

SF 3561 4th Engrossment - 93rd Legislature (2023 - 2024) Posted on 06/12/2024 07:50am

KEY: ~~stricken~~ = removed, old language. underscored = added, new language.

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Current Version - 4th Engrossment

A bill for an act
relating to solid waste; establishing Packaging Waste and Cost Reduction Act;
authorizing rulemaking; proposing coding for new law in Minnesota Statutes,
chapter 115A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [115A.144] SHORT TITLE.
Sections 115A.144 to 115A.1462 may be cited as the "Packaging Waste and Cost Reduction Act."

Sec. 2. [115A.1441] DEFINITIONS.
Subdivision 1. Scope. For the purposes of sections 115A.144 to 115A.1462, the terms in this section have the meanings given.

Subd. 2. Advisory board. "Advisory board" or "board" means the Producer Responsibility Advisory Board established under section 115A.1444.

Subd. 3. Brand. "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.

Subd. 4. Brand owner. "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.

Subd. 5. Collection rate. "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 115A.1451.

Subd. 6. Compostable material. "Compostable material" means a covered material that:

(1) meets, and is labeled to reflect that it meets, the American Society for Testing and Materials Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities (D6400) or its successor;

(2) meets, and is labeled to reflect that it meets, the American Society for Testing and Materials Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities (D6868) or its successor;

(3) is comprised of only wood without any coatings or additives; or

(4) is comprised of only paper without any coatings or additives.

Subd. 7. Composting. "Composting" means the controlled microbial degradation of source-separated compostable materials to yield a humus-like product.

Subd. 8. Composting rate. "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 115A.1451.

Subd. 9. Covered material. "Covered material" means packaging and paper products introduced into the state. Covered material does not include exempt materials.

Subd. 10. Covered materials type. "Covered materials type" means a singular and specific type of covered material, such as paper, plastic, metal, or glass, that can be categorized based on distinguishing chemical or physical properties, including properties

that allow for a covered materials type to be aggregated into a commonly defined discrete commodity category for purposes of reuse, recycling, or composting, and based on similar uses in the form of a product or package.

Subd. 11. **De minimis producer.** "De minimis producer" means a person that in the most recent fiscal year:

- (1) introduced less than one ton of covered material into this state; or
- (2) earned global gross revenues of less than \$2,000,000.

Subd. 12. **Drop-off collection site.** "Drop-off collection site" means a physical location where covered materials are accepted from the public and that is open a minimum of 12 hours weekly throughout the year.

Subd. 13. **Environmental impact.** "Environmental impact" means the impact of a covered material on human health and the environment from extraction and processing of the raw materials composing the material through manufacturing; distribution; use; recovery for reuse, recycling, or composting; and final disposal.

Subd. 14. **Exempt materials.** "Exempt materials" means materials, or any portion of materials, that:

(1) are packaging for infant formula, as defined in United States Code, title 21, section 321(z);

(2) are packaging for medical food, as defined in United States Code, title 21, section 360ee(b)(3);

(3) 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;

(4) are a product, including its peripheral accessories, and the packaging or packaging components for any investigational or approved product regulated as a drug or medical device by the United States Food and Drug Administration;

(5) are medical equipment or products or their components, including consumable medical equipment or products and their components, and the packaging or packaging components for any products used in health care settings, including hospitals and clinics that are regulated by the United States Food and Drug Administration or used for infection prevention and dispensing of medication;

(6) are medical equipment or products and the packaging or packaging components for any product intended for Research Use Only as defined in the Federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 360 et seq.;

(7) are drugs, biological products, parasitocides, medical devices, or in vitro diagnostics used to treat, or administered to, animals and regulated by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 301 et seq., by the United States Department of Agriculture under the federal Virus-Serum-Toxin Act, United States Code, title 21, section 151 et seq.;

(8) are packaging for products regulated or by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, United States Code, title 7, section 136 et seq.;

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

or

(10) are paper products used for a print publication that primarily includes content derived from primary sources related to news and current events.

Subd. 15. **Food packaging.** "Food packaging" has the meaning given in section 325F.075.

Subd. 16. **Independent auditor.** "Independent auditor" means an independent and actively licensed certified public accountant that is:

(1) retained by a producer responsibility organization;

(2) not otherwise employed by or affiliated with a producer responsibility organization;

and

(3) qualified to conduct an audit under state law.

Subd. 17. **Infrastructure investment.** "Infrastructure investment" means an investment by a producer responsibility organization that funds or reimburses service providers for:

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

(2) equipment or facilities used for waste reduction, reuse, recycling, or composting of covered materials; or

(3) the expansion or strengthening of demand for and use of covered materials by responsible markets in the state or region.

Subd. 18. **Introduce.** "Introduce" means to sell, offer for sale, distribute, or use to ship a product within or into this state.

Subd. 19. **Living wage.** "Living wage" means the minimum hourly wage necessary to allow a person working 40 hours per week to afford basic needs.

Subd. 20. **Needs assessment.** "Needs assessment" means an assessment conducted according to section 115A.1450. Except where the context requires otherwise, needs assessment means the most recently completed needs assessment.

Subd. 21. **Nondisclosure agreement.** "Nondisclosure agreement" means an agreement that requires the parties to the agreement to treat private and nonpublic data submitted to facilitate completion of a needs assessment according to the definitions and requirements

established in section 115A.06, subdivision 13.

Subd. 22. **Packaging.** "Packaging" has the meaning given in section 115A.03 and includes food packaging and only includes those materials that are supplied to a residential consumer. Packaging does not include exempt materials.

Subd. 23. **Paper product.** "Paper product" means a product made primarily from wood pulp or other cellulosic fibers, except that paper product 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.

Subd. 24. **Postconsumer recycled content.** "Postconsumer recycled content" means the portion of a product composed of postconsumer material, expressed as a percentage of the total weight of the product.

Subd. 25. **Producer.** (a) "Producer" means the following person responsible for compliance with requirements under this act for a covered material sold, offered for sale, or distributed in or into this state:

(1) 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 item (i) 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 there is no person to which item (i) or (ii) applies, the producer is the brand owner of the item;

(iv) if there is no person described in item (i), (ii), or (iii) 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 there is no person described in items (i) to (iv), the producer is the person that first distributes the item in or into this state;

(2) 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 clause (1); 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;

(3) for packaging that is a covered material and is not included in clauses (1) and (2), the producer of the packaging is the person that first distributes the item in or into this state;

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

(5) for paper products not described in clause (4):

(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 item (i) 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 item (i) or (ii) applies, the producer is the brand owner of the paper product;

(iv) if there is no person described in item (i), (ii), or (iii) within the United States, 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 this state;

or

(v) if there is no person described in items (i) to (iv), the producer is the person that first distributes the paper product in or into this state; and

(6) a person is the producer of a covered material sold, offered for sale, or distributed in or into this state, as defined in clauses (1) to (5), except:

(i) where another person has mutually signed an agreement with a producer as defined in clauses (1) to (5) 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 act. In the event that another person is assigned responsibility as the producer under this subdivision, the producer under clauses (1) to (5) must provide written certification of that contractual agreement to the producer responsibility organization; and

(ii) if the producer described in clauses (1) to (5) 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.

(b) "Producer" does not include:

(1) government agencies, municipalities, or other political subdivisions of the state;

(2) registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations;

(3) de minimis producers; or

(4) a mill that uses any virgin wood fiber in the products it produces.

Subd. 26. **Producer responsibility organization.** "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 act.

Subd. 27. **Recycling.** "Recycling" has the meaning given in section 115A.03 except that recycling does not include reuse or composting, as defined in this act.

Subd. 28. **Recycling rate.** "Recycling rate" means the amount of covered material, in aggregate or by individual covered materials type, recycled in a calendar year divided by the total amount of covered materials sold or distributed into the state by the relevant unit of measurement established in section 115A.1451.

Subd. 29. **Refill.** "Refill" means the continued use of a covered material by a consumer through a system that is:

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

(2) supported by adequate logistics and infrastructure to provide convenient access for consumers; and

(3) compliant with all applicable state and local statute, rule, ordinance, or other law governing health and safety.

Subd. 30. **Responsible market.** "Responsible market" means a materials market that:

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

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

(3) possesses all requisite licenses and permits required by government agencies;

(4) 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 115A.02; and

(5) minimizes adverse impacts to environmental justice areas.

Subd. 31. **Return rate.** "Return rate" means the amount of reusable covered material in aggregate or by individual covered materials type, collected for reuse by the 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 115A.1451.

Subd. 32. **Reusable.** "Reusable" means capable of reuse.

Subd. 33. **Reuse.** "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:

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

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

(3) 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

(4) compliant with all applicable state and local statutes, rules, ordinances, or other laws governing health and safety.

Subd. 34. **Reuse rate.** "Reuse rate" means the share of units of a covered material sold or distributed into the state in a calendar year that are deemed reusable by the commissioner according to section 115A.1451.

Subd. 35. **Service provider.** "Service provider" means an entity that collects, transfers, sorts, processes, recovers, or otherwise prepares covered materials for reuse, recycling, or composting. A political subdivision that provides or that contracts or otherwise arranges with another party to provide reuse, collection, recycling, or composting 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.

Subd. 36. **Third-party certification.** "Third-party certification" means certification by an accredited independent organization that a standard or process required by this act, or a stewardship plan approved under this act, has been achieved.

Subd. 37. **This act.** "This act" means sections 115A.144 to 115A.1462.

Subd. 38. **Toxic substance.** "Toxic substance" means hazardous waste, a problem material, a chemical or chemical class regulated under section 115A.965, 116.943, 325F.075, or 325F.172 to 325F.179, or a chemical of high concern identified under section 116.9402.

Subd. 39. **Waste reduction or source reduction.** "Waste reduction" or "source reduction" has the meaning given in section 115A.03, except that waste reduction or source reduction does not include reuse, but does include refill, as defined in this act.

Sec. 3. **[115A.1442] ESTABLISHMENT OF PROGRAM.**

Producers must implement and finance a statewide program for packaging and paper products in accordance with this act that encourages packaging redesign to reduce the environmental impacts and human health impacts and that reduces generation of covered materials waste through waste reduction, reuse, recycling, and composting and by providing

for negotiation and execution of agreements to collect, transport, and process used covered materials for reuse, recycling, and composting.

Sec. 4. **[115A.1443] REGISTRATION OF PRODUCER RESPONSIBILITY ORGANIZATIONS AND SERVICE PROVIDERS.**

Subdivision 1. Annual registration. (a) By July 1, 2025, and each January 1 thereafter, producers must appoint a producer responsibility organization. The producer responsibility organization must register with the commissioner by July 1, 2026, and each January 1 thereafter by submitting the following:

(1) contact information for a person responsible for implementing an approved stewardship plan;

(2) a list 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 introduced;

(3) copies of written agreements with each producer stating that each producer agrees to operate under an approved stewardship plan administered by the producer responsibility organization;

(4) a list of current board members and the executive director if different than the person responsible for implementing approved stewardship plans; and

(5) documentation demonstrating adequate financial responsibility and financial controls to ensure proper management of funds and payment of the annual fee required under subdivision 2.

(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 must establish a coordinating body and process to prevent redundancy. The stewardship plans of all producer responsibility organizations must be integrated into a single stewardship plan that covers all requirements of this act and encompasses all producers when submitted to the commissioner for approval. The annual reports of all producer responsibility organizations must be integrated into a single annual report that covers all requirements of this act and encompasses all producers when submitted to the commissioner.

Subd. 2. Registration fee. (a) As part of its annual registration with the commissioner, a producer responsibility organization must submit to the commissioner an annual fee for the following year, as determined by the commissioner. Beginning October 1, 2026, and annually thereafter, the commissioner must notify registered producer responsibility organizations in writing of the amount of the fee for the following year. If there is more than one registered producer responsibility organization, the coordinating body described in subdivision 1, paragraph (b), must equitably apportion payment of the annual fee between all registered producer responsibility organizations. The annual fee must 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 115A.1445 and to otherwise administer, implement, and enforce this act.

(b) The commissioner must reconcile the fees paid by a producer responsibility organization under this subdivision with the actual costs incurred by the agency on an annual basis, by means of credits or refunds to or additional payments required of a producer responsibility organization, as applicable.

Subd. 3. Initial producer responsibility organization registration; implementation fee. (a) By January 1, 2025, producers must appoint a producer responsibility organization. The producer responsibility organization must register with the commissioner by submitting the following:

(1) contact information for a person responsible for implementing an approved stewardship plan;

(2) a list of current member producers and their written agreements confirming producers will operate under an approved stewardship plan administered by the producer responsibility organization;

(3) a plan for recruiting additional member producers and executing written agreements confirming producers will operate under an approved stewardship plan administered by the producer responsibility organization;

(4) a list of current board members and the executive director if different than the person responsible for implementing approved stewardship plans; and

(5) documentation demonstrating adequate financial responsibility and financial controls to ensure proper management of funds and payment of the annual fee required under subdivision 2.

(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 must select the producer responsibility organization that will represent producers until the first stewardship plan expires and must return the registration fee paid by applicants who are not selected. When selecting a producer responsibility organization, the commissioner must consider whether the producer responsibility organization:

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

(2) demonstrates adequate financial responsibility and financial controls to ensure proper management of funds.

(c) By January 1, 2025, and annually until the first stewardship plan is approved, the commissioner must provide written notice to the initial producer responsibility organization appointed by producers of the commissioner's estimate of the cost of conducting the preliminary needs assessment, initial needs assessment, and the commissioner's costs to administer this act during the period prior to plan approval. The producer responsibility organization must remit payment in full for these costs to the commissioner within 45 days of receipt of this notice. The producer responsibility organization may charge each member producer to cover the cost of its implementation 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.

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

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

(2) producers organize under additional producer responsibility organizations that meet the criteria established in subdivision 3, paragraph (a).

Subd. 5. Registration of service providers. (a) By January 1, 2027, and annually thereafter, a service provider seeking reimbursement for services provided under an approved stewardship plan according to section 115A.1451 may elect to register with the commissioner by submitting the following information:

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

(2) address of the service provider.

(b) A service provider may register at any time.

Sec. 5. [115A.1444] ESTABLISHMENT OF PRODUCER RESPONSIBILITY ADVISORY BOARD.

Subdivision 1. Establishment. The Producer Responsibility Advisory Board is established to review all activities conducted by producer responsibility organizations under this act and to advise the commissioner and producer responsibility organizations regarding the implementation of this act.

Subd. 2. Membership. (a) The membership of the advisory board consists of persons appointed by the commissioner by January 1, 2025, as follows:

(1) two members representing manufacturers of covered materials or a statewide or national trade association representing those manufacturers;

(2) two members representing recycling facilities that manage covered materials;

(3) one member representing a waste hauler or a statewide association representing waste haulers;

(4) one member representing retailers of covered materials or a statewide trade association representing those retailers;

(5) one member representing a statewide nonprofit environmental organization;

(6) one member representing a community-based nonprofit environmental justice organization;

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

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

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

(10) three members representing organizations of political subdivisions, with at least one member representing a political subdivision outside the metropolitan area;

(11) two members representing other stakeholders or additional members of interests represented under clauses (1) to (10) as determined by the commissioner; and

(12) one member representing the commissioner.

(b) In making appointments under paragraph (a), the commissioner:

(1) may not appoint members who are state legislators or registered lobbyists;

(2) may not appoint members who are employees of a producer required to be members of a producer responsibility organization in this state under this act; and

(3) must endeavor to appoint members from all regions of the state.

Subd. 3. Terms; removal. A member of the advisory board appointed under subdivision 2, paragraph (a), clause (12), serves at the pleasure of the commissioner. All other members serve for a term of four years, except that the initial term for nine of the initial appointees must be two years so that membership terms are staggered. Members may be reappointed but may not serve more than eight consecutive years. Removing members and filling of vacancies is governed by section 15.059, subdivision 4. Except as otherwise provided, chapter 15 does not apply to the board.

Subd. 4. **Compensation.** Members of the board must be compensated according to section 15.059, subdivision 3.

Subd. 5. **Quorum.** A 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.

Subd. 6. **Voting.** 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 subdivision 2, paragraph (a), clause (12), are voting members of the board.

Subd. 7. **Meetings.** The advisory board must 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.

Subd. 8. **Open meetings.** Meetings of the board must comply with chapter 13D.

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

Subd. 10. **Administrative and operating support.** The commissioner must provide administrative and operating support to the advisory board 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 agency website.

Subd. 11. **Conflict of interest policies.** The commissioner must 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 of themselves or of family members. Each advisory board member is responsible for reviewing the conflict of interest policies and procedures. An advisory board member must 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.

Sec. 6. **[115A.1445] COMMISSIONER RESPONSIBILITIES.**

The commissioner must:

(1) appoint the initial membership of the advisory board by January 1, 2025, according to section 115A.1444;

(2) provide administrative and operating support to the advisory board, as required by section 115A.1444, subdivision 10;

(3) complete a preliminary needs assessment by December 31, 2025, and an initial needs assessment by December 31, 2026, and update the needs assessment every five years thereafter, according to section 115A.1450;

(4) approve stewardship plans and amendments to stewardship plans according to section 115A.1451;

(5) provide lists established according to the requirements of section 115A.1453 to all producer responsibility organizations by March 1, 2027;

(6) establish or approve requirements according to section 115A.1451, subdivision 7;

(7) post on the agency's website:

(i) the most recent registration materials submitted by producer responsibility organizations, including all information submitted under section 115A.1443, subdivision 1;

(ii) a list of registered service providers;

(iii) the most recent needs assessments;

(iv) any stewardship plan or amendment submitted by a producer responsibility organization under section 115A.1451 that is in draft form during the public comment period;

(v) the most recent lists established according to section 115A.1453;

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

(vii) links to producer responsibility organization websites;

(viii) comments of the public, advisory board, and producer responsibility organizations on the documents listed in items (iii), (iv), (v), and (ix), and the responses of the commissioner to those comments; and

(ix) links to adopted rules implementing this act;

(8) provide producer responsibility organizations with information regarding Minnesota and federal laws that prohibit toxic substances in covered materials;

(9) require each producer responsibility organization to secure an independent auditor to perform an annual financial audit of program operations and approve the selection of each auditor; and

(10) consider and respond in writing to all written comments received from the advisory board.

Sec. 7. **[115A.1446] PRODUCER RESPONSIBILITY ADVISORY BOARD RESPONSIBILITIES.**

The Producer Responsibility Advisory Board must:

(1) convene its initial meeting by March 1, 2025;

(2) consult with the commissioner regarding the scope of the needs assessments and to provide written comments on needs assessments, according to section 115A.1450, subdivision 2;

(3) advise on the development of stewardship plans and amendments to stewardship plans under section 115A.1451;

(4) submit comments to producer responsibility organizations and to the commissioner on any matter relevant to the administration of this act; and

(5) provide written comments to the commissioner during any rulemaking process undertaken by the commissioner under section 115A.1459.

Sec. 8. **[115A.1447] PRODUCER RESPONSIBILITY ORGANIZATION RESPONSIBILITIES.**

A producer responsibility organization must:

(1) annually register with the commissioner, according to section 115A.1443;

(2) submit a stewardship plan to the commissioner by March 1, 2027, and every five years thereafter, according to section 115A.1451;

(3) implement stewardship plans approved by the commissioner under section 115A.1451 and to comply with the requirements of this act;

(4) forward upon receipt from the commissioner the lists established according to section 115A.1453 to all service providers that participate in a stewardship plan administered by the producer responsibility organization;

(5) collect producer fees according to section 115A.1454;

(6) submit the reports required by section 115A.1456;

(7) 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 act;

(8) 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 act are unsuccessful. The producer responsibility organization must notify the commissioner when a producer has been expelled under this clause;

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

(10) provide producers with information regarding state and federal laws that prohibit substances in covered materials, including sections 115A.965, 116.943, 325F.075, 325F.172 to 325F.179, and all laws prohibiting toxic substances in covered materials;

(11) maintain a website according to section 115A.1457;

(12) notify the commissioner within 30 days if a change is made to the contact information for a person responsible for implementing the stewardship plan, a change to the board members, or a change to the executive director;

(13) assist service providers in identifying and using responsible markets;

(14) reimburse service providers in a timely manner and according to reimbursement rates approved in a stewardship plan as established according to section 115A.1451; and

(15) comply with all other applicable requirements of this act.

Sec. 9. **[115A.1448] PRODUCER RESPONSIBILITIES.**

Subdivision 1. **Registration required; prohibition of sale.** (a) After January 1, 2025, a producer must be a member of a producer responsibility organization registered in this state.

(b) After January 1, 2029, no producer may introduce covered materials, either separately or when used to package another product, unless the producer operates under a written agreement with a producer responsibility organization to operate under an approved stewardship plan.

(c) After January 1, 2032, no producer may introduce covered materials unless the covered materials are:

(1) reusable and capable of being managed through a reuse system that meets the reuse rate and return rate required under section 115A.1451, subdivision 7;

(2) capable of refill and supported by a refill system;

(3) included on the list established under section 115A.1453, subdivision 1; or

(4) included on the list established under section 115A.1453, subdivision 2.

(d) A producer responsibility organization may petition the commissioner for a two-year extension to comply with the requirements of paragraph (c). The commissioner may approve the extension if the petition demonstrates that the market or technical issues prevent a covered material from being considered reusable or included in the lists established under section 115A.1453. The producer responsibility organization may petition the commissioner for additional extensions in annual increments until January 1, 2040, if the producer responsibility organization demonstrates that market or technical issues persist.

Subd. 2. **Duties.** A producer must:

(1) implement the requirements of the stewardship plan under which the producer operates;

(2) pay producer fees according to section 115A.1454; and

(3) comply with all other applicable requirements of this act.

Sec. 10. **[115A.1449] SERVICE PROVIDER RESPONSIBILITIES.**

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

- (1) ensure the collection, transportation, and management of covered materials generated in the state pursuant to the lists established under section 115A.1453 or covered materials that are capable of refill or reuse;
- (2) register with the commissioner and submit invoices to the producer responsibility organization for reimbursement for services rendered;
- (3) meet performance standards established in an approved stewardship plan under section 115A.1451;
- (4) ensure that covered materials are sent to responsible markets;
- (5) provide documentation to the producer responsibility organization on the amounts, covered materials types, and volumes of covered materials collected, transported, and managed for recycling, composting, or reuse; and
- (6) comply with all other applicable requirements of this act.

Sec. 11. **[115A.1450] NEEDS ASSESSMENTS.**

Subdivision 1. Needs assessments required. (a) By December 31, 2025, and every five years thereafter, the commissioner must complete a preliminary needs assessment according to this section.

(b) By December 31, 2026, and every five years thereafter, the commissioner must complete a statewide needs assessment according to this section. The commissioner may adjust what is required to be included in a specific needs assessment to inform the next stewardship plan.

Subd. 2. Input from interested parties. In conducting a needs assessment, the commissioner must:

- (1) 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 statewide needs assessment required by this section;
- (2) contract with a third party who is not a producer or a producer responsibility organization to conduct the needs assessment; and
- (3) 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 must respond in writing to the comments and recommendations of the advisory board and producer responsibility organizations.

Subd. 3. Content of preliminary needs assessment. A preliminary needs assessment must be completed for a preceding period of no less than 12 months and no more than 36 months, that includes:

- (1) tons of collected covered materials;
- (2) recycling and composting program characteristics, including a description of single-stream and dual-stream recycling systems used in the state and prevalence of use, average frequency of collection of covered materials for recycling and composting, types of collection containers used, and commonly accepted materials for recycling and composting;
- (3) total number and types of single-family and multifamily households and residential properties receiving recycling and composting collection services;
- (4) processing capacity at recycling facilities, including total tons processed and number of bales created, the range of material composition and bales produced, and current technologies utilized;
- (5) size and number of depot, container, or drop-off locations;
- (6) size and number of transfer stations and transfer locations;
- (7) average term length of residential recycling and composting collection contracts issued by political subdivisions and an assessment of contract cost structures;
- (8) average recycling facility processing fees charged to collectors delivering covered materials for recycling;
- (9) available markets in the state for covered materials and the capacity of those markets; and
- (10) covered materials sales by volume, weight, and material types introduced by producers.

Subd. 4. Content of needs assessment. A needs assessment must include at least the following:

- (1) an evaluation of the performance of:
 - (i) existing waste reduction, reuse, recycling, and composting efforts for each covered materials type, as applicable, including collection rates, recycling rates, composting rates, reuse rates, and return rates 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;

(2) an evaluation of a representative sample of management of covered materials with mixed municipal solid waste, as source-separated recyclable materials, and as source-separated compostable materials as received by waste management, recycling, and composting facilities in the state, and relevant findings from any publicly available waste stream evaluations conducted within the previous year, to evaluate the amount and portion of covered materials being disposed of that would otherwise be recyclable or compostable;

(3) 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;

(4) proposals for a range of outcomes for the categories established in section 115A.1451, subdivision 7, 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 Act under this chapter;

(iii) statewide goals for greenhouse gas emission reductions under section 216H.02;

(iv) need for continuous progress toward generating less waste from covered materials and the complete reuse, recycling, or composting of the covered materials that are generated, in doing so reducing impacts to human health and the environment;

(v) a preference for statewide requirements that accomplish and further the goals and requirements in clauses (2) to (4) as soon as practicable and to the maximum extent achievable; and

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

(5) an evaluation of the following factors for each covered material collected for recycling or composting:

(i) availability of recycling and composting collection services;

(ii) recycling and composting processing infrastructure;

(iii) capacity and technology for sorting covered materials;

(iv) availability of responsible end markets;

(v) presence and amount of processing residuals, contamination, and toxic substances;

(vi) quantity of material estimated to be available and recoverable;

(vii) projected future conditions for items (i) to (vi); and

(viii) other criteria or factors determined by the commissioner;

(6) recommended collection methods by covered materials type to maximize collection efficiency, feedstock quality, level of service, and convenience for collection of covered materials included on lists established in section 115A.1453;

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

(8) an evaluation of options for third-party certification of activities to meet obligations of this act;

(9) an inventory of the current system including:

(i) infrastructure, capacity, performance, funding level, and method and sources of financing for the existing waste reduction, reuse, collection, transportation, processing, recycling, and composting systems for covered materials operating in the state;

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

(iii) availability and cost of waste reduction, reuse, recycling, and composting services for covered materials at single-family residences, at multifamily residences, and in public places where political subdivisions arrange for collection of recyclable or compostable materials, including identification of disparities in the availability of these services in environmental justice areas compared with other areas and proposals for reducing or eliminating those disparities;

(10) 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 that would:

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

(ii) expand the availability and accessibility of recycling collection services for recyclable covered materials to all residents of the state at an equivalent level of service and convenience as collection services for mixed municipal solid waste; and

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

(11) a recommended methodology for applying criteria and formulas to establish reimbursement rates as described in section 115A.1455;

(12) 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;

(13) 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;

(14) an assessment of what toxic substances might be intentionally added to covered materials and best practices to eliminate or mitigate their use or presence in covered materials;

(15) 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 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;

(16) identification of the covered materials with the most significant environmental impact, including assessing each covered material's generation of hazardous waste, generation of greenhouse gases, environmental justice impacts, public health impacts, and other impacts; and

(17) other items identified by the commissioner that would aid the creation of the stewardship plan, its administration, and the enforcement of this act.

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

Subd. 6. Participation required. (a) A service provider or other person with data or information necessary to complete a needs assessment must provide the data or information to the commissioner upon request. A service provider or other person who does not want to be identified with information submitted to the commissioner under this subdivision may request to proceed under a nondisclosure agreement. A nondisclosure agreement is limited to the items under section 115A.06, subdivision 13. Once a request is made, the requestor, the commissioner, and all third parties participating in the completion of the needs assessment in whatever capacity must enter into a nondisclosure agreement. Once these parties have entered into a nondisclosure agreement, the requestor must submit the necessary data or information to the contractor selected by the commissioner according to subdivision 2, who must aggregate and anonymize the data or information, excluding location data necessary to assess needs, received from all parties proceeding under a nondisclosure agreement under this subdivision and must then submit the aggregated anonymized information to the commissioner or to the party or parties contracted to complete the needs assessment, including assessing each covered material's generation of hazardous waste, generation of greenhouse gases, environmental justice impacts, public health impacts, and other impacts.

(b) The commissioner, any employee of the agency, or any agent thereof, when authorized by the commissioner, may enter upon any property, public or private, for the purpose of obtaining information necessary for completing the evaluation in subdivision 3, clause (2).

Sec. 12. [115A.1451] STEWARDSHIP PLAN.

Subdivision 1. Stewardship plan required. By March 1, 2027, and every five years thereafter, a producer responsibility organization must submit a stewardship plan to the commissioner that describes the proposed operation by the organization of programs to fulfill the requirements of this act and that incorporates the findings and results of needs assessments. Once approved, a stewardship plan remains in effect for five years, as amended, or until a subsequent stewardship plan is approved.

Subd. 2. Advisory board review of draft plan and amendments. A producer responsibility organization must submit a draft stewardship plan or draft amendment to the advisory board at least 60 days prior to submitting the draft plan or draft amendment to the commissioner to allow the advisory board to submit comments and must address advisory board comments and recommendations prior to submission of the draft plan or draft amendment to the commissioner.

Subd. 3. Content of stewardship plans. A proposed stewardship plan must include at least the following:

(1) performance targets as applicable to each covered materials type to be accomplished within a five-year period, established in subdivision 5, paragraph (a);

(2) a description of the anticipated method of collection, how reimbursements will support a level of convenience for collection, service convenience metrics, processing infrastructure and management methods to be used for each covered materials type, and how these will meet the statewide requirements established in subdivision 7 for covered materials;

(i) included on the list established in section 115A.1453, subdivision 1;

(ii) included on the list established in section 115A.1453, subdivision 2;

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

(iv) that are capable of refill and managed through a system of waste reduction.

(3) 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;

(4) a plan for how the producer responsibility organization will measure recycling, waste reduction, reuse, composting, and inclusion of postconsumer recycled content, according to subdivision 6 and by covered materials type as applicable;

(5) third-party certifications as required by the commissioner or voluntarily undertaken;

(6) a budget identifying funding needs for each of the five calendar years covered by the plan, producer fees, a description of the process used to calculate the fees, and an explanation of how the fees meet the requirements of section 115A.1454;

(7) goals for infrastructure investments, including 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;

(8) 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;

(9) a description of activities to be undertaken during the next five calendar years, which must at a minimum describe how the producer responsibility organization, acting on behalf of producers, will:

(i) minimize the environmental impacts and human health impacts of covered materials, including assessing each covered material's generation of hazardous waste, generation of greenhouse gases, environmental justice impacts, public health impacts, and other impacts;

(ii) incorporate as program objectives the improved design of covered materials according to section 115A.1454, subdivision 1, clause (2);

(iii) provide funding to expand and increase the convenience of waste reduction, reuse, collection, recycling, and composting services according to the order of the waste management hierarchy under section 115A.02;

(iv) provide for reasonable reimbursement rates for statewide coverage of recycling services for covered materials on the lists established in section 115A.1453 to single-family residences, multifamily residences, and political subdivisions arranging for collection, transportation, and processing of recyclable materials at an equivalent level of convenience as services for mixed municipal solid waste according to section 115A.1455; and

(v) monitor to ensure that postconsumer recycled materials are delivered to responsible markets;

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

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

(i) the use of differentiated rates developed according to the requirements and factors established under section 115A.1455, subdivision 4;

(ii) clear and reasonable timelines for reimbursement, with a frequency of no less than monthly unless agreed to by a service provider and a producer responsibility organization; and

(iii) a process to resolve disputes that arise between the producer responsibility organization and a service provider regarding the determination and payment of reimbursements;

(12) performance standards for service providers that are reimbursed under an approved stewardship plan, including but not limited to the following, as applicable to the service provided:

(i) requirements that service providers must accept all covered materials on the lists established by the commissioner under section 115A.1453; and

(ii) labor standards and safety practices, including but not limited to safety programs, health benefits, and living wages;

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

(14) a description of how the producer responsibility organization will provide technical assistance to:

(i) service providers in order to deliver covered materials to responsible markets;

(ii) producers regarding toxic substances in covered materials and actions producers can take to reduce intentionally added toxic substances in covered materials, including verification by suppliers through certificates of compliance, upon request; and

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

(15) a description of how the producer responsibility organization will increase public awareness, educate, and complete outreach activities accounting for 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;

(16) a summary of consultations held with the advisory board and other stakeholders 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; and

(17) strategies to incorporate findings from any relevant studies required by the legislature.

Subd. 4. Plan and amendment review and approval procedure. (a) The commissioner must review and approve, deny, or request additional information for a draft stewardship plan or a draft plan amendment no later than 120 days after the date the commissioner receives it from a producer responsibility organization. The commissioner must post the draft plan or draft amendment on the agency's website and allow public comment for no less than 45 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 must provide the producer responsibility organization with the reasons, in writing, that the plan or plan amendment does not meet the plan requirements of subdivision 3. The producer responsibility organization shall have 60 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 60 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 act, the commissioner must modify the draft plan or draft amendment as necessary for it to meet the requirements of this act 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 act.

Subd. 5. Performance targets. (a) The producer responsibility organization must propose performance targets based on the needs assessment that meet the statewide requirements in subdivision 7 that must be included in a stewardship plan approved under this section. Performance targets must include reuse rates, return rates, recycling rates, composting rates, and targets for waste reduction, and postconsumer recycled content by covered materials type that are to be achieved by the end of the stewardship plan's term. The producer responsibility organization must select the unit that is most appropriate to measure each performance target as informed by the needs assessment.

(b) The commissioner may require that a producer responsibility organization obtain third-party certification of any activity or achievement of any standard required by this act. The commissioner must provide a producer responsibility organization with notice of at least one year prior to requiring use of third-party certification under this paragraph if such certifications are readily available, applicable, and of reasonable cost.

(c) Proposed performance targets must demonstrate continuous improvement in reducing environmental impacts and human health impacts of covered materials over time.

Subd. 6. Measurement criteria for performance targets. (a) For purposes of determining whether recycling performance targets are being met, except as modified by the commissioner, a stewardship plan must provide for the measurement of the amount of recycled material to be at the point at which material leaves a recycling facility and must account for:

(1) levels of estimated contamination documented by the facility;

(2) any exclusions for fuel or energy capture; and

(3) compliance with sections 115A.965, 116.943, 325F.075, and 325F.172 to 325F.179, and all other laws pertaining to toxic substances in covered materials.

(b) For purposes of determining whether waste reduction performance targets are being met, a stewardship plan must provide for the measurement of the amount of waste reduction of covered materials in a manner that can determine the extent to which the amount of material used for a covered material is eliminated beyond what is necessary to efficiently

deliver a product without damage or spoilage, or other means of covered material redesign to reduce overall use and environmental impacts.

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

(1) 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 must be reused for it to have lower environmental impacts than the single-use versions of those items; and

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

(d) For other targets, the producer responsibility organization must propose a calculation point for review and approval as part of the stewardship plan based on findings from the needs assessment.

Subd. 7. **Statewide requirements.** (a) The commissioner must establish or approve statewide requirements and the date the statewide requirements must be met for the following categories:

(1) recycling rate;

(2) composting rate;

(3) reuse rate;

(4) return rate;

(5) the percentage of covered materials introduced that must be waste reduced; and

(6) the percentage of postconsumer recycled content that covered materials introduced must contain, including an overall percentage for all covered materials, as applicable, excluding compostable materials that cannot include postconsumer recycled content because unique chemical or physical properties or health and safety requirements prohibit introduction of postconsumer recycled content.

(b) The commissioner may use the following information and criteria when establishing statewide requirements under paragraph (a):

(1) needs assessments under section 115A.1450;

(2) goals and requirements of the Waste Management Act under this chapter;

(3) statewide goals for greenhouse gas emission reductions under section 216H.02;

(4) need for continuous progress toward generating less waste from covered materials and the complete reuse, recycling, or composting of the covered materials that are generated, in doing so reducing impacts to human health and the environment;

(5) a preference for statewide requirements that accomplish and further the goals and requirements in clauses (2) to (4) as soon as practicable and to the maximum extent achievable; and

(6) information from packaging and paper producer responsibility programs operating in other jurisdictions.

(c) The commissioner must consult with the product stewardship organization on the proposed statewide requirements and must submit proposed statewide requirements under paragraph (a) to the advisory board and consider the board's recommendations before finalizing the statewide requirements.

(d) Every five years, the commissioner must review the statewide requirements established under paragraph (a). If the commissioner decides an update is not warranted at that time, the commissioner must submit the reasoning to the advisory board and consider the board's recommendations before making a final decision. If the commissioner decides an update is warranted, the process in paragraphs (b) and (c) must be utilized.

(e) The producer responsibility organization must ensure the statewide requirements are met.

Sec. 13. [115A.1453] RECYCLABLE OR COMPOSTABLE COVERED MATERIALS LISTS.

Subdivision 1. **List required.** By March 1, 2027, the commissioner must complete 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. These covered materials must be collected at the equivalent level of service and convenience as collection services for mixed municipal solid waste.

Subd. 2. **Alternative collection list required.** By March 1, 2027, the commissioner must 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 1.

Subd. 3. **Input from interested parties.** The commissioner must 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 must review any petitions by interested parties for addition or removal of covered materials from the lists created under this section.

Subd. 4. **Criteria.** In developing the lists under subdivisions 1 and 2, the commissioner may consider the following criteria:

(1) current availability of recycling collection services;

(2) recycling collection and processing infrastructure;

(3) capacity and technology for sorting covered materials;
(4) availability of responsible end markets;
(5) presence and amount of processing residuals and contamination;
(6) quantity of material estimated to be available and recoverable;
(7) projected future conditions for clauses (1) to (6);
(8) if collected for recycling, the covered material type and form must be one that is regularly sorted and aggregated into defined streams for recycling processes or the packaging format must be specified in a relevant Institution of Scrap Recycling Industries specification;
and

(9) other criteria or factors determined by the commissioner.

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

Sec. 14. **[115A.1454] PRODUCER FEES.**

Subdivision 1. Annual fee. A producer responsibility organization must annually collect a fee from each producer that must:

(1) be 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;

(2) incentivize using materials and design attributes that reduce the environmental impacts and human health impacts, as determined by the commissioner, of covered materials by the following methods:

(i) eliminating intentionally added toxic substances in covered materials;

(ii) reducing the amount of packaging per individual covered material that is necessary to efficiently deliver a product without damage or spoilage without reducing its ability to be recycled or reducing the amount of paper used to manufacture individual paper products;

(iii) increasing covered materials managed in a reuse system;

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

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

(vi) increasing the amount of inputs derived from renewable and sustainable sources;

(3) discourage using materials and design attributes in a producer's covered materials whose environmental impacts and human health impacts, as determined by the commissioner, can be reduced by the methods listed under clause (2);

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

(5) generate revenue sufficient to pay in full:

(i) the annual registration fee required under section 115A.1443;

(ii) financial obligations to complete activities described in an approved stewardship plan and to reimburse service providers under section 115A.1455;

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

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

Subd. 2. Overcollections. Revenue collected under this section that exceeds the amount needed to pay the costs described in subdivision 1, clause (5), must be used to improve or enhance program outcomes or to reduce producer fees according to provisions of an approved stewardship plan.

Subd. 3. Prohibited conduct. Fees collected under this section may not be used for lobbying, as defined in section 3.084, subdivision 1.

Sec. 15. **[115A.1455] SERVICE PROVIDER; REIMBURSEMENT.**

Subdivision 1. Service provider reimbursement required. The reimbursements provided for waste reduction, reuse, processing, recycling, or composting services under an approved stewardship plan shall only be provided to service providers that meet the performance standards requirements established under an approved stewardship plan.

Subd. 2. Collection of recyclables. If a household does not have access to collection services at a comparable level of convenience as collection services for mixed municipal solid waste for covered materials on the recyclable covered materials list established under section 115A.1453, subdivision 1, the producer responsibility organization must ensure that collection service is available to the household through a service provider.

Subd. 3. Bidding processes. (a) For infrastructure investments included under an approved stewardship plan, a producer responsibility organization must use the competitive bidding processes established in section 16C.28, subdivision 1, and publicly post bid opportunities, except that preference must 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.

(b) No producer or producer responsibility organization may own or partially own infrastructure that is used to fulfill obligations under this act except in the following circumstances:

(1) a producer may hold an ownership stake in infrastructure used to fulfill obligations under this act so long as the stake was held prior to enactment of this act and said ownership stake is fully disclosed by the producer to the producer responsibility organization; or

(2) if, after a bidding process described in paragraph (a), no service provider bids on the contract, the producer responsibility organization may make infrastructure investments identified under an approved stewardship plan to implement the requirements in this act.

Subd. 4. Reimbursement rates. (a) An approved stewardship plan must provide reimbursement rates for services, collection, transportation, and management of covered materials, exclusive of exempt materials, and incorporate relevant cost information identified by the initial needs assessment. Reimbursement rates shall be established equivalent to 50 percent of the cost per ton by July 1, 2027, 75 percent of the cost per ton by July 1, 2028, and 90 percent of the cost per ton by July 1, 2029, and each year thereafter and varied per ton, as follows:

(1) a fixed amount for each ton of covered material collected by a service provider that reflects conditions that affect collection, recycling, and composting costs in the region or jurisdiction in which the services are provided, including but not limited to:

- (i) the number and size of households;
 - (ii) population density;
 - (iii) collections methods employed;
 - (iv) public education efforts;
 - (v) distance to consolidation or transfer facilities; to reuse, recycling, or composting facilities; or to responsible markets;
 - (vi) other factors that may contribute to regional or jurisdictional cost differences;
 - (vii) proportion of covered compostable materials within all source-separated compostable materials collected or managed through composting; and
 - (viii) the general quality of materials recycled or composted by service providers;
- (2) a fixed amount for each ton of covered material recycled or composted by a service provider in the prior calendar year based upon:

- (i) the average costs associated with the transportation and processing from a central location within a political subdivision, of collected covered material from the political subdivision to a recycling or composting facility;
- (ii) the processing of and removal of contamination from covered material by a recycling or composting facility;
- (iii) the recycling or composting of covered materials in the state or in another jurisdiction less the average fair market value for that covered material based on the market indices for the region, updated monthly;
- (iv) costs associated with the management of contaminated materials removed from collected covered material; and
- (v) the proportion of covered compostable materials within all source-separated compostable materials collected or managed through composting;

(3) an additional fixed amount, in excess of the rate provided under clause (2), for each material type per ton for covered materials that are not included on the lists established according to section 115A.1453, subdivision 1, that are recycled or composted by a service provider in the prior calendar year less the average fair market value for that covered material based on the market indices for the region, updated monthly;

(4) a fixed amount for mixed recycling tons that are managed through a process that includes percentages of covered materials included on the lists established according to section 115A.1453, subdivision 1, and additional covered materials. The per ton fixed amount shall be prorated for the values in clause (2), items (i) and (ii), based upon the most recent waste characterization for mixed recycling ton averages;

(5) a fixed amount, based on population served, for administrative costs of service providers, including education, public awareness campaigns, and outreach program costs as applicable; and

(6) a fixed amount for the cost of managing covered materials capable of refill or reusable covered materials and for the costs associated with collection, cleaning, sanitation, distribution, and management of contamination.

(b) A service provider may retain all revenue from the sale of covered materials. Nothing in this act restricts a service provider from charging a fee for collection or processing of covered materials to the extent that reimbursement from a producer responsibility organization does not cover all costs of services, including operating profits and returns on investments required by a service provider to provide sustainability of the services.

Subd. 5. Local government authority. (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 approved in subdivision 4. If a majority of political subdivisions in the state chooses not to participate in the program by January 1, 2030, the commissioner shall revise the statewide requirements established under section 115A.1451, subdivision 7.

(b) Nothing in this act 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 115A.94. A producer responsibility organization may not restrict or otherwise interfere with a political subdivision exercising its authority under section 115A.94 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.

Subd. 6. **Dispute resolution.** There must be a dispute resolution process for disputes related to reimbursements utilizing third-party mediators.

Sec. 16. [115A.1456] REPORTING.

Subdivision 1. **Producer responsibility organization annual report.** (a) By July 1, 2031, and each July 1 thereafter, a producer responsibility organization must submit a written report to the commissioner that contains, at a minimum, the following information for the previous calendar year:

(1) the amount of covered materials introduced by each covered materials type, reported in the same units used to establish fees under section 115A.1454, subdivision 1, clause (1);

(2) progress toward the performance targets reported in the same units used to establish producer fees under section 115A.1454, subdivision 1, clause (1), and reported statewide and for each county including:

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

(ii) information about third-party certifications obtained;

(3) the total cost to implement the program and a detailed description of program expenditures including:

(i) the total amount of producer fees collected in the current calendar year; and

(ii) a description of infrastructure investments made during the previous year;

(4) 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;

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

(6) 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;

(7) 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;

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

(9) a list of any producers found to be out of compliance with this act, and actions taken by the producer responsibility organization to return the producer 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;

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

(11) any recommendations for additions or removal of covered materials to or from the recyclable or compostable covered materials lists developed under section 115A.1453; and

(12) any information requested by the commissioner to assist with determining compliance with this act.

(b) Every fourth year after a stewardship plan is approved by the commissioner, a performance audit of the program must be completed. The performance audit must 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.

Subd. 2. **Report following unmet target.** A producer responsibility organization that fails to meet a performance target approved in a stewardship plan must, within 90 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 following year's targets. If a performance target is unmet due to lack of political subdivision participation in the program, the commissioner shall revise the statewide requirements developed under section 115A.1451, subdivision 7. If a revision to the statewide performance targets is required and completed by the commissioner, the producer responsibility organization may revise the performance targets at the same

time. An amendment filed under this subdivision must be reviewed by the advisory board and reviewed and approved by the commissioner in the manner specified in section 115A.1451, subdivisions 2 and 4.

Subd. 3. **Commissioner's report.** By October 15, 2034, and every five years thereafter, the commissioner must 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 must contain a summary of the operations of the Packaging Waste and Cost Reduction Act during the previous five years, a summary of the needs assessment, a link to reports filed under subdivisions 1 and 2, recommendations for policy, statutory, or regulatory changes to the program, a list of efforts undertaken by the commissioner to enforce and secure compliance with this act, and any other information the commissioner deems to be relevant.

Subd. 4. **Duty to cooperate.** Service providers must provide producer responsibility organizations with data necessary to complete the reports required by this section upon request.

Sec. 17. [115A.1457] PRODUCER RESPONSIBILITY ORGANIZATION WEBSITES.

A producer responsibility organization must maintain a website that uses best practices for accessibility that contains at least:

- (1) information regarding a process that members of the public can use to contact the producer responsibility organization with questions;
- (2) 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;
- (3) registration materials submitted to the commissioner under section 115A.1443;
- (4) the draft and approved stewardship plan and any draft and approved amendments;
- (5) information on how to manage materials included in lists established under section 115A.1453;
- (6) the list of exempt materials as defined in this act and covered materials exempt from performance targets and statewide requirements as approved in the stewardship plan;
- (7) the most recent needs assessment and all past needs assessments;
- (8) annual reports filed by the producer responsibility organization;
- (9) a link to administrative rules implementing this act;
- (10) comments of the advisory board on the documents listed in clauses (4) and (7), and the responses of the producer responsibility organization to those comments;
- (11) the names of producers and brands that are not in compliance with section 115A.1448;
- (12) a list, that is 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 introduced in the state; and
- (13) education materials on waste reduction, reuse, recycling, and composting for producers and the general public.

Sec. 18. [115A.1458] ANTICOMPETITIVE CONDUCT.

A producer responsibility organization that arranges collection, recycling, composting, waste reduction, or reuse services under this act 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 act, and is immune from liability under state laws relating to antitrust, restraint of trade, and unfair trade practices.

Sec. 19. [115A.1459] RULEMAKING.

The commissioner may adopt rules to implement this act. The 18-month time limit under section 14.125 does not apply to the commissioner's rulemaking authority under this section.

Sec. 20. [115A.1460] PROVIDING INFORMATION.

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

Sec. 21. [115A.1461] DEPOSIT RETURN SYSTEM.

(a) It is the intent of the legislature that if a bottle deposit return system is enacted in the future, it will be harmonized with this act in a manner that ensures that:

- (1) materials covered in that system are exempt from this act or related financial obligations are reduced;
 - (2) colocation of drop-off facilities and alternative collection sites is maximized;
 - (3) education and outreach is integrated between the two programs; and
 - (4) waste reduction and reuse strategies are prioritized between the two programs.
- (b) Any implementation of a deposit return system is created with at least a two-year transition period prior to the expiry of the currently approved stewardship plan and conducted in a manner that does not create sudden and significant operational or financial disruption

to the implementation of a stewardship plan under section 115A.1451, including provisions of recycling or reuse services contained in the plan.

Sec. 22. **[115A.1462] ENFORCEMENT.**

(a) The commissioner must enforce this act as provided under this section and sections 115.071 and 116.072. The commissioner may revoke a registration of a producer responsibility organization or producer found to have violated this act.

(b) Notwithstanding the penalty limits contained in section 115.071, subdivision 3, and except as otherwise provided in paragraph (c), a person that violates or fails to perform a duty imposed by this act or any rule adopted thereunder is liable for a civil penalty not to exceed \$25,000 per day of violation.

(c) Notwithstanding the penalty limits contained in section 115.071, subdivision 3, a producer responsibility organization or producer that violates a provision of or fails to perform a duty imposed by this act, a rule adopted thereunder, or requirements of a stewardship plan approved by the commissioner, is liable for a civil penalty not to exceed \$25,000 per day of violation. For a second violation occurring within five years after the approval of a stewardship plan, a producer responsibility organization or producer is liable for a civil penalty not to exceed \$50,000 per day of violation. For a third or subsequent violation occurring within five years after the approval of a stewardship plan, a producer responsibility organization or producer is liable for a civil penalty not to exceed \$100,000 per day of violation.

Sec. 23. **WORKPLACE CONDITIONS AND EQUITY STUDY.**

(a) By January 1, 2032, the commissioner of the Pollution Control Agency must contract with a third party that is not a producer or a producer responsibility organization to conduct a study of the recycling, composting, and reuse facilities operating in the state. The study must analyze, at a minimum information about:

(1) working conditions, wage and benefit levels, and employment levels of minorities and women at those facilities;

(2) barriers to ownership of recycling, composting, and reuse operations faced by women and minorities;

(3) the degree to which residents of multifamily buildings have less convenient access to recycling, composting, and reuse opportunities than those living in single-family homes;

(4) the degree to which environmental justice areas have access to fewer recycling, composting, and reuse opportunities compared to other parts of the state;

(5) the degree to which programs to increase access, convenience, and education are successful in raising reuse, recycling, and composting rates in areas where participation in these activities is low;

(6) strategies to increase participation in reuse, recycling, and composting; and

(7) the degree to which residents and workers in environmental justice areas are impacted by emissions, toxic substances, and other pollutants from solid waste facilities in comparison to other areas of the state and provide recommendations to mitigate those impacts.

(b) The initial producer responsibility organization registered by the commissioner under Minnesota Statutes, sections 115A.144 to 115A.1462, must cover the cost of conducting the study through its annual registration fee and recommended actions identified in the study. must be considered as part of future stewardship plans as required under Minnesota Statutes, section 115A.1451, including adjustments to service provider reimbursements as established under Minnesota Statutes, section 115A.1455.

Sec. 24. **COVERED MATERIALS POLLUTION AND CLEANUP STUDY.**

(a) By January 1, 2032, the commissioner of the Pollution Control Agency, in consultation with the commissioners of health and natural resources, must contract with a third party that is not a producer or a producer responsibility organization to conduct a study to identify the contribution of covered products to litter and water pollution in Minnesota. The report must at a minimum:

(1) analyze historical and current environmental and human health impacts of littered covered materials and their associated toxic substances in the environment;

(2) estimate the cost of cleanup and prevention; and

(3) provide recommendations for how to reduce and mitigate the impacts of litter in the state.

(b) The contracted third party must consult with units of local government, the commissioners of health and natural resources, and environmental justice organizations.

(c) The initial producer responsibility organization registered by the commissioner under Minnesota Statutes, sections 115A.144 to 115A.1462, must cover the cost of conducting the study through its annual registration fee and recommended actions identified in the study. must be considered as part of future stewardship plans, as required under Minnesota Statutes, section 115A.1451.