE OPEN, COMPETITIVE, AND FAIR PROCUREMENT PRACTICES WHEN ENTERING INTO CONTRACTS WITH SERVICE PROVIDERS, AND, WHEN ENTERING INTO CONTRACTS WITH PRIVATE SERVICE PROVIDERS, ADOPT A PREFERENCE FOR SERVICE PROVIDERS WITH STRONG LABOR STANDARDS AND WORKER SAFETY PRACTICES;

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

(IV) USE ENVIRONMENTALLY SOUND MANAGEMENT PRACTICES;

(h) DESCRIBE HOW THE ORGANIZATION WILL WORK WITH NEWSPAPER PUBLISHERS AND MAGAZINE AND PERIODICAL PUBLISHERS TO ACCEPT PRINT OR ONLINE ADVERTISING IN LIEU OF ALL OR A PORTION OF THE PRODUCER RESPONSIBILITY DUES FOR NEWSPAPERS, MAGAZINES, AND PERIODICALS CIRCULATED WITHIN THE STATE;

(i) ESTABLISH A FUNDING MECHANISM THAT:

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

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

(B) MEETING THE REPORTING REQUIREMENTS SET FORTH IN SECTION 25-17-709 (2);

(C) CONDUCTING THE NEEDS ASSESSMENT;

(D) DEVELOPING AND UPDATING THE FINAL PLAN;

(E) IMPLEMENTING THE EDUCATION AND OUTREACH PROGRAM SET FORTH IN SECTION 25-17-707;

(F) REIMBURSING THE DEPARTMENT PURSUANT TO SECTION 25-17-715 FOR ITS COSTS IN ADMINISTERING AND IMPLEMENTING THIS PART 7, INCLUDING THE COSTS OF THE ADVISORY BOARD; AND

(G) REIMBURSING THE DEPARTMENT PURSUANT TO SECTION 25-17-715 FOR THE COSTS OF ENFORCING THIS PART 7 PURSUANT TO SECTION 25-17-710;

(II) IS FUNDED THROUGH PRODUCER RESPONSIBILITY DUES. THE PRODUCER RESPONSIBILITY DUES MUST VARY BY THE TYPE OF COVERED MATERIAL, WHETHER OR NOT THE MATERIAL IS READILY RECYCLABLE, AND BE BASED ON THE NET RECYCLING SERVICES COSTS FOR EACH COVERED MATERIAL IN THE STATE. THE ORGANIZATION MAY USE UP TO FIVE PERCENT OF THE PRODUCER RESPONSIBILITY DUES COLLECTED FROM PRODUCERS FOR ADMINISTRATION OF THE PROGRAM, OVER THE TERMS OF THE PROGRAM, IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, BUT THE ORGANIZATION SHALL NOT USE ANY PRODUCER RESPONSIBILITY DUES COLLECTED FROM PRODUCERS TO PAY EMPLOYEE BONUSES.

(III) REQUIRES:

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

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

(C) ANNUAL UPDATES TO THE PRODUCER RESPONSIBILITY DUES SCHEDULE TO REFLECT CHANGES IN PROGRAM COSTS AND RELEVANT PLAN REVISIONS AND HOW THE ORGANIZATION WILL SOLICIT AND INCORPORATE INPUT FROM ALL PRODUCERS IN SETTING AND REVISING THE ANNUAL PRODUCER RESPONSIBILITY DUES SCHEDULE;

(IV) INCLUDES ECO-MODULATION FACTORS THAT LOWER PRODUCER RESPONSIBILITY DUES TO INCENTIVIZE:

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

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

(C) HIGH LEVELS OF POSTCONSUMER RECYCLED MATERIAL USE;

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

AND

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

(V) INCLUDES ECO-MODULATION FACTORS THAT INCREASE PRODUCER RESPONSIBILITY DUES TO DISCOURAGE:

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

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

(C) PRODUCERS FROM USING COVERED MATERIALS THAT ARE NOT ON THE MINIMUM RECYCLABLE LIST; AND

(VI) AT THE REQUEST OF A PRODUCER OR PRODUCERS OF A COVERED MATERIAL, MAY INCLUDE A SPECIAL ASSESSMENT PAID BY THE PRODUCERS OF THAT COVERED MATERIAL TO COVER SYSTEM IMPROVEMENTS THAT IMPROVE THE COLLECTION AND RECYCLING OF THAT COVERED MATERIAL OR FACILITATE THE ADDITION OF THE COVERED MATERIAL TO THE LIST OF READILY RECYCLABLE MATERIALS;

(j) INCLUDE REIMBURSEMENT RATES FOR ONE HUNDRED PERCENT OF THE NET RECYCLING SERVICES COSTS OF THE RECYCLING SERVICES PROVIDED BY SERVICE PROVIDERS UNDER THE PROGRAM CONSISTENT WITH THE REQUIREMENTS OF SECTION 25-17-706. THE REIMBURSEMENT RATES MUST:

(I) BE CALCULATED USING AN OBJECTIVE COST FORMULA OR FORMULAS;

(II) INCORPORATE THE RELEVANT COST INFORMATION IDENTIFIED BY THE NEEDS ASSESSMENT PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION;

(III) BE CALCULATED ON A PER UNIT BASIS SUCH AS PER TON, PER HOUSEHOLD, OR OTHER UNIT OF MEASUREMENT; AND

(IV) TAKE INTO ACCOUNT:

(A) REGIONAL RECYCLING SERVICES COSTS;

(B) POPULATION DENSITY;

(C) THE NUMBER AND TYPES OF HOUSEHOLDS SERVED;

(D) THE COLLECTION METHOD USED;

(E) THE REVENUE GENERATED FROM COVERED MATERIALS;

(F) THE AMOUNT OF INBOUND CONTAMINATION AND OTHER FACTORS AFFECTING THE QUALITY OF COVERED MATERIALS; AND

(G) OTHER DEMOGRAPHIC FACTORS IDENTIFIED IN THE NEEDS ASSESSMENT PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION.

(k) DESCRIBE THE PROCESS TO EVALUATE AND REVISE THE OBJECTIVE COST FORMULAS AS NECESSARY AND USING DOCUMENTED COSTS. IF THE PLAN PROPOSAL INCLUDES MORE THAN ONE OBJECTIVE COST FORMULA FOR RECYCLING SERVICES, THE PLAN PROPOSAL MUST DESCRIBE THE CONDITIONS UNDER WHICH EACH FORMULA WILL BE APPLIED.

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

(m) INCLUDE A PROPOSED BUDGET AND A DESCRIPTION OF THE PROCESS USED TO DETERMINE PRODUCER RESPONSIBILITY DUES, INCLUDING A DE MINIMIS LEVEL IN WHICH NO DUES ARE CHARGED AND AN OPTIONAL FLAT RATE FOR PRODUCERS BELOW A CERTAIN SIZE TO MINIMIZE THE ADMINISTRATIVE AND REPORTING COSTS OF THE PRODUCERS AND THE ORGANIZATION;

(n) DESCRIBE A PLAN THAT OUTLINES, IF THE ORGANIZATION CEASES TO EXIST OR CEASES TO ADMINISTER THE PROGRAM, HOW ANY PRODUCER RESPONSIBILITY DUES THAT HAVE NOT BEEN USED TO IMPLEMENT THE

PROGRAM WILL BE TRANSFERRED TO ANOTHER ORGANIZATION DESIGNATED BY THE EXECUTIVE DIRECTOR UNDER SUBSECTION (1)(b)(II) OF THIS SECTION TO ADMINISTER THE PROGRAM OR WILL BE TRANSFERRED TO THE FUND TO BE MANAGED BY THE DEPARTMENT UNTIL TRANSFERRED TO ANOTHER DESIGNATED ORGANIZATION;

(o) INCLUDE THE MINIMUM RECYCLABLE LIST ESTABLISHED IN ACCORDANCE WITH SECTION 25-17-706 (1)(a);

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

(q) DESCRIBE HOW THE ORGANIZATION PLANS TO CONTINUE TO INCREASE THE STATE'S MINIMUM COLLECTION RATES, MINIMUM RECYCLING RATES, AND MINIMUM POSTCONSUMER-RECYCLED-CONTENT RATES AFTER JANUARY 1, 2030, AND JANUARY 1, 2035;

(r) DESCRIBE HOW THE ORGANIZATION WILL VERIFY MINIMUM POSTCONSUMER-RECYCLED-CONTENT RATES AND HOW POSTCONSUMER-RECYCLED-CONTENT RATES WILL BE CALCULATED USING WEIGHT AND OTHER METRICS, AND DESCRIBE ANY WAIVERS FROM MINIMUM POSTCONSUMER-RECYCLED-CONTENT RATES GRANTED TO A TYPE OR SUBCATEGORY OF COVERED MATERIALS AND THE CRITERIA FOR EVALUATING SUCH WAIVERS, INCLUDING FOOD SAFETY REQUIREMENTS, TECHNOLOGICAL FEASIBILITY, OR INADEQUATE SUPPLY, AND HOW OFTEN THE WAIVERS WILL BE REVIEWED;

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

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

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

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

(u) DESCRIBE HOW THE ORGANIZATION WILL WORK WITH SERVICE PROVIDERS TO:

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

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

(A) REQUIRING EACH MATERIALS RECOVERY FACILITY AND COMPOST FACILITY PARTICIPATING IN THE PROGRAM TO REPORT ANNUALLY TO THE ORGANIZATION ON CONTAMINATION LEVELS AT EACH FACILITY; AND

(B) PROVIDING FUNDING OR OTHER ASSISTANCE TO COMPOST FACILITIES TO REDUCE THE COSTS OF MANAGING OR INCREASE THE EFFECTIVENESS OF EFFORTS TO MANAGE CONTAMINATION AND TO PROCESS AND RECOVER COMPOSTABLE PACKAGING MATERIALS;

(III) INVEST IN NEW OR UPGRADED RECYCLING INFRASTRUCTURE;

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

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

(VI) INVEST IN MARKET DEVELOPMENT FOR COVERED MATERIALS IN THE STATE; AND

(VII) INCREASE THE RECYCLING OF COLLECTED COVERED MATERIALS;

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

(w) DESCRIBE HOW THE PROGRAM WILL PRIORITIZE THE USE OF END MARKETS THAT RETURN POSTCONSUMER RECYCLED MATERIALS TO THEIR ORIGINAL PRODUCT TYPE;

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

(y) DESCRIBE HOW THE ORGANIZATION WILL IMPLEMENT THE EDUCATION AND OUTREACH PROGRAM SET FORTH IN SECTION 25-17-707;

(z) DESCRIBE A PROCESS AND TIMELINE, BEGINNING NO LATER THAN 2028, TO EXPAND RECYCLING SERVICES TO APPLICABLE NONRESIDENTIAL COVERED ENTITIES, AS IDENTIFIED IN THE NEEDS ASSESSMENT PURSUANT TO SUBSECTION (3)(a)(V) OF THIS SECTION; AND

(aa) INCLUDE ANY ADDITIONAL INFORMATION REQUIRED BY THE DEPARTMENT.

(5) (a) THE ADVISORY BOARD SHALL REVIEW THE PLAN PROPOSAL FOR COMPLIANCE WITH THIS PART 7. THE ADVISORY BOARD SHALL CONSULT WITH THE ORGANIZATION THROUGHOUT ITS REVIEW OF THE PLAN PROPOSAL. WITHIN NINETY DAYS AFTER THE SUBMISSION OF THE PLAN PROPOSAL TO THE ADVISORY BOARD, THE ADVISORY BOARD SHALL EITHER PROVIDE ANY RECOMMENDED AMENDMENTS TO THE PLAN PROPOSAL TO THE ORGANIZATION OR, IF THE ADVISORY BOARD DOES NOT HAVE ANY RECOMMENDED AMENDMENTS, FORWARD THE PLAN PROPOSAL TO THE EXECUTIVE DIRECTOR. THE ORGANIZATION SHALL PROVIDE RESPONSIVE ANSWERS TO THE ADVISORY BOARD'S RECOMMENDATIONS AND SUBMIT THE AMENDED PLAN PROPOSAL TO THE ADVISORY BOARD WITHIN SIXTY DAYS AFTER ITS RECEIPT OF THE RECOMMENDED AMENDMENTS. WITHIN FORTY-FIVE DAYS AFTER THE SUBMISSION OF THE AMENDED PLAN PROPOSAL TO THE ADVISORY BOARD, THE ADVISORY BOARD SHALL FORWARD THE AMENDED PLAN PROPOSAL TO THE EXECUTIVE DIRECTOR WITH ITS

RECOMMENDATION FOR APPROVAL OR REJECTION AND, IF APPLICABLE, A WRITTEN EXPLANATION OF THE BASIS FOR RECOMMENDING REJECTION OF THE PLAN PROPOSAL. WITHIN EIGHT DAYS AFTER RECEIVING THE PLAN PROPOSAL, THE EXECUTIVE DIRECTOR SHALL POST THE PLAN PROPOSAL ON THE DEPARTMENT'S WEBSITE AND PROVIDE PUBLIC NOTICE AND AN OPPORTUNITY TO COMMENT ON THE PLAN PROPOSAL.

(b) (I) WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE PLAN PROPOSAL OR AMENDED PLAN PROPOSAL, THE EXECUTIVE DIRECTOR SHALL:

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

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

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

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

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

(6)(a) THE ORGANIZATION MAY SUBMIT PROPOSED AMENDMENTS TO THE FINAL PLAN ANNUALLY TO THE ADVISORY BOARD FOR INCLUSION IN THE ANNUAL REPORT UNDER SECTION 25-17-709 (2)(c). AT LEAST SIXTY DAYS

PRIOR TO THE DEADLINE TO SUBMIT THE ANNUAL REPORT, THE DEPARTMENT MAY REQUEST THAT THE ORGANIZATION SUBMIT AN AMENDMENT TO THE ANNUAL PLAN TO ADDRESS A SPECIFIC CONCERN OR ASPECT OF THE PLAN. AT LEAST THIRTY DAYS PRIOR TO SUBMITTING THE ANNUAL REPORT PURSUANT TO SECTION 25-17-709 (2)(a), THE ORGANIZATION SHALL CONSULT WITH THE ADVISORY BOARD ON ANY PROPOSED AMENDMENTS TO THE FINAL PLAN. THE ADVISORY BOARD SHALL SUBMIT ANY PROPOSED AMENDMENTS TO THE EXECUTIVE DIRECTOR. THE EXECUTIVE DIRECTOR SHALL APPROVE OR REJECT THE PROPOSED AMENDMENTS BASED ON THE PLAN PROPOSAL REQUIREMENTS SPECIFIED IN SUBSECTION (4) OF THIS SECTION.

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

(7) THE EXECUTIVE DIRECTOR SHALL ENFORCE THIS PART 7 IN ACCORDANCE WITH SECTION 25-17-710 AND THE COMMISSION SHALL PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 AS MAY BE NECESSARY FOR THE ADMINISTRATION OF THIS PART 7 AND THE ENFORCEMENT OF THIS PART 7 PURSUANT TO SECTION 25-17-710. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE ORGANIZATION MAY NOT MAKE ANY DETERMINATION AS TO A PERSON'S COMPLIANCE WITH THIS PART 7.

(8)(a) ON JANUARY 1, 2025, AND EACH JANUARY 1 THEREAFTER, AS AN ALTERNATIVE TO PARTICIPATING IN THE PROGRAM, A PRODUCER MAY SUBMIT TO THE ADVISORY BOARD AN INDIVIDUAL PROGRAM PLAN PROPOSAL. A PRODUCER MUST NOTIFY THE DEPARTMENT OF ITS INTENT TO SUBMIT AN INDIVIDUAL PROGRAM PLAN PROPOSAL BY JANUARY 1, 2024, AND BY EACH JANUARY 1 THEREAFTER. THE INDIVIDUAL PROGRAM PLAN PROPOSAL MUST:

(I) COMPLY WITH THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION, AS APPLICABLE;

(II) DESCRIBE HOW THE PRODUCER PARTICIPATING IN THE INDIVIDUAL PROGRAM PLAN PROPOSAL WILL CONTRIBUTE TO THE COSTS OF

THE DEPARTMENT IN OVERSEEING THE PROGRAM;

(III) DESCRIBE HOW THE PRODUCER WILL REIMBURSE SERVICE PROVIDERS THAT PROVIDE RECYCLING SERVICES FOR THE COVERED MATERIALS COVERED BY THE INDIVIDUAL PROGRAM PLAN PROPOSAL; AND

(IV) DESCRIBE ANY ALTERNATIVE COLLECTION PROGRAMS RUN BY THE PRODUCER AND ITS RECYCLING RATES.

(b) THE ADVISORY BOARD SHALL REVIEW AND MAKE RECOMMENDATIONS ON, AND THE EXECUTIVE DIRECTOR SHALL APPROVE OR REJECT, ANY INDIVIDUAL PROGRAM PLAN PROPOSALS IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBSECTION (5) OF THIS SECTION. AFTER THE EXECUTIVE DIRECTOR APPROVES THE INDIVIDUAL PROGRAM PLAN PROPOSAL, THE EXECUTIVE DIRECTOR SHALL DESIGNATE THE INDIVIDUAL PROGRAM PLAN PROPOSAL AS THE PLAN THAT THE PRODUCER IS AUTHORIZED TO IMPLEMENT AND ADMINISTER AS AN ALTERNATIVE TO PARTICIPATING IN THE PROGRAM.

(c) THE PRODUCER IMPLEMENTING A PLAN DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION SHALL SUBMIT ANY AMENDMENTS TO THE PLAN TO THE ADVISORY BOARD IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION. THE ADVISORY BOARD SHALL REVIEW AND MAKE RECOMMENDATIONS ON, AND THE EXECUTIVE DIRECTOR SHALL APPROVE OR REJECT, ANY AMENDMENTS TO THE PLAN IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION.

25-17-706. Minimum recyclable list - convenience standards.

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

(b) THE ORGANIZATION SHALL UPDATE THE MINIMUM RECYCLABLE LIST, AND SUBMIT ANY UPDATES FOR INCLUSION IN THE ANNUAL REPORT PURSUANT TO SECTION 25-17-709 (2)(a), IN RESPONSE TO RECYCLING COLLECTION AND PROCESSING IMPROVEMENTS AND CHANGES IN RECYCLING END MARKETS. THE ADVISORY BOARD SHALL CONSULT WITH THE ORGANIZATION ON ANY UPDATES TO THE MINIMUM RECYCLABLE LIST IN

ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION 25-17-705 (6).

(2) (a) TO BE ELIGIBLE FOR REIMBURSEMENT FOR RECYCLING SERVICES PROVIDED UNDER THE PROGRAM, SERVICE PROVIDERS MUST PROVIDE RECYCLING SERVICES FOR ALL READILY RECYCLABLE MATERIALS IN A MANNER THAT FACILITATES ATTAINING THE RATE TARGETS ESTABLISHED IN THE FINAL PLAN UNDER SECTION 25-17-705 (4)(p).

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

(c) SERVICE PROVIDERS ARE ELIGIBLE FOR REIMBURSEMENT FROM THE ORGANIZATION FOR THE COLLECTION OF COVERED MATERIALS THAT ARE NOT INCLUDED IN THE MINIMUM RECYCLABLE LIST FOR THE REGIONS WHERE THE ORGANIZATION HAS ESTABLISHED A REASONABLE COST FOR THE SUPPLEMENTAL COLLECTION OF COVERED MATERIALS THAT ARE NOT READILY RECYCLABLE AND A RESPONSIBLE END MARKET HAS BEEN ESTABLISHED. THE SERVICES DESCRIBED IN THIS SUBSECTION (2)(c) ARE NOT SUBJECT TO THE CONVENIENCE STANDARDS.

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

(e) NOTWITHSTANDING ANY LAW TO THE CONTRARY, NOTHING IN THIS PART 7 RESTRICTS A SERVICE PROVIDER FROM COLLECTING OR PROCESSING COVERED MATERIALS THAT ARE NOT INCLUDED IN THE MINIMUM RECYCLABLE LIST.

(3) (a) THE ORGANIZATION SHALL CONTRACT WITH SERVICE PROVIDERS TO PROVIDE COVERED ENTITIES WITH CONVENIENT AND EQUITABLE ACCESS TO RECYCLING SERVICES FOR ALL READILY RECYCLABLE MATERIALS, AT NO CHARGE TO THE COVERED ENTITY, WITH THE GOAL OF ACHIEVING THE RECYCLING RATE, COLLECTION RATE, AND

POSTCONSUMER-RECYCLED-CONTENT RATE TARGETS ESTABLISHED IN THE FINAL PLAN UNDER SECTION 25-17-705 (4)(p).

(b) THE COLLECTION OF READILY RECYCLABLE MATERIALS MUST BE PROVIDED IN A MANNER THAT IS AS CONVENIENT AS THE COLLECTION OF SOLID WASTE IN THE GEOGRAPHIC AREA IN WHICH THE COVERED ENTITY IS LOCATED.

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

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

(e) NOTWITHSTANDING ANY LAW TO THE CONTRARY, NOTHING IN THIS PART 7 VOIDS OR CANCELS ANY CONTRACT BETWEEN A RESIDENT AND A SERVICE PROVIDER FOR THE PROVISION OF RECYCLING SERVICES THAT IS EXECUTED PRIOR TO DECEMBER 31, 2022.

25-17-707. Education and outreach program. (1) THE ORGANIZATION SHALL DEVELOP AND IMPLEMENT A STATEWIDE EDUCATION AND OUTREACH PROGRAM THAT IS DESIGNED TO INCREASE THE RECYCLING AND REUSE OF COVERED MATERIALS AND INCLUDES EDUCATION AND OUTREACH ON:

(a) PROPER END-OF-LIFE MANAGEMENT OF COVERED MATERIALS;

(b) THE LOCATION AND AVAILABILITY OF RECYCLING SERVICES UNDER THE PROGRAM; AND

(c) HOW TO PREVENT LITTERING IN THE PROCESS OF PROVIDING RECYCLING SERVICES FOR COVERED MATERIALS.

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

(a) PROVIDE CLEAR AND CONCISE RECYCLING INSTRUCTIONS THAT ARE CONSISTENT STATEWIDE AND ACCESSIBLE FOR ALL DEMOGRAPHIC

GROUPS;

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

(c) BE DESIGNED TO HELP THE STATE ACHIEVE THE MINIMUM COLLECTION RATE AND MINIMUM RECYCLING RATE TARGETS ESTABLISHED IN THE FINAL PLAN UNDER SECTION 25-17-705 (4)(p) AND REDUCE LEVELS AND IMPACTS OF INBOUND CONTAMINATION FROM COVERED MATERIALS AT MATERIALS RECOVERY FACILITIES AND COMPOST FACILITIES.

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

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

25-17-708. Producer requirements - additional producer responsibility organization - coordination plan - rules - confidentiality - compliance with local government codes - audit. (1) EFFECTIVE JULY 1, 2025, A PRODUCER SHALL NOT SELL OR DISTRIBUTE ANY PRODUCTS THAT USE COVERED MATERIALS IN THE STATE UNLESS THE PRODUCER IS PARTICIPATING IN THE PROGRAM OR, ON OR AFTER JANUARY 1, 2029, EXCEPT AS SET FORTH IN THE FINAL PLAN OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7. A PRODUCER MUST REPORT THE DATA NECESSARY TO MEET ITS PLAN OBLIGATIONS AND MAY USE PRORATED NATIONAL DATA IF STATE-SPECIFIC DATA IS NOT AVAILABLE OR FEASIBLE TO GENERATE.

(2) (a) ON JANUARY 1, 2029, AND EVERY JANUARY 1 THEREAFTER, A NONPROFIT ORGANIZATION MAY REQUEST THAT THE EXECUTIVE DIRECTOR DESIGNATE THE NONPROFIT ORGANIZATION AS AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION.

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

(I) INCREASE RECYCLING RATES;

(II) EXPAND RECYCLING SERVICES TO COVERED ENTITIES THAT ARE NOT COVERED UNDER THE FINAL PLAN; OR

(III) PROVIDE RECYCLING SERVICES FOR A SPECIFIC TYPE OF COVERED MATERIAL.

(c) IF THE EXECUTIVE DIRECTOR DESIGNATES AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION, THE ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION SHALL SUBMIT A COORDINATION PLAN TO THE EXECUTIVE DIRECTOR FOR APPROVAL IN ACCORDANCE WITH THE RULES PROMULGATED PURSUANT TO THIS SUBSECTION (2)(c). WITHIN ONE HUNDRED TWENTY DAYS AFTER THE DESIGNATION OF THE FIRST ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, THE EXECUTIVE DIRECTOR SHALL PROMULGATE BY RULE STANDARDS AND REQUIREMENTS FOR A COORDINATION PLAN AND FOR COORDINATION BETWEEN THE ORGANIZATION AND ANY ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATIONS DESIGNATED BY THE EXECUTIVE DIRECTOR. A COORDINATION PLAN APPROVED OR ORDERED BY THE EXECUTIVE DIRECTOR SHALL BE IMPLEMENTED BY THE ORGANIZATION AND ANY ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATIONS DESIGNATED BY THE EXECUTIVE DIRECTOR. IF THE COORDINATION PLAN CONFLICTS WITH THE FINAL PLAN OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, THE PROVISIONS OF THE COORDINATION PLAN PREVAIL. A COORDINATION PLAN APPROVED OR ORDERED BY THE EXECUTIVE DIRECTOR IS VALID UNTIL REVOKED OR UNTIL A NEW COORDINATION PLAN IS APPROVED OR ORDERED BY THE EXECUTIVE DIRECTOR.

(3) THE EXECUTIVE DIRECTOR, THE ADVISORY BOARD, THE ORGANIZATION, AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, AND ANY OTHER PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7:

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

(b) SHALL NOT INCLUDE ANY PROPRIETARY INFORMATION PROVIDED BY A PRODUCER IN THE PLAN PROPOSAL, THE AMENDED PLAN PROPOSAL, THE FINAL PLAN, ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR ANY AMENDMENT TO THE FINAL PLAN OR OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7.

(4) (a) THE PROGRAM AND ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 MUST COMPLY WITH ANY FIRE, SOLID WASTE, OR OTHER RELEVANT ORDINANCES OR RESOLUTIONS ADOPTED BY A LOCAL GOVERNMENT AND WITH APPLICABLE STATE AND FEDERAL LAWS, INCLUDING THE EXEMPTIONS SET FORTH IN SECTION 30-20-102 (5).

(b) NOTWITHSTANDING ANY LAW TO THE CONTRARY, A LOCAL GOVERNMENT IS NOT REQUIRED TO PROVIDE RECYCLING SERVICES UNDER THE PROGRAM OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7. TO THE EXTENT THAT A LOCAL GOVERNMENT ELECTS TO PROVIDE RECYCLING SERVICES UNDER THE PROGRAM OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, OR OTHER PERSON RESPONSIBLE FOR ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR UNDER THIS PART 7 SHALL REIMBURSE THE LOCAL GOVERNMENT FOR THOSE RECYCLING SERVICES IN ACCORDANCE WITH SECTION 25-17-706 (2) AND THE FINAL PLAN OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7.

(c) A LOCAL GOVERNMENT THAT RECEIVES REIMBURSEMENT FUNDS FROM THE ORGANIZATION SHALL USE SUCH FUNDS FOR THE LOCAL GOVERNMENT'S RECYCLING PROGRAM.

(5) THE ORGANIZATION, ANY ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, AND ANY PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 SHALL CAUSE TO BE CONDUCTED AN ANNUAL FINANCIAL AUDIT OF THE PROGRAM OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO

THIS PART 7 BY AN INDEPENDENT THIRD-PARTY AUDITOR. THE AUDIT MUST INCLUDE A DETAILED LIST OF THE PROGRAM'S OR PLAN'S COSTS AND REVENUES FROM THE PRODUCER RESPONSIBILITY DUES.

(6) NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE ORGANIZATION AND ANY ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION SHALL NOT BE CONSIDERED A STATE-SPONSORED OR STATE-OWNED ENTITY AND SHALL NOT BE CONSIDERED AN ENTERPRISE, AS DEFINED IN SECTION 20 (2)(d) OF ARTICLE X OF THE STATE CONSTITUTION. EMPLOYEES OF THE ORGANIZATION AND ANY ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION SHALL NOT BE CONSIDERED EMPLOYEES OF THE STATE.

(7) THE ORGANIZATION, ANY ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, AND ANY PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 SHALL PRESERVE ALL BOOKS AND RECORDS IN ACCORDANCE WITH STATE AND FEDERAL LAWS AND BE OPEN TO INSPECTION BY THE DEPARTMENT AT ANY TIME.

25-17-709. Producer responsibility dues - inspection of records - annual reporting. (1) (a) EXCEPT AS SET FORTH IN A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 ON OR AFTER JANUARY 1, 2029, BY A DATE DETERMINED BY THE ORGANIZATION THAT IS NO LATER THAN JANUARY 1, 2026, AND ANNUALLY THEREAFTER BY A DATE DETERMINED BY THE ORGANIZATION, A PRODUCER SHALL PAY PRODUCER RESPONSIBILITY DUES TO THE ORGANIZATION BASED ON THE FUNDING MECHANISM DESCRIBED IN THE PLAN PROPOSAL PURSUANT TO SECTION 25-17-705 (4)(i).

(b) A PRODUCER SHALL MAKE ALL DOCUMENTS AND RECORDS RELATED TO THE CALCULATION AND PAYMENT OF PRODUCER RESPONSIBILITY DUES, RECYCLING RATES, COLLECTION RATES, POSTCONSUMER-RECYCLED-CONTENT RATES, AND ANY OTHER MATERIALS NECESSARY FOR THE EXECUTIVE DIRECTOR TO DETERMINE COMPLIANCE WITH THIS PART 7 AVAILABLE FOR INSPECTION BY THE EXECUTIVE DIRECTOR. IN CONNECTION WITH ENFORCING A VIOLATION BY A PRODUCER PURSUANT TO SECTION 25-17-710, THE EXECUTIVE DIRECTOR MAY REQUEST IN WRITING THAT THE PRODUCER PROVIDE ANY SUCH DOCUMENTS OR RECORDS TO THE EXECUTIVE DIRECTOR.

(c) THE ORGANIZATION, ANY ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, AND ANY PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 SHALL MAINTAIN ALL DOCUMENTS AND RECORDS NECESSARY FOR THE EXECUTIVE DIRECTOR TO DETERMINE COMPLIANCE WITH THIS PART 7 AND SUBMIT ANY SUCH DOCUMENTS AND RECORDS TO THE EXECUTIVE DIRECTOR UPON A REQUEST BY THE EXECUTIVE DIRECTOR PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION.

(d) BY JANUARY 1, 2026, AND EACH YEAR THEREAFTER, THE EXECUTIVE DIRECTOR SHALL DEVELOP AN ECO-MODULATION BONUS SCHEDULE THAT IS DESIGNED TO REDUCE THE PRODUCER RESPONSIBILITY DUES OF PRODUCERS THAT MEET CERTAIN BENCHMARKS ESTABLISHED BY THE EXECUTIVE DIRECTOR BY RULE. THE EXECUTIVE DIRECTOR SHALL CONSULT WITH THE ORGANIZATION AND THE ADVISORY BOARD IN DEVELOPING THE ECO-MODULATION BONUS SCHEDULE. THE ORGANIZATION SHALL REDUCE THE PRODUCER RESPONSIBILITY DUES OF PRODUCERS IN ACCORDANCE WITH THE ECO-MODULATION BONUS SCHEDULE DEVELOPED BY THE EXECUTIVE DIRECTOR.

(2)(a) BEFORE MARCH 31 OF THE SECOND YEAR OF THE PROGRAM'S IMPLEMENTATION, AND BY MARCH 31 EACH YEAR THEREAFTER, THE ORGANIZATION SHALL SUBMIT A REPORT TO THE ADVISORY BOARD DESCRIBING THE PROGRESS OF THE PROGRAM. WITHIN TWO YEARS AFTER THE IMPLEMENTATION OF THE FINAL PLAN OR ANY UPDATED PLAN PROPOSALS SUBMITTED TO THE ADVISORY BOARD PURSUANT TO SECTION 25-17-705 (4), THE REPORT MUST ALSO INCLUDE AN EVALUATION OF THE IMPACTS OF THE EXEMPTIONS DESCRIBED IN SECTION 25-17-713 (1) ON THE PERFORMANCE OF THE PROGRAM AND THE PRODUCER RESPONSIBILITY DUES SCHEDULE. THE ADVISORY BOARD SHALL REVIEW THE REPORT AND FORWARD THE REPORT TO THE EXECUTIVE DIRECTOR. THE ADVISORY BOARD SHALL ALSO REVIEW ANY PROPOSED AMENDMENTS TO THE FINAL PLAN AND ANY UPDATES TO THE MINIMUM RECYCLABLE LIST AND FORWARD THE AMENDMENTS AND UPDATES TO THE EXECUTIVE DIRECTOR WITH ITS RECOMMENDATION FOR APPROVAL OR REJECTION. THE EXECUTIVE DIRECTOR SHALL POST THE REPORT ON THE DEPARTMENT'S WEBSITE. THE PROGRAM REPORT MUST INCLUDE THE FOLLOWING INFORMATION FROM THE PRECEDING CALENDAR YEAR:

(I) A DETAILED DESCRIPTION OF THE PROGRESS TOWARD EACH

ELEMENT OF THE FINAL PLAN AS DESCRIBED IN SECTION 25-17-705 (4);

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

(III) A LIST OF PRODUCERS THAT ARE NOT PARTICIPATING IN THE PROGRAM AND ANY PRODUCERS THAT MAY BE OUT OF COMPLIANCE WITH ONE OR MORE OBLIGATIONS IMPOSED BY THIS PART 7;

(IV) THE TOTAL WEIGHT OF THE COVERED MATERIALS THAT PRODUCERS USED FOR PRODUCTS THAT ARE SOLD OR DISTRIBUTED IN THE STATE;

(V) THE TOTAL AMOUNT OF PRODUCER RESPONSIBILITY DUES COLLECTED UNDER THE PROGRAM, INCLUDING AN ANNUAL SCHEDULE OF PRODUCER RESPONSIBILITY DUES ASSESSED BY WEIGHT FOR EACH TYPE OF COVERED MATERIAL AND ANY ANNUAL INCREASES OR DECREASES IN THE DUES SCHEDULE AND THE REASONS FOR THESE ADJUSTMENTS;

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

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

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

(C) THE METHOD USED TO HANDLE THE COLLECTED COVERED MATERIAL; AND

(D) GEOGRAPHIC AREA;

(VII) THE RECYCLING RATE, COLLECTION RATE, AND POSTCONSUMER-RECYCLED-CONTENT RATE FOR EACH TYPE OF COVERED MATERIAL AND A DESCRIPTION OF THE ORGANIZATION'S PROCESS IN ACHIEVING THE MINIMUM RATE TARGETS SET FORTH IN THE FINAL PLAN PURSUANT TO SECTION 25-17-705 (4)(p);

(VIII) THE RATE SCHEDULES FOR REIMBURSEMENT TO SERVICE PROVIDERS, ANY PROPOSED ADJUSTMENTS TO THE RATE SCHEDULES, AND A SUMMARY OF ANY DISPUTES ARISING BETWEEN THE ORGANIZATION AND SERVICE PROVIDERS CONCERNING RATES AND HOW THE DISPUTES WERE ADDRESSED;

(IX) A SUMMARY OF THE EDUCATION AND OUTREACH EFFORTS IMPLEMENTED IN ACCORDANCE WITH SECTION 25-17-707, INCLUDING:

(A) SAMPLES OF ANY MATERIALS DISTRIBUTED; AND

(B) A DESCRIPTION OF THE METHODOLOGY USED AND THE RESULTS OF THE EVALUATION CONDUCTED PURSUANT TO SECTION 25-17-707 (4);

(X) A LIST OF THE NAMES, LOCATIONS, AND HOURS OF OPERATION FOR CURBSIDE SERVICES, DROP-OFF CENTERS, AND OTHER ENTITIES ACCEPTING OR COLLECTING COVERED MATERIALS UNDER THE PROGRAM;

(XI) A DESCRIPTION OF THE ORGANIZATION'S EFFORTS TO ENSURE THAT COVERED MATERIALS HAVE BEEN RESPONSIBLY MANAGED AND DELIVERED TO RESPONSIBLE END MARKETS UNDER THE PROGRAM;

(XII) A LIST OF THE RECYCLING END MARKETS OF ANY COVERED MATERIALS, AND, IF THE COVERED MATERIALS ARE PROCESSED THROUGH A METHOD OTHER THAN MECHANICAL RECYCLING, THE LIST MUST INCLUDE:

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

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

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

(D) AN ANALYSIS OF THE ENVIRONMENTAL IMPACTS OF THE METHOD COMPARED TO THE ENVIRONMENTAL IMPACTS OF INCINERATION OF SOLID

WASTE IN LANDFILLS;

(XIII) A COPY OF AN INDEPENDENT THIRD PARTY'S REPORT AUDITING THE PROGRAM PURSUANT TO SECTION 25-17-708 (5);

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

(XV) ANY AMENDMENTS TO THE FINAL PLAN IN ACCORDANCE WITH SECTION 25-17-705 (6);

(XVI) ANY UPDATES TO THE MINIMUM RECYCLABLE LIST IN ACCORDANCE WITH SECTION 25-17-706 (1)(b); AND

(XVII) A DESCRIPTION OF THE ADVISORY BOARD'S FEEDBACK ON ANY AMENDMENTS TO THE FINAL PLAN PURSUANT TO SECTION 25-17-705 (6)(a).

(b) BEFORE MARCH 31 OF THE SECOND YEAR OF ANY PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 THAT IS NOT THE FINAL PLAN, AND BY MARCH 31 EACH YEAR THEREAFTER, AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION OR OTHER PERSON RESPONSIBLE FOR ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 SHALL SUBMIT A REPORT TO THE ADVISORY BOARD DESCRIBING THE PROGRESS OF THE PLAN. THE REPORT MUST INCLUDE THE INFORMATION DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION, AS APPLICABLE, FROM THE PRECEDING CALENDAR YEAR. THE ADVISORY BOARD SHALL REVIEW THE REPORT AND FORWARD THE REPORT TO THE EXECUTIVE DIRECTOR. THE ADVISORY BOARD SHALL ALSO REVIEW ANY PROPOSED AMENDMENTS TO THE PLAN AND FORWARD THE AMENDMENTS TO THE EXECUTIVE DIRECTOR WITH ITS RECOMMENDATION FOR APPROVAL OR REJECTION. THE EXECUTIVE DIRECTOR SHALL POST THE REPORT ON THE DEPARTMENT'S WEBSITE.

(c) THE EXECUTIVE DIRECTOR SHALL ANNUALLY COMPILE THE RESULTS OF THE REPORTS RECEIVED PURSUANT TO SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION INTO A GENERAL REPORT DESCRIBING THE PROGRESS OF THE PROGRAM AND ANY OTHER PLANS APPROVED BY THE EXECUTIVE

DIRECTOR PURSUANT TO THIS PART 7. THE EXECUTIVE DIRECTOR SHALL INCLUDE THE DEPARTMENT'S ACTIVITIES AND EXPENSES THAT WERE REIMBURSED PURSUANT TO SECTION 25-17-715 IN THE GENERAL REPORT. ADDITIONALLY, AT LEAST EVERY THREE YEARS STARTING IN 2028, THE EXECUTIVE DIRECTOR SHALL INCLUDE IN THE GENERAL REPORT THE OUTCOME OF THE CONSUMER COST IMPACT REVIEW CONDUCTED BY THE DEPARTMENT PURSUANT TO SUBSECTION (4) OF THIS SECTION. THE EXECUTIVE DIRECTOR SHALL POST THE REPORT ON THE DEPARTMENT'S WEBSITE AND SUBMIT THE REPORT TO THE GOVERNOR AND SHALL ANNUALLY PRESENT THE GENERAL REPORT TO THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE AND THE ENERGY AND ENVIRONMENT COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES, DURING THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT" HEARINGS HELD PURSUANT TO PART 2 OF ARTICLE 7 OF TITLE 2. NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE REPORTING REQUIREMENT SPECIFIED IN THIS SUBSECTION (2)(c) CONTINUES INDEFINITELY.

(3) IF, BASED ON THE ANNUAL REPORT SUBMITTED UNDER SUBSECTION (2) OF THIS SECTION, THE PROGRAM OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7 IS NOT ON TRACK TO MEET THE MINIMUM COLLECTION RATES, MINIMUM RECYCLING RATES, OR MINIMUM POSTCONSUMER-RECYCLED-CONTENT RATES SET FORTH IN THE PROGRAM OR PLAN, THE EXECUTIVE DIRECTOR MAY REQUIRE THE ORGANIZATION, WITH RESPECT TO THE PROGRAM, OR THE ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION OR OTHER PERSON RESPONSIBLE FOR ADMINISTERING THE PLAN, WITH RESPECT TO ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, TO AMEND ITS RESPECTIVE PLAN UNDER SECTION 25-17-705 (6).

(4) NO LESS THAN EVERY THREE YEARS, STARTING IN 2028, THE DEPARTMENT SHALL CONDUCT A REVIEW OF CONSUMER COST IMPACTS RESULTING FROM THE PROGRAM, INCLUDING ASSESSMENTS OF INCREASED PRICES FOR COVERED MATERIALS RELATIVE TO THE PRICES FOR THOSE MATERIALS IN OTHER STATES, AS WELL AS LOCAL GOVERNMENT EXPENDITURES AND CONSUMER SPENDING ON RECYCLING SERVICES AND TRASH COLLECTION AND DISPOSAL.

25-17-710. Violations - enforcement - administrative penalty - injunction. (1) IF THE ORGANIZATION, AN ADDITIONAL PRODUCER

RESPONSIBILITY ORGANIZATION, A PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR A PRODUCER VIOLATES ANY PORTION OF THIS PART 7, THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR PRODUCER IS LIABLE FOR AN ADMINISTRATIVE PENALTY NOT TO EXCEED:

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

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

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

(2) (a) IF THE ORGANIZATION, AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, A PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR A PRODUCER VIOLATES ANY PORTION OF THIS PART 7, THE EXECUTIVE DIRECTOR SHALL SERVE BY PERSONAL SERVICE OR BY CERTIFIED MAIL AN ORDER THAT IMPOSES AN ADMINISTRATIVE PENALTY ON THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR PRODUCER.

(b) THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR PRODUCER MAY SUBMIT A WRITTEN REQUEST FOR A HEARING TO THE EXECUTIVE DIRECTOR BY PERSONAL SERVICE OR BY CERTIFIED MAIL WITHIN THIRTY-FIVE CALENDAR DAYS AFTER THE DATE OF THE ORDER IMPOSING AN ADMINISTRATIVE PENALTY. THE COMMISSION SHALL CONDUCT THE HEARING IN ACCORDANCE

WITH SECTION 24-4-105.

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

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

(3) THE EXECUTIVE DIRECTOR MAY ENTER INTO A SETTLEMENT AGREEMENT WITH THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR PRODUCER ASSESSED AN ADMINISTRATIVE PENALTY UNDER THIS SECTION.

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

(5) NOTWITHSTANDING ANY LAW TO THE CONTRARY, NOTHING IN THIS PART 7:

(a) CREATES A PRIVATE RIGHT OF ACTION; OR

(b) AUTHORIZES ENFORCEMENT OF THIS PART 7 AGAINST ANYONE OTHER THAN THE ORGANIZATION, AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, A PERSON ADMINISTERING A PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7, OR A PRODUCER.

25-17-711. Limited exemption from antitrust, restraint of trade, and unfair trade practices provisions. IF THE PROGRAM OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7

ENGAGES IN AN ACTIVITY PERFORMED SOLELY IN FURTHERANCE OF IMPLEMENTING THE PROGRAM OR PLAN AND IN COMPLIANCE WITH THIS PART 7, THE ACTIVITY IS NOT A VIOLATION OF THE ANTITRUST, RESTRAINT OF TRADE, AND UNFAIR TRADE PRACTICES PROVISIONS OF THE "UNFAIR PRACTICES ACT", ARTICLE 2 OF TITLE 6, OR THE "COLORADO ANTITRUST ACT OF 1992", ARTICLE 4 OF TITLE 6.

25-17-712. Eligibility for state or local incentive programs. NOTHING IN THIS PART 7 AFFECTS A PERSON'S ELIGIBILITY FOR ANY STATE OR LOCAL INCENTIVE PROGRAMS FOR WHICH THE PERSON IS OTHERWISE ELIGIBLE.

25-17-713. Producer exemptions - rules. (1) A PRODUCER IS EXEMPT FROM THE REQUIREMENTS OF THIS PART 7 IF THE PRODUCER IS:

(a) A PERSON WITH LESS THAN FIVE MILLION DOLLARS IN REALIZED GROSS TOTAL REVENUE, NOT INCLUDING ON-PREMISES ALCOHOL SALES, DURING THE PRIOR CALENDAR YEAR;

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

(c) THE STATE OR A LOCAL GOVERNMENT;

(d) A NONPROFIT ORGANIZATION;

(e) AN AGRICULTURAL EMPLOYER, AS DEFINED IN SECTION 8-3-104 (1), REGARDLESS OF WHERE THE AGRICULTURAL EMPLOYER IS LOCATED, WITH LESS THAN FIVE MILLION DOLLARS IN REALIZED GROSS TOTAL REVENUE IN THE STATE FROM CONSUMER SALES OF AGRICULTURAL PRODUCTS SOLD UNDER THE BRAND NAME OF THE FARMER, EGG PRODUCER, GROWER, OR INDIVIDUAL GROWER COOPERATIVE;

(f) AN INDIVIDUAL BUSINESS OPERATING A RETAIL FOOD ESTABLISHMENT THAT IS LOCATED AT A PHYSICAL BUSINESS LOCATION AND THAT IS LICENSED UNDER SECTION 25-4-1607 (1)(a) OR SECTION 32-106.5 (1) TO SECTION 32-106.5 (5) OF THE DENVER CODE OF ORDINANCES; OR

(g) A BUILDER, A CONSTRUCTION COMPANY, OR CONSTRUCTION

CONTRACTORS.

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

25-17-714. Restriction on fees. A PERSON SHALL NOT CHARGE ANY KIND OF POINT-OF-SALE OR POINT-OF-COLLECTION FEE TO CONSUMERS TO RECOUP ITS COSTS IN MEETING THE OBLIGATIONS OF OR COMPLYING WITH THIS PART 7.

25-17-715. Producer responsibility program for statewide recycling administration fund - creation - purpose. (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING ADMINISTRATION FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE FUND CONSISTS OF ALL PRODUCER RESPONSIBILITY DUES TRANSFERRED TO THE FUND PURSUANT TO THIS SECTION AND MONEY THAT THE GENERAL ASSEMBLY TRANSFERS TO THE FUND FOR USE BY THE DEPARTMENT. THE ORGANIZATION SHALL TRANSMIT A PORTION OF THE PRODUCER RESPONSIBILITY DUES TO THE STATE TREASURER FOR DEPOSIT IN THE FUND FOR PURPOSES OF REIMBURSING:

(a) THE DEPARTMENT, INCLUDING THE ADVISORY BOARD, FOR THE REASONABLE COSTS INCURRED IN ADMINISTERING AND IMPLEMENTING ANY PORTION OF THIS PART 7; AND

(b) THE DEPARTMENT FOR THE REASONABLE COSTS INCURRED IN ENFORCING THIS PART 7 PURSUANT TO SECTION 25-17-710.

(2) (a) BY JUNE 30, 2026, THE DEPARTMENT SHALL NOTIFY THE ORGANIZATION OF THE COSTS IN ADMINISTERING, IMPLEMENTING, AND ENFORCING THIS PART 7 SINCE THE EFFECTIVE DATE OF THIS PART 7.

(b) BY JUNE 30 OF EACH YEAR AFTER JUNE 30, 2026, THE DEPARTMENT SHALL NOTIFY THE ORGANIZATION OF THE COSTS OF ADMINISTERING, IMPLEMENTING, AND ENFORCING THIS PART 7 DURING THE

IMMEDIATELY PRECEDING YEAR.

(c) UPON RECEIPT OF THE DEPARTMENT'S COST ACCOUNTING, THE ORGANIZATION SHALL TRANSMIT TO THE STATE TREASURER, FOR DEPOSIT IN THE FUND, AN AMOUNT OF PRODUCER RESPONSIBILITY DUES NECESSARY TO REIMBURSE THE DEPARTMENT FOR ITS COSTS.

(3) THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE MONEY FROM THE FUND TO THE DEPARTMENT FOR THE PURPOSES SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(4) ALL UNEXPENDED AND UNENCUMBERED MONEY IN THE FUND AT THE END OF ANY STATE FISCAL YEAR REMAINS IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND REMAINS IN THE FUND AND DOES NOT REVERT TO THE GENERAL FUND.

25-17-716. No obligation to provide recycling services. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A PRIVATE SERVICE PROVIDER IS NOT REQUIRED TO PROVIDE RECYCLING SERVICES UNDER THE PROGRAM OR ANY OTHER PLAN APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PART 7.

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

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

(I.5) MONEY CREDITED TO THE FUND PURSUANT TO SECTION 25-17-710 (4);

SECTION 3. Appropriation. (1) For the 2022-23 state fiscal year, \$119,130 is appropriated to the department of public health and environment. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$98,627 for use by the solid waste control program for solid waste control, which amount is based on an assumption that the program will require an additional 0.8 FTE; and

(b) \$20,503 for the purchase of legal services.

(2) For the 2022-23 state fiscal year, \$20,503 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of public health and environment under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of public health and environment.

SECTION 4. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO