

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2 **Solid and Hazardous Waste Commission/Hazardous Materials and**
3 **Waste Management Division**

4 **6 CCR 1007-2**

5 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND**
6 **FACILITIES**

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9 **Amendment of Section 18. Producer Responsibility Regulations**

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13 **1) The Table of Contents for the Solid Waste Regulations is being amended by revising**
14 **the title of subsection 18.9 of Section 18 (Producer Responsibility) to read as follows:**

15
16 **TABLE OF CONTENTS**

17
18 **PART A**

19
20 **GENERAL REQUIREMENTS AND INFORMATION CONCERNING**
21 **ALL SOLID WASTE DISPOSAL SITES AND FACILITIES**
22 **IN THE STATE OF COLORADO**

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25
26 **SECTION 18 PRODUCER RESPONSIBILITY**

- 27 18.1 General Provisions
28 18.2 Producers
29 18.3 Covered Materials – Minimum Recyclable List
30 18.4 Covered Entities
31 18.5 Producer Responsibility Organization (PRO)
32 18.6 Individual Program Plan (IPP) Requirements
33 18.7 Additional Producer Responsibility Organization (PRO)
34 18.8 Education and Outreach Program
35 18.9 Producer Eco-Modulation (~~Reserved~~)
36 18.10 PRO Reimbursement to CDPHE
37 18.11 Inspection – Enforcement – Penalties

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41 **2) The Table of Contents for Section 18 (Producer Responsibility) is being amended to**
42 **revise subsections 18.2 and 18.9 to read as follows:**

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44
45 **SECTION 18 – PRODUCER RESPONSIBILITY**

46
47 **TABLE OF CONTENTS**

18.2 PRODUCERS

18.2.1 Scope and Applicability

18.2.2 Order of Obligation

18.2.3 Producer Exemptions

18.2.4 Producer Requirements

18.2.5 Recordkeeping, Reporting, and Production of Records

18.2.6 Restriction on fees

18.2.7 Producer dues eco-modulation factors hearing

18.9 PRODUCER ECO-MODULATION ~~(RESERVED)~~

18.9.1 Eco-modulation Bonus Schedule Eligibility Criteria

18.9.2 Benchmarks

18.9.3 PRO and Alternate Collection Program Requirements

3) Section 18.1.6 (Definitions of Terms Used in this Section) is being amended by adding the following new definitions: “Benchmark”; “Brand owner”; “Certified compostable”; “Eco-modulation”; “Eco-modulation bonus schedule”; “Malus”; “Postconsumer-recycled-content rate”; and “Qualifying Material”; and revising the definitions of “Compostable”; “Contamination”; “Inbound contamination rate”; “Reuse” or “Refill”; and “Small business” to read as follows:

18.1 GENERAL PROVISIONS

18.1.6 Definitions of Terms Used in this Section

“Benchmark” means a standard that a covered material or producer must meet in order to receive an eco-modulation incentive.

“Brand owner” means the person who owns the brand which includes the person directing the manufacturing, including setting specifications for the paper product or a product’s packaging.

“Certified compostable” means that a product has received certification by a recognized, independent, third-party verification body that the product is compostable pursuant to §25-17-803, C.R.S.

“Compostable” means a covered material associated with organic waste streams that is capable of undergoing aerobic biological decomposition in a controlled composting system as demonstrated by meeting ASTM D6400 (2023~~2~~), ASTM D6868 (2021), or ASTM D8410 (2022) or any successor standards.

“Contamination” means discarded materials delivered to a recycling, compost or other processing facility in an amount or concentration that negatively impacts the value of the material being collected or negatively impacts a processor's ability to sort that material.

For composting, contamination only includes covered materials that are not certified compostable.

“Eco-modulation” means the approach in which producer responsibility dues are structured and adjusted for the purpose of preventing, minimizing or reducing negative environmental, social, economic, and health impacts of covered materials.

“Eco-modulation bonus schedule” ~~RESERVED~~ means optional incentives that reduce producer responsibility dues for covered materials that meet certain benchmarks established by the Commission for the purpose of preventing, minimizing or reducing negative environmental, social, economic, and health impacts of covered materials.

“Inbound contamination rate” means the percentage of ~~covered material contamination~~ collected and sent to a MRF, compost facility or other processor of covered materials that is not recyclable either due to improper recycling behavior or covered materials that are not recyclable.

“Malus” means a disincentive developed by the PRO or an individual producer of an alternative collection program that increases producer responsibility dues for the purpose of preventing, minimizing or reducing negative environmental, social, economic, and health impacts of covered materials.

“Postconsumer-recycled-content rate” means the amount of postconsumer recycled materials used in the production of covered materials in a calendar year divided by the amount of covered materials used for products sold or distributed by producers within or into their United States market territory in the same calendar year, expressed as a percentage.

“Qualifying Material” means any covered material supplied by a producer that meets the related requirements and benchmarks established in sections 18.9.1 and 18.9.2.

“Reuse” or **“Refill”** means the return into the marketplace of a covered material that:
(a) has already been used in the same manner as originally intended without a change in the covered material's purpose; and
(b) was intended to be used for its original purpose at least five times. A covered material is used five times when it is used once for its original purpose and four additional times following this.

For purposes of this definition, 1) ~~returnable reusable packaging~~ is packaging designed to be recirculated multiple times for the same or similar purpose in its original format in a system for reuse, that is owned by

producers or a third party and is returned to producers or a third party after each use; and 2) refillable packaging is packaging designed to be refilled by consumers multiple times for the same or similar purpose in its original format, and that is sold or provided to consumers once for the duration of its usable life, and where the producer has made the same or similar product available for consumers to refill ~~five~~ multiple times without the need for additional packaging.

“Small business” means an individual business at a physical business location that has less than the total annual gross global sales as adjusted annually by the Consumer Price Index as specified in Section 1.8.2.

4) Section 18.2.2 (Order of Obligation) is being amended by revising paragraphs (B)(1) and (B)(2) to read as follows:

18.2 PRODUCERS

18.2.2 ORDER OF OBLIGATION

The following producers are subject to the Program in order of who is first obligated, if the product is sold or distributed in Colorado (except for paragraph E):

(A) Producers of Products Using Packaging Materials and Producers of Unfilled Food and Beverage Packaging Material

(1) The brand owner of the product directing or performing the manufacturing of the packaging material used for the product;

(2) If (1) does not apply, then the brand or trademark licensee of the product directing the manufacturing of the packaging material used for the product;

(3) If there is no identified brand on the packaging materials and neither (1) nor (2) applies, then the manufacturer of the product using covered materials; or

(4) If (1) through (3) do not apply, then the importer into the United States of the product using covered materials.

(B) Producers of Packaging Materials Used in Internet Transactions

Internet transactions involve two obligated producers, both who are equally obligated:

(1) Producers of packaging material used to directly protect or contain the product (follow determination in (A)); and

(2) ~~Producers of packaging material used to ship the product to the consumer (follow determination in (A)).~~ The person that packages or ships the product to the consumer.

5) Section 18.2.3 (Producer Exemptions) is being amended by revising paragraph (F)(2) to read as follows:

18.2.3 Producer Exemptions

The following categories of producers are exempt from the Program under section 713 of the Producer Responsibility Act:

(F) An individual business operating a retail food establishment that is located at a physical business location and that is licensed under section 25-4-1607(1)(a), C.R.S. (2024), or sections 32-106.5(1) to 32-106.5(5) (2024) of the Denver Code of Ordinances.

(1) This includes a retail food establishment preparing or serving food in individual portions for immediate on- or off-premises consumption and assessed an annual fee based on the schedule in section 25-4-1607(1)(a), C.R.S. (2024).

(2) Where the producer is a business operated wholly or in part as a franchise, the franchisee that is an individual business at a physical business location in the state.

6) Section 18.2.5 (Recordkeeping, Reporting, and Production of Records) is being amended by revising paragraph (C) to read as follows:

Section 18.2.5 Recordkeeping, Reporting, and Production of Records

(C) Consistent with Section 18.1, a producer must make all documents and records related to the calculation and payment of producer responsibility dues, recycling rates, collection rates, postconsumer-recycled-content rates, and any other materials necessary for the department to determine compliance with section 708(7) of the Producer Responsibility Act available for inspection by the department. In connection with enforcing a violation by a producer pursuant to section 710 of the Producer Responsibility Act, the department may request in writing that the producer provide any such documents or records to the department.

~~Producers must submit documents and records to the PRO if they believe they are exempt for covered material.~~

7) Add new Section 18.2.7 (Producer dues eco-modulation factors hearing) to read as follows:

18.2.7 Producer dues eco-modulation factors hearing

(A) Timeline to request a hearing

A producer who receives a final invoice from the PRO or individual producer of an alternative collection program assessing annual dues for the Program may request a hearing before the advisory board to contest whether the eco-modulation factors increasing or reducing the dues assessed comply with the Plan, IPP, applicable Regulations, or the Producer Responsibility Act. Before requesting a hearing, a producer must first proceed through the dispute resolution process provided in the contract between the PRO or individual producer of an alternative collection program and producer, if applicable. Should this process not resolve the dispute, only then may a producer request a hearing within 35 days following the final outcome of the dispute resolution process. All requests for hearing must be sent to the following email address, epcomments@state.co.us, no

later than 5pm Mountain Time on the 35th day. A producer may withdraw its request for a hearing at any time upon notice via email to epcomments@state.co.us.

(B) Requirements for a request for hearing

A producer who requests a hearing must include the following information in its request. Producers who do not address all requirements will have their request dismissed. If applicable, a producer may request the following information be protected as confidential business information under the process set forth in Section 18.1.4.

A request for hearing must:

- (1) Be submitted in writing and include the name of the entity requesting the hearing and the full name, address, email, and phone number of the actual individual who will be the main contact for the request;
- (2) Include a detailed description of the alleged error in the eco-modulation factors included in the producer dues calculations with citations to the specific authority under the Producer Responsibility Act and any other authorities and/or documents in support;
- (3) Include documentation of completion of all phases of the dispute resolution process with the PRO or individual producer of an alternative collection program, if applicable;
- (4) Include a copy of the final disputed invoice and proof of payment, including the date of payment, of the disputed dues; and
- (5) State the amount of time anticipated for the hearing.

(C) Hearing process

The advisory board has the authority to hear producer hearing requests in compliance with 24-4-105, C.R.S. Hearings may be held in person, virtually or in a hybrid format at the advisory board's discretion.

Upon receipt of a complete hearing request, the administrator for the advisory board or the administrator's designee must forward the request to the board. The administrator for the board or the administrator's designee must also issue a notice of hearing describing the prehearing and hearing processes to the producer via email and post the notice on its webpage. The administrator for the board or the administrator's designee must then schedule the producer's request for a hearing at the next available board meeting that allows for at least 30-days notice prior to the hearing.

The PRO or individual producer of an alternative collection program may request party status at the hearing by submitting an email to epcomments@state.co.us, no later than 10 days after the notice of hearing is posted to the board's webpage.

At the hearing, the producer bears the burden to show that the eco-modulation factors included in the dues assessed by the invoice do not comply with the Plan, IPP, applicable regulations, or the Producer Responsibility Act. The advisory board may consider any evidence submitted with the hearing request and any evidence submitted by the PRO or individual producer of an alternative collection program, if applicable. Following completion of the hearing, the board must make a recommendation to either uphold the producer's dues as invoiced or reduce the producer's dues based on the error found. The board must issue its recommendation in writing and include reasoning supporting its recommendation and the recommended final dues amount.

Should the producer who requested the hearing fail to attend it, the advisory board may make a recommendation based on the evidence in the record and any evidence and testimony from the

PRO or individual producer of an alternative collection program.

(D) Director review, decision

The Director of the Hazardous Materials and Waste Management Division must review the board's recommendation and make a decision whether to approve or reject the recommendation within 45 days after receipt. If the Director decides to reject the board's recommendation, the Director must make their own decision regarding the eco-modulation factors included in the dues based on the record reviewed by the board. The Director must issue their recommendation in writing and include reasoning supporting their decision. The Director must communicate their decision to all parties to the hearing via email 45 days after receiving the board's recommendation.

(E) No stay, refund

A producer's obligation to pay the dues assessed by the PRO or individual producer of an alternative collection program is not stayed while the hearing request is pending.

If the Director of the HMWMD decides for the producer, a producer will receive a refund of the total amount of increased dues from the assessed eco-modulation factors within a reasonable amount of time but no later than 60 days following the Director's decision.

(F) Judicial review

A producer may seek judicial review of any final decision of the Director of HMWMD as permitted by § 24-4-106, C.R.S.

8) Section 18.3 (COVERED MATERIALS – MINIMUM RECYCLABLE LIST) is being amended to read as follows:

18.3 COVERED MATERIALS – MINIMUM RECYCLABLE LIST

This Section 18.3 applies to all covered material categories of packaging and paper products. Compliance with this Section 18 does not relieve any producer from his/her obligation to comply with any other applicable federal, state or local statutes, regulations, requirements or ordinances.

The categories described below are not intended to be all-inclusive, but rather are set forth to assist producers such as manufacturers, brand or trademark owners or licensees, distributors, importers, shippers, and packagers in determining the appropriate category of a covered material. The department recognizes that case-by-case determinations may be necessary concerning selection of an appropriate category for a particular covered material. Accordingly, the department may require that analytical and/or process information be supplied by the producer to assist in making such determinations.

~~Producers must submit documents and records to the PRO if they believe they are exempt for covered material.~~

379 **9) Section 18.5.4 (PRO Funding Mechanism) is being amended by revising paragraph**
380 **(B)(3) to read as follows:**
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383 **18.5 PRODUCER RESPONSIBILITY ORGANIZATION (PRO)**
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387 **18.5.4 PRO Funding Mechanism**
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391 **(B) Eco-Modulation Factors**
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393 (1) The funding mechanism must include eco-modulation factors that lower producer responsibility
394 dues to incentivize:

- 395 (a) Reductions in the amount of packaging materials used for products;
396 (b) Innovations and practices to enhance the recyclability or commodity value of covered
397 materials;
398 (c) High levels of postconsumer recycled material use;
399 (d) Designs for the reuse and refill of covered materials; and
400 (e) High recycling and refill rates of covered materials.
401

402 (2) The funding mechanism must also include eco-modulation factors that increase producer
403 responsibility dues to discourage:

- 404 (a) Designs and practices that increase the costs of recycling, reusing, or composting covered
405 materials;
406 (b) Designs and practices that disrupt the recycling of other materials; and
407 (c) Producers from using covered materials that are not on the minimum recyclable list.
408

409 (3) The producer responsibility dues of producers must be reduced ~~or increased~~ in accordance with
410 the eco-modulation bonus schedule developed by the department in section 18.9.
411

412 **(C) Special Assessment for Improvement of Collection and Recycling**

413 A producer or group of producers of a covered material may request a special assessment paid by
414 the producers of that covered material to cover system improvements that improve the collection
415 and recycling of that covered material or facilitate the addition of the covered material to the list of
416 readily recyclable materials.
417

418 **(D) Annual Updates to Producer Responsibility Dues Schedule**

419 The PRO must update the producer responsibility dues schedule annually. These updates must
420 reflect changes in program costs and relevant plan revisions. When setting and revising the annual
421 producer responsibility dues schedule, the PRO must solicit and incorporate input from all
422 producers.
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425 **10) Section 18.9 (PRODUCER ECO-MODULATION) is being added to read as follows:**
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427 **18.9 PRODUCER ECO-MODULATION (~~RESERVED~~)**
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429 **18.9.1 ECO-MODULATION BONUS SCHEDULE ELIGIBILITY CRITERIA**
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431 (A) Section 18.9.2 bonuses apply to producers and their qualifying covered material(s) if they meet
432 all of the following criteria, as assessed by the PRO or individual producer of alternative
433 collection program in coordination with the department:
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- 436 (1) The qualifying material has been sold or distributed in Colorado as of January 1 of each

applicable reporting year.
(2) Producers of a covered material must be in compliance with the Act. A producer is not considered in compliance with the Act if the producer is subject to a final administrative penalty order pursuant to Section 18.11.3 that is not stayed or is subject to a fully adjudicated civil action for injunctive relief pursuant to section 18.11.4.

(B) A producer is eligible for 18.9.2 bonuses equal to a reduction in base dues of 10% for the qualifying material in addition to incentives or maluses applied by the PRO or an individual producer of an alternative collection program.

(C) The bonus benchmarks in section 18.9.2 are not mandatory for producers.

18.9.2 Benchmarks

No later than October 31, 2026, the PRO and individual producer of an alternative collection program must publish producer dues and guidance for producers to be able to calculate their total producer dues and reductions to dues from the eco-modulation bonuses.

No later than January 31, 2027, the PRO and individual producer of an alternative collection program must apply the following eco-modulation bonuses to reduce producer responsibility dues paid if a qualifying material can achieve one or all of the following benchmarks:

(A) On-Package Sorting Instructions Benchmark

Starting January 1, 2029, a bonus equal to a 1% reduction in dues for each qualifying material that meets the on-package sorting instructions criteria and guidance developed in section 18.9.3(B).

(B) Local End Use Benchmark

A bonus equal to a 1% reduction in dues for each qualifying material that is:

1. On the minimum recyclable list or recyclables list identified through an alternative collection program;
2. Uses an average of at least 20% postconsumer-recycled content generated in the United States for the applicable reporting year; and
3. Utilized by an end market business in Colorado.

(C) Compostability Benchmark

(1) A producer is eligible for a bonus equal to a 1% reduction in dues of their certified compostable qualifying material if:

- (a) The qualifying material meets the ASTM standards of D6400 (2022), D6868 (2021), D8410 (2022) (or successor standards) as compostable; and
- (b) Meets the labeling requirements set forth in § 25-17-803, C.R.S. (2025).

(D) Case Study Benchmark

(1) On or before July 1, 2027, a producer of a qualifying material, is eligible for a bonus equal to a 1% reduction in dues if the producer or group of producers:

- (a) Submits an initial case study proposal to the corresponding PRO or individual of an alternative collection program that:
 - (i) Is directly relevant to the producer's qualifying material;

(ii) Is designed to yield measurable benefits in the collection, reuse, sortation, recyclability or compostability, reduction or elimination of waste or toxicity, or development of Colorado end markets; and

(iii) Includes a defined scope, the covered materials impacted, the estimated cost, and the implementation timeline of the study.

(b) Receives a recommendation from the corresponding PRO or individual producer of an alternative collection program and approval from the department to carry out the study;

(c) Successfully completes a case study in accordance with the proposal, reports out to the PRO or individual producer of an alternative collection program that includes the measurable benefit provided and the true cost to carry out the study; and

(d) Gives consent to the PRO or individual producer of an alternative collection program for publication of the results of the case study.

(2) The incentive case study bonus reduction shall not exceed the individual producer's contributions to the cost to carry out the study.

(3) The case study must take place in Colorado or must be paired with investment(s) in Colorado and take place in the United States.

(4) The incentive will be accounted for in the reporting year the final report is published by the PRO or individual producer of an alternative collection program.

(5) A producer may not receive a reduction from this bonus if they have already received funding from a PRO or individual producer of an alternative collection program for the same applicable activity.

18.9.3 PRO and Alternative Collection Program Requirements

The PRO and individual producer(s) of an alternative collection program shall:

(A) In its first annual report, assess the producer participation and establish baselines for the eco-modulation bonus schedule developed by the department. For each annual report thereafter, they shall also assess the effectiveness and practicality of the eco-modulation bonus schedule developed by the department.

(B) In coordination with the department, develop and publish on-package sorting instruction criteria for their corresponding covered materials no later than January 1, 2028, that incentivize producers to display clear sorting instructions in Section 18.9.2(A) that accurately reflects recyclability or proper disposal pathway of the qualifying material in Colorado.

(C) In coordination with the department, develop and publish guidance criteria for the case study proposal, recommendation, and reporting processing in 18.9.2(D) no later than October 31, 2026.

(D) Develop internal guidance and determine verification processes for the benchmarks in section 18.9.2, and receive approval from the department on the internal guidance and verification process by October 31, 2026.