

4522

2015-2016 Regular Sessions

I N S E N A T E

March 26, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing a product stewardship program for primary batteries

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 27 of the environmental conservation law is amended
2 by adding a new title 16 to read as follows:

3 TITLE 16

4 PRODUCT STEWARDSHIP

5 FOR PRIMARY BATTERIES

6 SECTION 27-1601. DEFINITIONS

7 27-1603. SALE OF PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING
8 PRODUCT; STEWARDSHIP ORGANIZATION REGISTRATION.

9 27-1605. PRIMARY BATTERY STEWARDSHIP PLAN.

10 27-1607. ANNUAL REPORT; PLAN AUDIT.

11 27-1609. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS
12 REGISTRATION.

13 27-1611. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS.

14 27-1613. RETAILER OBLIGATIONS.

15 27-1615. CONFIDENTIALITY OF SUBMITTED DATA.

16 27-1617. ANTITRUST; CONDUCT AUTHORIZED.

17 27-1619. ADMINISTRATIVE FEE.

18 27-1621. PRIVATE RIGHT OF ACTION.

19 27-1623. REIMBURSEMENT OF RECHARGEABLE BATTERY STEWARDS.

20 27-1625. PENALTIES.

21 27-1627. RULEMAKING; PROCEDURE.

22 S 27-1601. DEFINITIONS.

23 WHEN USED IN THIS TITLE:

24 1. "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

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

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2. "BRAND" MEANS A NAME, SYMBOL, WORD, OR TRACEABLE MARK THAT IDENTIFIES:

A. A PRIMARY BATTERY AND ATTRIBUTES THE PRIMARY BATTERY TO THE OWNER OR LICENSEE OF THE BRAND AS THE PRODUCER; OR

B. A PRIMARY BATTERY-CONTAINING PRODUCT AND ATTRIBUTES THE PRIMARY BATTERY TO THE OWNER OR LICENSEE OF THE PRIMARY BATTERY-CONTAINING PRODUCT AS THE PRODUCER.

3. "CALENDAR YEAR" MEANS THE PERIOD COMMENCING JANUARY FIRST AND ENDING DECEMBER THIRTY-FIRST OF THE SAME CALENDAR YEAR.

4. "COLLECTION RATE" MEANS A PERCENTAGE BY WEIGHT THAT EACH PRODUCER OR STEWARDSHIP ORGANIZATION COLLECTS BY AN ESTABLISHED DATE. THE COLLECTION RATE SHALL BE CALCULATED BY WEIGHT BASED ON THE PERCENTAGE OF PRIMARY BATTERIES, INCLUDING PRIMARY BATTERIES TAKEN FROM PRIMARY BATTERY-CONTAINING PRODUCTS, THAT ARE COLLECTED DURING A CALENDAR YEAR, AS COMPARED TO THE AVERAGE WEIGHT OF PRIMARY BATTERIES, INCLUDING THOSE IN PRIMARY BATTERY-CONTAINING PRODUCTS, THAT WERE ESTIMATED TO HAVE BEEN SOLD IN THE STATE BY PARTICIPATING PRODUCERS DURING THE THREE PREVIOUS CALENDAR YEARS. ESTIMATES OF PRIMARY BATTERIES SOLD IN THE STATE MAY BE BASED ON A REASONABLE PRO RATA CALCULATION BASED ON NATIONAL SALES.

5. "CONSUMER" MEANS ANY PERSON WHO PRESENTS OR DELIVERS ANY NUMBER OF PRIMARY BATTERIES TO A COLLECTION FACILITY THAT IS INCLUDED IN AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN.

6. "DISCARDED PRIMARY BATTERY" MEANS A PRIMARY BATTERY THAT IS NO LONGER USED FOR ITS MANUFACTURED PURPOSE.

7. "EASILY REMOVABLE" MEANS READILY DETACHABLE BY A PERSON WITHOUT THE USE OF TOOLS OR WITH THE USE OF COMMON HOUSEHOLD TOOLS.

8. "PRIMARY BATTERY" MEANS A NONRECHARGEABLE BATTERY WEIGHING TWO KILOGRAMS OR LESS, INCLUDING ALKALINE, CARBON-ZINC, LITHIUM METAL, AND OTHER BATTERIES TYPICALLY GENERATED AS WASTE.

9. "PRIMARY BATTERY-CONTAINING PRODUCT" MEANS A PRIMARY BATTERY CONTAINED IN OR PACKED WITH PRODUCTS SUCH AS CAMERAS, WATCHES, CALCULATORS, FLASHLIGHTS, LANTERNS, PORTABLE RADIOS, TOYS, AND CLOCKS. "PRIMARY BATTERY-CONTAINING PRODUCT" SHALL NOT MEAN ANY OF THE FOLLOWING:

A. A PRIMARY BATTERY THAT IS SOLD IN A COVERED ELECTRONIC DEVICE;

B. A PRIMARY BATTERY THAT IS NOT EASILY REMOVABLE OR IS NOT INTENDED OR DESIGNED TO BE REMOVED FROM THE PRODUCT, OTHER THAN BY THE MANUFACTURER; OR

C. A PRIMARY BATTERY THAT IS SOLD OR USED IN AN IMPLANTED MEDICAL DEVICE.

10. "PRIMARY BATTERY STEWARDSHIP ORGANIZATION" OR "STEWARDSHIP ORGANIZATION" MEANS AN ORGANIZATION APPOINTED BY ONE OR MORE PRODUCERS TO ACT AS AN AGENT ON BEHALF OF A PRODUCER OR PRODUCERS TO DESIGN, SUBMIT, IMPLEMENT AND ADMINISTER A PRIMARY BATTERY STEWARDSHIP PLAN UNDER THIS TITLE.

11. "PRIMARY BATTERY STEWARDSHIP PLAN" OR "PLAN" MEANS A PLAN SUBMITTED TO THE COMMISSIONER PURSUANT TO SECTION 27-1605 OF THIS TITLE BY AN INDIVIDUAL PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION.

12. A. "PRODUCER" MEANS ONE OF THE FOLLOWING WITH REGARD TO A PRIMARY BATTERY OR A PRIMARY BATTERY-CONTAINING PRODUCT THAT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE:

(I) A PERSON WHO MANUFACTURES A PRIMARY BATTERY, OR A PRIMARY BATTERY-CONTAINING PRODUCT, AND WHO SELLS, OFFERS FOR SALE, OR DISTRIBUTES THAT PRIMARY BATTERY, OR THAT PRIMARY BATTERY-CONTAINING PRODUCT, IN THE STATE UNDER THE PERSON'S OWN NAME OR BRAND;

(II) IF SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT APPLY, A PERSON WHO OWNS OR LICENSES A TRADEMARK OR BRAND UNDER WHICH A PRIMARY BATTERY

OR PRIMARY BATTERY-CONTAINING PRODUCT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE, WHETHER OR NOT THE TRADEMARK IS REGISTERED; OR (III) IF SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH DO NOT APPLY, A PERSON WHO IMPORTS A PRIMARY BATTERY OR A PRIMARY BATTERY-CONTAINING PRODUCT INTO THE STATE FOR SALE OR DISTRIBUTION.

B. "PRODUCER" SHALL NOT MEAN A PERSON WHO MANUFACTURES, SELLS, OFFERS FOR SALE OR IMPORTS A PRIMARY BATTERY-CONTAINING PRODUCT IN THE STATE IF THAT PERSON:

(I) AFFIRMS THAT IT ONLY USES PRIMARY BATTERIES SUPPLIED BY A PRODUCER PARTICIPATING IN AN APPROVED BATTERY STEWARDSHIP PROGRAM; AND

(II) REPORTS TO THE COMMISSIONER THE ESTIMATED NUMBER OF PRIMARY BATTERIES IN THE PERSON'S PRIMARY BATTERY-CONTAINING PRODUCTS ESTIMATED TO BE SOLD IN THE STATE. ESTIMATES OF PRIMARY BATTERIES CONTAINED IN PRIMARY BATTERY-CONTAINING PRODUCTS SOLD IN THE STATE MAY BE BASED ON A REASONABLE PRO RATA CALCULATION OF NATIONAL SALES OF THE PRIMARY BATTERY-CONTAINING PRODUCTS.

13. "PROGRAM" OR "STEWARDSHIP PROGRAM" MEANS THE SYSTEM FOR THE COLLECTION, TRANSPORTATION, RECYCLING, AND DISPOSAL OF PRIMARY BATTERIES IMPLEMENTED PURSUANT TO AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN.

14. A. "RECHARGEABLE BATTERY" MEANS:

(I) ONE OR MORE VOLTAIC OR GALVANIC CELLS, ELECTRICALLY CONNECTED TO PRODUCE ELECTRIC ENERGY AND DESIGNED TO BE RECHARGED AND WEIGHING LESS THAN ELEVEN POUNDS; OR

(II) A BATTERY PACK DESIGNED TO BE RECHARGED THAT WEIGHS LESS THAN ELEVEN POUNDS AND THAT IS DESIGNED TO PROVIDE LESS THAN FORTY VOLTS DIRECT CURRENT.

B. "RECHARGEABLE BATTERY" SHALL NOT MEAN:

(I) A BATTERY THAT IS NOT EASILY REMOVABLE OR IS NOT INTENDED OR DESIGNED TO BE REMOVED FROM THE COVERED PRODUCT, OTHER THAN BY THE MANUFACTURER;

(II) A BATTERY THAT CONTAINS ELECTROLYTE AS A FREE LIQUID; OR

(III) A BATTERY OR BATTERY PACK THAT EMPLOYS LEAD-ACID TECHNOLOGY, UNLESS THE BATTERY OR BATTERY PACK:

(1) IS SEALED;

(2) CONTAINS NO LIQUID ELECTROLYTE; AND

(3) IS INTENDED BY ITS MANUFACTURER TO POWER A HANDHELD DEVICE OR TO PROVIDE UNINTERRUPTED BACKUP ELECTRICAL POWER PROTECTION FOR STATIONARY CONSUMER PRODUCTS OR STATIONARY OFFICE EQUIPMENT.

15. "RECHARGEABLE BATTERY STEWARD" MEANS A PERSON WHO:

A. MANUFACTURES A RECHARGEABLE BATTERY OR A RECHARGEABLE PRODUCT THAT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE UNDER ITS OWN BRAND NAMES;

B. OWNS OR LICENSES A TRADEMARK OR BRAND UNDER WHICH A RECHARGEABLE BATTERY OR RECHARGEABLE PRODUCT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE, WHETHER OR NOT THE TRADEMARK IS REGISTERED; OR

C. IF PARAGRAPHS A AND B OF THIS SUBDIVISION DO NOT APPLY, IMPORTS A RECHARGEABLE BATTERY OR RECHARGEABLE PRODUCT INTO THE STATE FOR SALE OR DISTRIBUTION.

16. "RECHARGEABLE PRODUCT" MEANS A PRODUCT THAT CONTAINS OR IS PACKAGED WITH A RECHARGEABLE BATTERY AT THE TIME THE PRODUCT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE. "RECHARGEABLE PRODUCT" SHALL NOT MEAN:

A. A PRODUCT FROM WHICH A RECHARGEABLE BATTERY IS NOT EASILY REMOVABLE OR IS NOT INTENDED OR DESIGNED TO BE REMOVED FROM THE PRODUCT, OTHER THAN BY THE MANUFACTURER; OR

1 B. AN IMPLANTED MEDICAL DEVICE, AS THAT TERM IS DEFINED IN THE FEDERAL
2 FOOD, DRUG, AND COSMETIC ACT, 21 U.S.C. S 321(H), AS AMENDED.

3 17. "RECYCLING" MEANS ANY PROCESS BY WHICH DISCARDED PRODUCTS, COMPO-
4 NENTS, AND BY-PRODUCTS ARE TRANSFORMED INTO NEW USABLE OR MARKETABLE
5 MATERIALS IN A MANNER IN WHICH THE ORIGINAL PRODUCTS MAY LOSE THEIR
6 IDENTITY, BUT DOES NOT INCLUDE ENERGY RECOVERY OR ENERGY GENERATION BY
7 MEANS OF COMBUSTING DISCARDED PRODUCTS, COMPONENTS, AND BY-PRODUCTS WITH
8 OR WITHOUT OTHER WASTE PRODUCTS.

9 18. "RETAILER" MEANS A PERSON WHO OFFERS A PRIMARY BATTERY OR A PRIMA-
10 RY BATTERY-CONTAINING PRODUCT FOR SALE TO ANY CONSUMER OR BUSINESS AT
11 RETAIL IN THE STATE THROUGH ANY MEANS, INCLUDING REMOTE OFFERINGS SUCH
12 AS SALES OUTLETS, CATALOGUES, OR AN INTERNET WEBSITE.

13 S 27-1603. SALE OF PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING PROD-
14 UCT; STEWARDSHIP ORGANIZATION REGISTRATION.

15 1. SALE PROHIBITED. BEGINNING JANUARY FIRST, TWO THOUSAND SEVENTEEN,
16 EXCEPT AS SET FORTH UNDER THIS SUBDIVISION AND SUBDIVISION TWO OF THIS
17 SECTION, A PRODUCER OF A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING
18 PRODUCT SHALL NOT SELL, OFFER FOR SALE, OR DELIVER TO A RETAILER FOR
19 SUBSEQUENT SALE A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING PRODUCT
20 UNLESS ALL OF THE FOLLOWING HAS BEEN MET:

21 A. THE PRODUCER OR STEWARDSHIP ORGANIZATION IS REGISTERED UNDER AN
22 APPROVED AND IMPLEMENTED PRIMARY BATTERY STEWARDSHIP PLAN;

23 B. THE PRODUCER OR STEWARDSHIP ORGANIZATION HAS PAID THE FEE UNDER
24 SECTION 27-1619 OF THIS TITLE; AND

25 C. THE NAME OF THE PRODUCER AND THE PRODUCER'S BRAND ARE DESIGNATED ON
26 THE DEPARTMENT WEBSITE AS COVERED BY AN APPROVED PRIMARY BATTERY
27 STEWARDSHIP PLAN.

28 2. PRIMARY BATTERY STEWARDSHIP ORGANIZATION REGISTRATION REQUIREMENTS.
29 BEGINNING SEPTEMBER FIRST, TWO THOUSAND SIXTEEN, AND ANNUALLY THEREAFT-
30 ER, A STEWARDSHIP ORGANIZATION SHALL FILE A REGISTRATION FORM WITH THE
31 COMMISSIONER. THE COMMISSIONER SHALL PROVIDE THE REGISTRATION FORM TO A
32 STEWARDSHIP ORGANIZATION. THE REGISTRATION FORM SHALL INCLUDE:

33 A. A LIST OF THE PRODUCERS OF PRIMARY BATTERIES AND PRIMARY BATTERY
34 CONTAINING PRODUCTS PARTICIPATING IN THE STEWARDSHIP ORGANIZATION;

35 B. A LIST OF THE BRANDS OF PRIMARY BATTERIES AND PRIMARY BATTERY
36 CONTAINING PRODUCTS OF EACH PRODUCER PARTICIPATING IN THE STEWARDSHIP
37 ORGANIZATION; AND

38 C. THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON RESPONSIBLE
39 FOR ENSURING THE PRODUCER'S COMPLIANCE WITH THIS CHAPTER.

40 3. NEW PRODUCERS. A PRODUCER WHO, AFTER JANUARY FIRST, TWO THOUSAND
41 SIXTEEN, SEEKS TO SELL, OFFER FOR SALE, OR OFFER FOR PROMOTIONAL
42 PURPOSES IN THE STATE A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING
43 PRODUCT NOT PREVIOUSLY SOLD IN THE STATE, SHALL NOTIFY THE COMMISSIONER
44 PRIOR TO SELLING OR OFFERING A PRODUCT NOT COVERED BY A STEWARDSHIP PLAN
45 IN THE STATE. THE COMMISSIONER SHALL LIST A PRODUCER WHO SUPPLIES NOTICE
46 UNDER THIS SUBDIVISION AS A "NEW PRODUCER" ON THE DEPARTMENT'S WEBSITE.
47 A PRODUCER THAT SUPPLIES NOTICE UNDER THIS SUBDIVISION SHALL HAVE NINETY
48 DAYS TO EITHER JOIN AN EXISTING PRIMARY BATTERY STEWARDSHIP ORGANIZATION
49 OR TO SUBMIT A PRIMARY BATTERY STEWARDSHIP PLAN FOR APPROVAL TO THE
50 STATE.

51 4. EXEMPTION. A PRODUCER WHO ANNUALLY SELLS, OFFERS FOR SALE, DISTRIB-
52 UTES, OR IMPORTS IN THE STATE PRIMARY BATTERIES OR PRIMARY BATTERY-CON-
53 TAINING PRODUCTS WITH A TOTAL RETAIL VALUE OF LESS THAN FIVE HUNDRED
54 DOLLARS SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS TITLE.
55 S 27-1605. PRIMARY BATTERY STEWARDSHIP PLAN.

1 1. PRIMARY BATTERY STEWARDSHIP PLAN REQUIRED. ON OR BEFORE APRIL
2 FIRST, TWO THOUSAND SIXTEEN, EACH PRODUCER SELLING, OFFERING FOR SALE,
3 OR OFFERING FOR PROMOTIONAL PURPOSES A PRIMARY BATTERY OR PRIMARY
4 BATTERY-CONTAINING PRODUCT IN THE STATE SHALL INDIVIDUALLY OR AS PART OF
5 A PRIMARY BATTERY STEWARDSHIP ORGANIZATION SUBMIT A PRIMARY BATTERY
6 STEWARDSHIP PLAN TO THE COMMISSIONER FOR REVIEW.

7 2. PRIMARY BATTERY STEWARDSHIP PLAN; MINIMUM REQUIREMENTS. EACH PRIMA-
8 RY BATTERY STEWARDSHIP PLAN SHALL INCLUDE, AT A MINIMUM, ALL OF THE
9 FOLLOWING ELEMENTS:

10 A. LIST OF PRODUCERS AND BRANDS. EACH PRIMARY BATTERY STEWARDSHIP PLAN
11 SHALL LIST:

12 (I) ALL PARTICIPATING PRODUCERS AND CONTACT INFORMATION FOR EACH OF
13 THE PARTICIPATING PRODUCERS; AND

14 (II) THE BRANDS OF PRIMARY BATTERIES COVERED BY THE PLAN.

15 B. FREE COLLECTION. EACH PRIMARY BATTERY STEWARDSHIP PLAN SHALL
16 PROVIDE FOR THE FREE COLLECTION OF PRIMARY BATTERIES FROM CONSUMERS. A
17 PRODUCER SHALL NOT REFUSE THE COLLECTION OF A PRIMARY BATTERY BASED ON
18 THE BRAND OR MANUFACTURER OF THE PRIMARY BATTERY.

19 C. COLLECTION; CONVENIENCE. EACH PRIMARY BATTERY STEWARDSHIP PLAN
20 SHALL:

21 (I) ALLOW ALL RETAILERS THAT SELL PRIMARY BATTERIES OR PRIMARY BATTER-
22 Y-CONTAINING PRODUCTS COVERED UNDER THE PLAN AND ALL MUNICIPALITIES TO
23 OPT TO BE A COLLECTION FACILITY;

24 (II) PROVIDE, AT A MINIMUM, NO FEWER THAN TWO COLLECTION FACILITIES IN
25 EACH COUNTY IN THE STATE; AND

26 (III) PROVIDE FOR THE ACCEPTANCE FROM A CONSUMER OF UP TO TWENTY
27 BATTERIES PER VISIT. A COLLECTION FACILITY MAY AGREE TO ACCEPT MORE THAN
28 TWENTY BATTERIES PER VISIT FROM A CONSUMER.

29 D. METHOD OF DISPOSITION. EACH PRIMARY BATTERY STEWARDSHIP PLAN SHALL
30 INCLUDE A DESCRIPTION OF THE METHOD THAT WILL BE USED TO RESPONSIBLY
31 MANAGE DISCARDED PRIMARY BATTERIES TO ENSURE THAT THE COMPONENTS OF THE
32 DISCARDED PRIMARY BATTERIES, TO THE EXTENT ECONOMICALLY AND TECHNICALLY
33 FEASIBLE, ARE RECYCLED.

34 E. ROLES AND RESPONSIBILITIES. A PRIMARY BATTERY STEWARDSHIP PLAN
35 SHALL LIST ALL KEY PARTICIPANTS IN THE PRIMARY BATTERY COLLECTION CHAIN,
36 INCLUDING:

37 (I) THE NUMBER AND NAME OF THE COLLECTION FACILITIES ACCEPTING PRIMARY
38 BATTERIES UNDER THE PLAN, INCLUDING THE ADDRESS AND CONTACT INFORMATION
39 FOR EACH FACILITY;

40 (II) THE NAME AND CONTACT INFORMATION OF A TRANSPORTER OR CONTRACTOR
41 COLLECTING PRIMARY BATTERIES FROM COLLECTION FACILITIES; AND

42 (III) THE NAME, ADDRESS, AND CONTACT INFORMATION OF THE RECYCLING
43 FACILITIES THAT PROCESS THE COLLECTED PRIMARY BATTERIES OR PRIMARY
44 BATTERY-CONTAINING PRODUCTS.

45 F. EDUCATION AND OUTREACH. A PRIMARY BATTERY STEWARDSHIP PLAN SHALL
46 INCLUDE AN EDUCATION AND OUTREACH PROGRAM. THE EDUCATION AND OUTREACH
47 PROGRAM MAY INCLUDE MEDIA ADVERTISING, RETAIL DISPLAYS, ARTICLES IN
48 TRADE AND OTHER JOURNALS AND PUBLICATIONS, AND OTHER PUBLIC EDUCATIONAL
49 EFFORTS. THE EDUCATION AND OUTREACH PROGRAM SHALL DESCRIBE THE OUTREACH
50 PROCEDURES THAT WILL BE USED TO PROVIDE NOTICE OF THE PROGRAM TO BUSI-
51 NESSES, MUNICIPALITIES, RETAILERS, WHOLESALERS, AND HAULERS. AT A MINI-
52 MUM, THE EDUCATION AND OUTREACH PROGRAM SHALL NOTIFY THE PUBLIC OF THE
53 FOLLOWING:

54 (I) THAT THERE IS A FREE COLLECTION PROGRAM FOR ALL PRIMARY BATTERIES;
55 AND

1 (II) THE LOCATION OF COLLECTION POINTS AND HOW TO ACCESS THE
2 COLLECTION PROGRAM.

3 G. REIMBURSEMENT.

4 (I) A PRIMARY BATTERY STEWARDSHIP PLAN SHALL INCLUDE A PROCEDURE UNDER
5 WHICH THE PRODUCER OR STEWARDSHIP ORGANIZATION SUBMITTING THE PLAN SHALL
6 REIMBURSE ANOTHER PRIMARY BATTERY PRODUCER OR STEWARDSHIP ORGANIZATION
7 WITH AN APPROVED PLAN FOR THE ACTUAL DIRECT COSTS PER UNIT OF WEIGHT
8 INCURRED IN COLLECTING THE BRANDS OR PRODUCTS OF THE PRODUCER SUBMITTING
9 THE PLAN. DIRECT COSTS INCLUDE COSTS OF COLLECTION, TRANSPORT, RECYCLING
10 AND OTHER ACTUAL ENVIRONMENTAL MANAGEMENT COSTS, PLUS AN ADDITIONAL
11 NEGOTIATED AMOUNT NOT TO EXCEED TEN PERCENT TO REFLECT A REASONABLE
12 CONTRIBUTION FOR INDIRECT COSTS, INCLUDING PERMITTING FEES, OVERHEAD,
13 PERSONNEL COSTS, ADMINISTRATION, INSURANCE, LEGAL OR ACCOUNTING COSTS,
14 EDUCATION AND OUTREACH, OR ANY OTHER COSTS.

15 (II) A PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION THAT
16 RECEIVES A REQUEST FOR REIMBURSEMENT MAY, PRIOR TO PAYMENT AND WITHIN
17 THIRTY DAYS OF RECEIPT OF THE REQUEST FOR REIMBURSEMENT, REQUEST AN
18 INDEPENDENT AUDIT OF SUBMITTED REIMBURSEMENT COSTS. IF THE INDEPENDENT
19 AUDIT CONFIRMS THE REASONABLENESS OF THE REIMBURSEMENT REQUEST, THE
20 PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION REQUESTING THE
21 AUDIT SHALL PAY THE COST OF THE AUDIT.

22 3. IMPLEMENTATION. A PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGAN-
23 IZATION SHALL INCLUDE PROVISIONS IN THE PLAN FOR THE IMPLEMENTATION OF
24 THE PROGRAM IN CONJUNCTION WITH THOSE RETAILERS AND MUNICIPALITIES
25 ACTING AS COLLECTION FACILITIES UNDER A PROGRAM. IMPLEMENTATION OF THE
26 PROGRAM SHALL BE AT NO COST TO RETAILERS OR MUNICIPALITIES ACTING AS
27 COLLECTION FACILITIES UNDER A PROGRAM. A PRODUCER OR A PRIMARY BATTERY
28 STEWARDSHIP ORGANIZATION SHALL PROVIDE RETAILERS AND MUNICIPALITIES
29 ACTING AS COLLECTION FACILITIES PRODUCTS OR EQUIPMENT FOR SETTING UP A
30 COLLECTION POINT AND FOR PROVIDING FOR THE PICKUP OF COLLECTED PRIMARY
31 BATTERIES, INCLUDING ARRANGING FOR THE MANAGEMENT OF THOSE PRIMARY
32 BATTERIES.

33 S 27-1607. ANNUAL REPORT; PLAN AUDIT.

34 1. ANNUAL REPORT. ON OR BEFORE APRIL FIRST, TWO THOUSAND EIGHTEEN, AND
35 ANNUALLY THEREAFTER, A PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGAN-
36 IZATION SHALL SUBMIT A REPORT TO THE COMMISSIONER THAT CONTAINS THE
37 FOLLOWING:

38 A. THE WEIGHT OF PRIMARY BATTERIES COLLECTED BY THE PRODUCER OR THE
39 STEWARDSHIP ORGANIZATION IN THE PRIOR CALENDAR YEAR;

40 B. THE COLLECTION RATE ACHIEVED IN THE PRIOR CALENDAR YEAR;

41 C. SPECIFIES THE COLLECTION FACILITIES THAT FAILED IN THE PREVIOUS
42 CALENDAR YEAR TO COLLECT A MINIMUM OF ONE HUNDRED POUNDS BY WEIGHT OF
43 PRIMARY BATTERIES AND WHETHER THESE COLLECTION FACILITIES WILL BE ELIMI-
44 NATED FROM THE PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION'S
45 PLAN;

46 D. THE LOCATIONS FOR ALL COLLECTION POINTS SET UP BY THE PRODUCERS
47 COVERED BY THE PLAN AND CONTACT INFORMATION FOR EACH LOCATION;

48 E. EXAMPLES AND DESCRIPTION OF EDUCATIONAL MATERIALS USED TO INCREASE
49 COLLECTION;

50 F. THE MANNER IN WHICH THE COLLECTED PRIMARY BATTERIES WERE MANAGED;

51 G. ANY MATERIAL CHANGE TO THE PRIMARY BATTERY STEWARDSHIP PLAN; AND

52 H. THE COST OF IMPLEMENTATION OF THE PROGRAM, INCLUDING THE COSTS OF
53 COLLECTION, RECYCLING, EDUCATION, AND OUTREACH.

54 2. PLAN AUDIT. ONCE EVERY FIVE YEARS, A PRODUCER OR STEWARDSHIP ORGAN-
55 IZATION SHALL HIRE AN INDEPENDENT THIRD PARTY TO AUDIT THE PLAN AND PLAN
56 OPERATION. THE AUDITOR SHALL EXAMINE THE EFFECTIVENESS OF THE PROGRAM IN

COLLECTING AND RECYCLING PRIMARY BATTERIES. THE INDEPENDENT AUDITOR SHALL EXAMINE THE COST-EFFECTIVENESS OF THE PROGRAM AND COMPARE IT TO THAT OF COLLECTION PROGRAMS FOR PRIMARY BATTERIES IN OTHER JURISDICTIONS. THE INDEPENDENT AUDITOR SHALL MAKE RECOMMENDATIONS TO THE COMMISSIONER ON WAYS TO INCREASE PROGRAM EFFICACY AND COST-EFFECTIVENESS.

S 27-1609. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS; REGISTRATION.

1. PARTICIPATION IN A STEWARDSHIP ORGANIZATION. A PRODUCER MAY MEET THE REQUIREMENTS OF THIS TITLE BY PARTICIPATING IN A PRIMARY BATTERY STEWARDSHIP ORGANIZATION THAT UNDERTAKES THE PRODUCER'S RESPONSIBILITIES UNDER SECTIONS 27-1603, 27-1605, AND 27-1607 OF THIS TITLE.

2. QUALIFICATIONS FOR A STEWARDSHIP ORGANIZATION. TO QUALIFY AS A STEWARDSHIP ORGANIZATION UNDER THIS CHAPTER, AN ORGANIZATION SHALL:

A. COMMIT TO ASSUME THE RESPONSIBILITIES, OBLIGATIONS, AND LIABILITIES OF ALL PRODUCERS PARTICIPATING IN THE STEWARDSHIP ORGANIZATION;

B. NOT CREATE UNREASONABLE BARRIERS FOR PARTICIPATION BY PRODUCERS IN THE STEWARDSHIP ORGANIZATION; AND

C. MAINTAIN A PUBLIC WEBSITE THAT LISTS ALL PRODUCERS AND PRODUCERS' BRANDS COVERED BY THE PRIMARY BATTERY STEWARDSHIP ORGANIZATION'S APPROVED COLLECTION PLAN.

3. REGISTRATION REQUIREMENTS.

A. BEGINNING JANUARY FIRST, TWO THOUSAND SIXTEEN AND ANNUALLY THEREAFTER, A STEWARDSHIP ORGANIZATION SHALL FILE A REGISTRATION FORM WITH THE COMMISSIONER. THE COMMISSIONER SHALL PROVIDE THE REGISTRATION FORM TO A STEWARDSHIP ORGANIZATION. THE REGISTRATION FORM SHALL INCLUDE:

(I) A LIST OF THE PRODUCERS PARTICIPATING IN THE STEWARDSHIP ORGANIZATION;

(II) THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON RESPONSIBLE FOR ENSURING A PRODUCER'S COMPLIANCE WITH THIS TITLE;

(III) A DESCRIPTION OF HOW THE STEWARDSHIP ORGANIZATION MEETS THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION, INCLUDING ANY REASONABLE REQUIREMENTS FOR PARTICIPATION IN THE STEWARDSHIP ORGANIZATION; AND

(IV) THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON FOR NONMEMBER MANUFACTURER TO CONTRACT ON HOW TO PARTICIPATE IN THE STEWARDSHIP ORGANIZATION TO SATISFY THE REQUIREMENTS OF THIS TITLE.

B. A RENEWAL OF A REGISTRATION WITHOUT CHANGES MAY BE ACCOMPLISHED THROUGH NOTIFYING THE COMMISSIONER ON A FORM PROVIDED BY THE COMMISSIONER.

4. PRIMARY BATTERY-CONTAINING PRODUCTS; NOTIFICATION. PRODUCERS OF A BATTERY-CONTAINING PRODUCT WHO CHOOSE TO FULFILL THE REQUIREMENTS OF THIS TITLE BY PARTICIPATION IN A STEWARDSHIP ORGANIZATION UNDER SUBDIVISION ONE OF THIS SECTION SHALL NOTIFY EACH PRODUCT STEWARDSHIP ORGANIZATION OPERATING AN APPROVED PROGRAM THAT THE PRIMARY BATTERIES CONTAINED WITHIN OR PACKAGED WITH THEIR PRODUCTS ARE COVERED BY A PRIMARY BATTERY PRODUCER PARTICIPATING IN A STEWARDSHIP PROGRAM, AND SHALL PROVIDE THE NAME OF THE PRODUCTS, AS WELL AS THE IDENTITY OF ITS PRIMARY BATTERY SUPPLIER, BRAND, WEIGHT, CHEMISTRY, ESTIMATED NUMBER OF BATTERIES CONTAINED IN, OR PACKAGED WITH, THE PRODUCTS SOLD IN THE STATE, AND SUCH OTHER DETAILS AS THE PRIMARY BATTERY STEWARDSHIP ORGANIZATION MAY REASONABLY REQUIRE. A PRIMARY BATTERY STEWARDSHIP ORGANIZATION IN WHICH THE PRIMARY BATTERY SUPPLIER IS PARTICIPATING SHALL, AS PART OF THE LIST SUBMITTED UNDER SUBDIVISION TWO OF SECTION 27-1605 OF THIS TITLE, INCLUDE THE PRODUCER OF THE PRIMARY BATTERY-CONTAINING PRODUCT AS A PARTICIPANT IN ITS PROGRAM, SUBJECT TO ANY LIMITATIONS OR EXCEPTIONS AS

1 MAY BE INDICATED BY THE INFORMATION SUBMITTED BY THE PRIMARY
2 BATTERY-CONTAINING PRODUCT PRODUCER.

3 S 27-1611. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS.

4 1. APPROVAL OF PLAN. WITHIN NINETY DAYS AFTER RECEIPT OF A PROPOSED
5 STEWARDSHIP PLAN, THE COMMISSIONER SHALL DETERMINE WHETHER THE PLAN
6 COMPLIES WITH THE REQUIREMENTS OF SECTION 27-1605 OF THIS TITLE. IF THE
7 COMMISSIONER APPROVES A PLAN, THE COMMISSIONER SHALL NOTIFY THE APPLI-
8 CANT OF THE PLAN APPROVAL IN WRITING. IF THE COMMISSIONER REJECTS A
9 PLAN, THE COMMISSIONER SHALL NOTIFY THE APPLICANT IN WRITING OF THE
10 REASONS FOR REJECTING THE PLAN. AN APPLICANT WHOSE PLAN IS REJECTED BY
11 THE COMMISSIONER SHALL SUBMIT A REVISED PLAN TO THE COMMISSIONER WITHIN
12 FORTY-FIVE DAYS OF RECEIVING NOTICE OF REJECTION.

13 2. PLAN AMENDMENT; CHANGES. ANY CHANGES TO A PROPOSED STEWARDSHIP PLAN
14 SHALL BE APPROVED BY THE COMMISSIONER IN WRITING. THE COMMISSIONER, IN
15 HIS OR HER DISCRETION OR AT THE REQUEST OF A PRODUCER, MAY REQUIRE A
16 PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION TO AMEND AN
17 APPROVED PLAN.

18 3. PUBLIC NOTICE. THE COMMISSIONER SHALL POST ALL PROPOSED AND
19 APPROVED PRIMARY BATTERY STEWARDSHIP PLANS ON THE DEPARTMENT'S WEBSITE,
20 SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SECTION 27-1615 OF THIS
21 TITLE.

22 4. PUBLIC INPUT. THE COMMISSIONER SHALL ESTABLISH A PROCESS UNDER
23 WHICH A PRIMARY BATTERY STEWARDSHIP PLAN, PRIOR TO PLAN APPROVAL OR
24 AMENDMENT, IS AVAILABLE FOR PUBLIC REVIEW AND COMMENT.

25 5. REGISTRATIONS. THE COMMISSIONER SHALL ACCEPT, REVIEW, AND APPROVE
26 OR DENY PRIMARY BATTERY STEWARDSHIP ORGANIZATION REGISTRATIONS SUBMITTED
27 UNDER SECTION 27-1605 OF THIS TITLE.

28 6. AGENCY WEBSITE. THE COMMISSIONER SHALL MAINTAIN A WEBSITE THAT
29 INCLUDES THE NAMES OF PRODUCERS WITH APPROVED PLANS OR PARTICIPATION IN
30 APPROVED PLANS. THE WEBSITE SHALL LIST ALL OF AN APPROVED PRODUCER'S
31 BRANDS COVERED BY THE STEWARDSHIP PLAN FILED WITH THE COMMISSIONER. THE
32 COMMISSIONER SHALL UPDATE INFORMATION ON THE WEBSITE WITHIN TEN DAYS OF
33 RECEIPT OF NOTICE OF ANY CHANGE TO THE LISTED INFORMATION.

34 7. TERM OF STEWARDSHIP PLAN. A PRIMARY BATTERY STEWARDSHIP PLAN
35 APPROVED BY THE COMMISSIONER UNDER THIS SECTION SHALL HAVE A TERM NOT TO
36 EXCEED FIVE YEARS, PROVIDED THAT THE PRODUCER REMAINS IN COMPLIANCE WITH
37 THE REQUIREMENTS OF THIS TITLE AND THE TERMS OF THE APPROVED PLAN.

38 S 27-1613. RETAILER OBLIGATIONS.

39 1. SALE PROHIBITED. EXCEPT AS SET FORTH UNDER SUBDIVISION TWO OF THIS
40 SECTION, BEGINNING JANUARY FIRST, TWO THOUSAND SEVENTEEN, NO RETAILER
41 SHALL SELL OR OFFER FOR SALE A PRIMARY BATTERY OR PRIMARY BATTERY-CON-
42 TAINING PRODUCT UNLESS THE RETAILER HAS REVIEWED THE DEPARTMENT'S
43 WEBSITE REQUIRED IN SUBDIVISION SIX OF SECTION 27-1611 OF THIS TITLE TO
44 DETERMINE THAT THE PRODUCER OF THE PRIMARY BATTERY OR PRIMARY
45 BATTERY-CONTAINING PRODUCT IS IMPLEMENTING AN APPROVED COLLECTION PLAN
46 OR IS A MEMBER OF A STEWARDSHIP ORGANIZATION.

47 2. INVENTORY EXCEPTION; EXPIRATION OR REVOCATION OF MANUFACTURER
48 REGISTRATION. A RETAILER SHALL NOT BE RESPONSIBLE FOR AN UNLAWFUL SALE
49 OF A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING PRODUCT UNDER THIS
50 SECTION IF:

51 A. THE RETAILER PURCHASED THE PRIMARY BATTERY OR PRIMARY BATTERY-CON-
52 TAINING PRODUCT PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN AND SELLS
53 THE BATTERY OR PRODUCT ON OR BEFORE JANUARY FIRST, TWO THOUSAND EIGH-
54 TEEN; OR

55 B. THE PRODUCER'S STEWARDSHIP PLAN EXPIRED OR WAS REVOKED, AND THE
56 RETAILER TOOK POSSESSION OF THE IN-STORE INVENTORY OF PRIMARY BATTERIES

OR PRIMARY BATTERY-CONTAINING PRODUCTS PRIOR TO THE EXPIRATION OR REVO-
CATION OF THE PRODUCER'S STEWARDSHIP PLAN.

S 27-1615. CONFIDENTIALITY OF SUBMITTED DATA.

1. CONFIDENTIALITY OF SUBMITTED REPORTS AND DATA. REPORTS AND DATA
SUBMITTED UNDER THIS TITLE SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND
COPYING, PROVIDED THAT:

A. INFORMATION EXEMPTED UNDER THE FREEDOM OF INFORMATION LAW, PURSUANT
TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW SHALL NOT BE AVAILABLE FOR
PUBLIC INSPECTION AND COPYING.

B. THE COMMISSIONER MAY PUBLISH INFORMATION CONFIDENTIAL UNDER PARA-
GRAPH A OF THIS SUBDIVISION IN A SUMMARY OR AGGREGATED FORM THAT DOES
NOT DIRECTLY OR INDIRECTLY IDENTIFY INDIVIDUAL PRODUCERS, DISTRIBUTORS,
OR RETAILERS.

2. OMISSION OF TRADE SECRET INFORMATION. THE COMMISSIONER MAY REQUIRE,
AS A PART OF A REPORT SUBMITTED UNDER THIS TITLE, THAT THE PRODUCER OR
STEWARDSHIP ORGANIZATION SUBMIT A REPORT THAT DOES NOT CONTAIN TRADE
SECRET INFORMATION AND IS AVAILABLE FOR PUBLIC INSPECTION AND REVIEW.

3. TOTAL WEIGHT OF BATTERIES. THE TOTAL WEIGHT OF BATTERIES COLLECTED
UNDER AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN IS NOT CONFIDENTIAL
BUSINESS INFORMATION EXEMPTED UNDER THE FREEDOM OF INFORMATION LAW, AND
SHALL BE SUBJECT TO INSPECTION AND REVIEW.

S 27-1617. ANTITRUST; CONDUCT AUTHORIZED.

1. ACTIVITY AUTHORIZED. A PRODUCER, GROUP OF PRODUCERS, OR STEWARDSHIP
ORGANIZATION IMPLEMENTING OR PARTICIPATING IN AN APPROVED STEWARDSHIP
PLAN UNDER THIS TITLE FOR THE COLLECTION, TRANSPORT, PROCESSING, AND
END-OF-LIFE MANAGEMENT OF PRIMARY BATTERIES ARE INDIVIDUALLY OR JOINTLY
IMMUNE FROM LIABILITY FOR THE CONDUCT UNDER STATE LAWS RELATING TO ANTI-
TRUST, RESTRAINT OF TRADE, UNFAIR TRADE PRACTICES, AND OTHER REGULATION
OF TRADE OR COMMERCE, TO THE EXTENT THAT THE CONDUCT IS REASONABLY
NECESSARY TO PLAN, IMPLEMENT, AND COMPLY WITH THE PRODUCER'S, GROUP OF
PRODUCERS', OR STEWARDSHIP ORGANIZATION'S CHOSEN SYSTEM FOR MANAGING
DISCARDED PRIMARY BATTERIES. THIS SUBDIVISION SHALL ALSO APPLY TO
CONDUCT OF A RETAILER OR WHOLESALER PARTICIPATING IN A PRODUCER OR
STEWARDSHIP ORGANIZATION'S APPROVED PLAN WHEN THE CONDUCT IS NECESSARY
TO PLAN AND IMPLEMENT THE PRODUCER'S OR STEWARDSHIP ORGANIZATION'S
ORGANIZED COLLECTION OR RECYCLING SYSTEM FOR DISCARDED BATTERIES.

2. LIMITATIONS ON ANTITRUST ACTIVITY. SUBDIVISION ONE OF THIS SECTION
SHALL NOT APPLY TO AN AGREEMENT AMONG PRODUCERS, GROUPS OF PRODUCERS,
RETAILERS, WHOLESALERS, OR STEWARDSHIP ORGANIZATIONS AFFECTING THE PRICE
OF PRIMARY BATTERIES OR PRIMARY BATTERY-CONTAINING PRODUCTS OR ANY
AGREEMENT RESTRICTING THE GEOGRAPHIC AREA IN WHICH, OR CUSTOMERS TO
WHOM, PRIMARY BATTERIES OR PRIMARY BATTERY-CONTAINING PRODUCTS SHALL BE
SOLD.

S 27-1619. ADMINISTRATIVE FEE.

1. FEE ASSESSED. A PRODUCER OF STEWARDSHIP ORGANIZATION SHALL PAY A
FEE OF FIFTEEN THOUSAND DOLLARS ANNUALLY FOR OPERATION UNDER A STEWARD-
SHIP PLAN APPROVED BY THE COMMISSIONER UNDER SECTION 27-1611 OF THIS
TITLE.

2. DISPOSITION OF FEE. THE FEES COLLECTED UNDER SUBDIVISION ONE OF
THIS SECTION SHALL BE DEPOSITED IN THE HAZARDOUS WASTE REMEDIAL FUND
UNDER SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW.

S 27-1621. PRIVATE RIGHT OF ACTION.

1. A PRODUCER OF A PRIMARY BATTERY STEWARDSHIP ORGANIZATION IMPLEMENT-
ING AN APPROVED PLAN IN COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE
MAY BRING A CIVIL ACTION AGAINST ANOTHER PRODUCER OR STEWARDSHIP ORGAN-
IZATION FOR DAMAGES WHEN:

1 A. THE PLAINTIFF PRODUCER OR STEWARDSHIP ORGANIZATION INCURS MORE THAN
2 THREE THOUSAND DOLLARS IN ACTUAL DIRECT COSTS COLLECTING, HANDLING,
3 RECYCLING, OR PROPERLY DISPOSING OF PRIMARY BATTERIES SOLD OR OFFERED
4 FOR SALE IN THE STATE BY ANOTHER PRODUCER;

5 B. THE PRODUCER FROM WHOM DAMAGES ARE SOUGHT:

6 (I) CAN BE IDENTIFIED AS THE PRODUCER OF THE COLLECTED BATTERIES FROM
7 A BRAND OR MARKING ON THE DISCARDED BATTERY OR FROM OTHER INFORMATION
8 AVAILABLE TO THE PLAINTIFF PRODUCER OR STEWARDSHIP ORGANIZATION; AND

9 (II) DOES NOT OPERATE AN APPROVED BATTERY STEWARDSHIP PROGRAM IN THE
10 STATE.

11 2. A. A PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION IMPL-
12 MENTING AN APPROVED PLAN IN COMPLIANCE WITH THE REQUIREMENTS OF THIS
13 TITLE MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST ANOTHER PRODUCER OR
14 STEWARDSHIP ORGANIZATION THAT IS IMPLEMENTING AN APPROVED PLAN IN THE
15 STATE WHEN:

16 (I) THE PLAINTIFF PRODUCER OR STEWARDSHIP ORGANIZATION SUBMITTED A
17 REIMBURSEMENT REQUEST TO ANOTHER PRODUCER OR STEWARDSHIP ORGANIZATION
18 UNDER THE PROCEDURE APPROVED UNDER PARAGRAPH G OF SUBDIVISION TWO OF
19 SECTION 27-1605 OF THIS TITLE;

20 (II) THE PLAINTIFF PRODUCER DOES NOT RECEIVE REIMBURSEMENT WITHIN:

21 (1) SIXTY DAYS OF THE REQUEST, IF NO INDEPENDENT AUDIT IS REQUESTED
22 UNDER THE PROCEDURE APPROVED UNDER PARAGRAPH G OF SUBDIVISION TWO OF
23 SECTION 27-1605 OF THIS TITLE; OR

24 (2) THIRTY DAYS AFTER COMPLETION OF AN AUDIT IF AN INDEPENDENT AUDIT
25 IS REQUESTED UNDER THE PROCEDURE APPROVED UNDER PARAGRAPH G OF SUBDIVI-
26 SION TWO OF SECTION 27-1605 OF THIS TITLE AND THE AUDIT CONFIRMS THE
27 VALIDITY OF THE REIMBURSEMENT REQUEST.

28 B. A CIVIL ACTION UNDER THIS SUBDIVISION MAY BE BROUGHT AGAINST AN
29 INDIVIDUAL PRODUCER ONLY IF THE PRODUCER IS IMPLEMENTING ITS OWN PRIMARY
30 BATTERY STEWARDSHIP PLAN. A PRODUCER PARTICIPATING IN AN APPROVED PRIMA-
31 RY BATTERY STEWARDSHIP PLAN COVERING MULTIPLE PRODUCERS SHALL NOT BE
32 SUED INDIVIDUALLY FOR REIMBURSEMENT. AN ACTION AGAINST A PRODUCER
33 PARTICIPATING IN A STEWARDSHIP PLAN COVERING MULTIPLE PRODUCERS SHALL BE
34 BROUGHT AGAINST THE STEWARDSHIP ORGANIZATION IMPLEMENTING THE PLAN.

35 3. AS USED IN THIS SECTION, "DAMAGES" MEANS:

36 A. THE ACTUAL, DIRECT COSTS A PLAINTIFF PRODUCER INCURS IN COLLECTING,
37 HANDLING, RECYCLING, OR PROPERLY DISPOSING OF PRIMARY BATTERIES REASON-
38 ABLY IDENTIFIED AS HAVING ORIGINATED FROM A NONCOMPLIANT PRODUCER;

39 B. EXEMPLARY DAMAGES NOT EXCEEDING THREE TIMES THE COSTS INCURRED
40 UNDER PARAGRAPH A OF THIS SUBDIVISION; AND

41 C. THE PREVAILING PLAINTIFF PRODUCER'S ATTORNEY'S FEES AND COSTS OF
42 BRINGING THE ACTION.

43 S 27-1623. REIMBURSEMENT OF RECHARGEABLE BATTERY STEWARDS.

44 1. REIMBURSEMENT OF RECHARGEABLE BATTERY STEWARDS. A PRIMARY BATTERY
45 PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION SHALL REIMBURSE
46 OPERATORS OF A BONA FIDE RECHARGEABLE BATTERY STEWARDSHIP ORGANIZATION,
47 OR OTHER PERSON OPERATING A BONA FIDE RECHARGEABLE BATTERY STEWARDSHIP
48 PROGRAM, FOR ACTUAL DIRECT COSTS PER UNIT OF WEIGHT INCURRED BY THE BONA
49 FIDE RECHARGEABLE BATTERY STEWARDSHIP ORGANIZATION IN THE COLLECTION OF
50 PRIMARY BATTERIES SUPPLIED BY PRODUCERS PARTICIPATING IN AN APPROVED
51 PRIMARY BATTERY STEWARDSHIP PROGRAM IN THE STATE. DIRECT COSTS INCLUDE
52 COSTS OF COLLECTION, TRANSPORT, RECYCLING AND OTHER ACTUAL ENVIRONMENTAL
53 MANAGEMENT COSTS, PLUS AN ADDITIONAL NEGOTIATED AMOUNT NOT TO EXCEED TEN
54 PERCENT TO REFLECT A REASONABLE CONTRIBUTION FOR INDIRECT COSTS, INCLUD-
55 ING PERMITTING FEES, OVERHEAD, PERSONNEL COSTS, ADMINISTRATION, INSUR-

ANCE, LEGAL OR ACCOUNTING COSTS, EDUCATION AND OUTREACH, OR ANY OTHER COSTS.

2. REQUEST FOR AUDIT. A PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION THAT RECEIVES A REQUEST FOR REIMBURSEMENT FROM A RECHARGEABLE BATTERY STEWARD MAY, PRIOR TO PAYMENT AND WITHIN THIRTY DAYS OF THE REQUEST FOR REIMBURSEMENT, REQUEST AN INDEPENDENT AUDIT OF THE REQUESTED REIMBURSEMENT COSTS. IF THE INDEPENDENT AUDIT CONFIRMS THE REASONABLENESS OF THE REIMBURSEMENT REQUEST, THE PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION REQUESTING THE AUDIT SHALL PAY THE COST OF THE AUDIT.

3. A. CIVIL ACTION FOR FAILURE TO REIMBURSE. A RECHARGEABLE BATTERY STEWARD OR OTHER PERSON OPERATING A BONA FIDE PROGRAM TO COLLECT USED RECHARGEABLE BATTERIES FOR RECYCLING IN THE STATE MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST A PRIMARY BATTERY PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION THAT IS IMPLEMENTING AN APPROVED PLAN IN THE STATE WHEN:

(I) THE RECHARGEABLE BATTERY STEWARD SUBMITTED A REIMBURSEMENT REQUEST TO ANOTHER PRODUCER OR STEWARDSHIP ORGANIZATION UNDER SUBDIVISION TWO OF THIS SECTION;

(II) THE RECHARGEABLE BATTERY STEWARD DOES NOT RECEIVE REIMBURSEMENT WITHIN:

(1) SIXTY DAYS OF THE REQUEST, IF NO INDEPENDENT AUDIT IS REQUESTED UNDER SUBDIVISION TWO OF THIS SECTION; OR

(2) THIRTY DAYS AFTER COMPLETION OF AN AUDIT IF AN INDEPENDENT AUDIT IS REQUESTED UNDER SUBDIVISION TWO OF THIS SECTION AND THE AUDIT CONFIRMS THE VALIDITY OF THE REIMBURSEMENT REQUEST.

B. A CIVIL ACTION UNDER THIS SUBDIVISION MAY BE BROUGHT AGAINST AN INDIVIDUAL PRIMARY BATTERY PRODUCER ONLY IF THE PRODUCER IS IMPLEMENTING ITS OWN PRIMARY BATTERY STEWARDSHIP PLAN OR THE PRODUCER HAS FAILED TO REGISTER TO PARTICIPATE IN A PLAN. A PRIMARY BATTERY PRODUCER PARTICIPATING IN AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN COVERING MULTIPLE PRODUCERS SHALL NOT BE SUED INDIVIDUALLY FOR REIMBURSEMENT. AN ACTION AGAINST A PRIMARY BATTERY PRODUCER PARTICIPATING IN A STEWARDSHIP PLAN COVERING MULTIPLE PRODUCERS SHALL BE BROUGHT AGAINST THE STEWARDSHIP ORGANIZATION IMPLEMENTING THE PLAN.

4. PROCEDURE; BONA FIDE RECHARGEABLE BATTERY STEWARDSHIP PROGRAM.

A. THE COMMISSIONER MAY REQUIRE A PRIMARY BATTERY PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION TO SUBMIT THE PROCEDURE FOR REIMBURSEMENT UNDER THIS SECTION TO THE COMMISSIONER FOR APPROVAL.

B. THE COMMISSIONER, IN HIS OR HER DISCRETION, SHALL APPROVE A RECHARGEABLE BATTERY STEWARDSHIP PROGRAM AS BONA FIDE UNDER THIS SECTION.

S 27-1625. PENALTIES.

A PRODUCER WHO VIOLATES THE REQUIREMENTS OF THIS TITLE SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS PER DAY FOR EACH DAY OF NONCOMPLIANCE.

S 27-1627. RULEMAKING; PROCEDURE.

THE COMMISSIONER MAY ADOPT RULES OR PROCEDURES TO IMPLEMENT THE REQUIREMENTS OF THIS TITLE.

S 2. Subdivision 2 of section 3-0301 of the environmental conservation law is amended by adding a new paragraph dd to read as follows:

DD. ENFORCE A PRODUCT STEWARDSHIP PROGRAM, INCLUDING THE COLLECTION AND DISPOSAL OF PRIMARY BATTERIES, PURSUANT TO TITLE SIXTEEN OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER.

S 3. This act shall take effect immediately.