STATE OF NEW YORK

1448

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sens. AVELLA, CARLUCCI, LATIMER -- 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:

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

TITLE 16
PRODUCT STEWARDSHIP
FOR PRIMARY BATTERIES

Section 27-1601. Definitions.
27-1603. Primary battery registration.
27-1605. Primary battery stewardship plan.
27-1607. Annual report; plan audit.
27-1609. Agency responsibilities.
27-1611. Retailer obligations.
27-1613. Administrative fee.
27-1615. Penalties.
27-1617. Rulemaking; procedure.

§ 27-1601. Definitions.

When used in this title:

1. "Department" means the department of environmental conservation.

2. "Brand" means a name, symbol, word, or traceable mark that identifies a primary battery and attributes the primary battery to the owner or licensee of the brand as the producer.

3. "Collection rate" means a percentage by weight that each producer or producers collects by an established date. The collection rate shall be calculated by weight based on the percentage of primary batteries that are collected during a calendar year, as compared to the average

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

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weight of primary batteries 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.

4. "Consumer" means any person who returns any number of unwanted primary batteries.

5. "Discarded primary battery" means a primary battery that is no longer used for its manufactured purpose, wanted by its owner, or for any other reason enters the waste collection, recovery, treatment or recycling system.

6. "Easily removable" means readily detachable by a person without the use of tools or with the use of common household tools.

7. "Primary battery" means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, and lithium metal. Primary battery shall not mean:

(A) Batteries intended for industrial, business to business, warranty or maintenance services, or nonpersonal use;

(B) A battery that is not easily removable or is not intended to be removed from a consumer product; and

(C) A battery that is sold or used in a medical device regulated by the United States Food and Drug Administration.

8. "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 by two or more producers acting collectively.

9. "Producer" means one of the following with regard to a primary battery that is sold, offered for sale, or distributed in the state:

a. a person who manufactures a primary battery and who sells, offers for sale, or distributes that primary battery in the state under the person's own name or brand;

b. if subparagraph a of this paragraph does not apply, a person who owns or licenses a trademark or brand under which a primary battery is sold, offered for sale, or distributed in the state, whether or not the trademark is registered; or

c. if subparagraphs a and b of this paragraph do not apply, a person who imports a primary battery into the state for sale or distribution.

10. "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.

11. "Rechargeable battery" shall have the same meaning as subdivision four of section 27-1803 of this article.

12. "Recycling" means any process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity, but does not include energy recovery or energy generation by means of combusting discarded products, components, and by-products with or without other waste products.

13. "Retailer" means a person who offers a primary battery for sale to any consumer or business at retail in the state through any means, including remote offerings such as sales outlets, catalogues, or an internet website.

§ 27-1603. Primary battery registration.

1. Sale prohibited. Beginning January first, two thousand nineteen, except as set forth under this subdivision, a producer of a primary battery shall not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery unless all of the following has been met:

a. the producer is registered under an approved and implemented primary battery stewardship plan;

b. the producer or producers have paid the fee under section 27-1613 of this title; and

c. the producer or producers and the brand of such producer or producers designated on the department website are identified as covered by an approved primary battery stewardship plan.

2. New producers. A producer who, after January first, two thousand nineteen, seeks to sell, offer for sale, or offer for promotional purposes in the state a primary battery not previously sold in the state, shall notify the commissioner prior to selling or offering a product not covered by a stewardship plan in the state. The commissioner shall list a producer who supplies notice under this subdivision as a "new producer" on the department's website. A producer that supplies notice under this subdivision shall have ninety days to either act cooperatively with at least one other producer or to submit its own primary battery stewardship plan for approval to the state.

3. Exemption. A producer who annually sells, offers for sale, distributes, or imports in the state primary batteries with a total retail value of less than five hundred dollars shall be exempt from the requirements of this title.

§ 27-1605. Primary battery stewardship plan.

1. Primary battery stewardship plan required. On or before April first, two thousand eighteen, each producer selling, offering for sale, or offering for promotional purposes a primary battery in the state shall individually or as part of a primary battery stewardship organization submit a primary battery stewardship plan to the commissioner for review.

2. Primary battery stewardship plan; minimum requirements. Each primary battery stewardship plan shall include, at a minimum, all of the following elements:

a. List of producers and brands. Each primary battery stewardship plan shall list:

(i) all participating producers and contact information for each of the participating producers; and

(ii) the brands of primary batteries covered by the plan.

b. Free collection. Each primary battery stewardship plan shall provide for the free collection of primary batteries from consumers. A producer shall not refuse the collection of a primary battery based on the brand or manufacturer of the primary battery.

c. Collection; convenience. Each primary battery stewardship plan shall:

(i) allow all retailers that sell primary batteries or primary battery-containing products covered under the plan and all municipalities to opt to be a collection facility;

(ii) provide, at a minimum, no fewer than two permanent collection facilities in each county in the state; and

(iii) provide for the acceptance from a consumer of up to twenty batteries per visit. A collection facility may agree to accept more than twenty batteries per visit from a consumer.

d. Method of disposition. Each primary battery stewardship plan shall include a description of the method that will be used to responsibly and properly manage discarded primary batteries and ensure that the components of the discarded primary batteries, to the extent economically and technically feasible, are recycled.

e. Roles and responsibilities. A primary battery stewardship plan shall list all key participants in the primary battery collection chain, including:

(i) the number and name of the collection facilities accepting primary batteries under the plan, including the address and contact information for each facility;

(ii) the name and contact information of a transporter or contractor collecting primary batteries from collection facilities; and

(iii) the name, address, and contact information of the recycling facilities that process the collected primary batteries.

f. Education and outreach. A primary battery stewardship plan shall include an education and outreach program. The education and outreach program may include media advertising, retail displays, articles in trade and other journals and publications, and other public educational efforts. The education and outreach program shall describe the outreach procedures that will be used to provide notice of the program to businesses, municipalities, retailers, wholesalers, and transporters. At a minimum, the education and outreach program shall notify the public of the following:

(i) that there is a free collection program for all primary batteries; and

(ii) the location of collection points and how to access the collection program.

3. Implementation. A producer or producers shall include provisions in the plan for the implementation of the program in conjunction with those retailers and municipalities acting as collection facilities under a program. Implementation of the program shall be at no cost to retailers or municipalities acting as collection facilities under a program. A producer shall provide retailers and municipalities acting as collection facilities products or equipment for setting up a collection point and for providing for the pickup of collected primary batteries, including arranging for the management of those primary batteries.

§ 27-1607. Annual report; plan audit.

1. Annual report. On or before April first, two thousand twenty, and annually thereafter, a producer or a primary battery stewardship organization shall submit a report to the commissioner that contains the following:

a. the weight of primary batteries collected by the producer or producers acting cooperatively in the prior calendar year;

b. the collection rate achieved in the prior calendar year;

c. specifies the collection facilities that failed in the previous calendar year to collect a minimum of one hundred pounds by weight of primary batteries and whether these collection facilities will be eliminated from the producer's plan or the plan of producers acting cooperatively;

d. the locations for all collection points set up by the producers covered by the plan and contact information for each location;

e. examples and description of educational materials used to increase collection;

f. the manner in which the collected primary batteries were managed;

g. any material change to the primary battery stewardship plan; and

h. the cost of implementation of the program, including the costs of collection, recycling, education, and outreach.

2. Plan audit. Once every five years, a producer or stewardship organization shall hire an independent third party to audit the plan and plan 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.

§ 27-1609. Agency responsibilities.

1. Approval of plan. Within ninety days after receipt of a proposed stewardship plan, the commissioner shall determine whether the plan complies with the requirements of section 27-1605 of this title. If the commissioner approves a plan, the commissioner shall notify the applicant of the plan approval in writing. If the commissioner rejects a plan, the commissioner shall notify the applicant in writing of the reasons for rejecting the plan. An applicant whose plan is rejected by the commissioner shall submit a revised plan to the commissioner within forty-five days of receiving notice of rejection.

2. Plan amendment; changes. Any changes to a proposed stewardship plan shall be approved by the commissioner in writing. The commissioner, in his or her discretion or at the request of a producer, may require a producer or producers to amend an approved plan.

3. Public notice. The commissioner shall post all proposed and approved primary battery stewardship plans on the department's website.

4. Public input. The commissioner shall establish a process under which a primary battery stewardship plan, prior to plan approval or amendment, is available for public review and comment.

5. Registrations. The commissioner shall accept, review, and approve or deny primary battery stewardship plans submitted under section 27-1605 of this title.

6. Agency website. The commissioner shall maintain a website that includes the names of producers with approved plans or participation in approved plans. The website shall list all of an approved producer's brands covered by the stewardship plan filed with the commissioner. The commissioner shall update information on the website within ten days of receipt of notice of any change to the listed information.

7. Term of stewardship plan. A primary battery stewardship plan approved by the commissioner under this section shall have a term not to exceed five years, provided that the producer remains in compliance with the requirements of this title and the terms of the approved plan.

§ 27-1611. Retailer obligations.

1. Sale prohibited. Except as set forth under subdivision two of this section, beginning January first, two thousand nineteen, no retailer shall sell or offer for sale a primary battery unless the retailer has reviewed the department's website required in subdivision six of section 27-1609 of this title to determine that the producer of the primary battery is implementing an approved battery stewardship plan.

2. Inventory exception; expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale of a primary battery under this section if:

a. the retailer purchased the primary battery prior to January first, two thousand nineteen and sells the battery or product on or before January first, two thousand twenty; or

b. the producer's stewardship plan expired or was revoked, and the retailer took possession of the in-store inventory of primary batteries prior to the expiration or revocation of the producer's stewardship plan.

§ 27-1613. Administrative fee.

1. Fee assessed. A producer acting individually shall pay a fee of seven thousand five hundred dollars annually and a producer acting cooperatively with at least one other producer shall pay a fee of fifteen thousand dollars annually for operation under a stewardship plan approved by the commissioner under section 27-1609 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.

§ 27-1615. 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.

§ 27-1617. Rulemaking; procedure.

The commissioner may adopt rules or procedures to implement the requirements of this title.

§ 2. The department of environmental conservation shall work with primary battery manufacturers to explore ways to develop labeling highlighting the existence of battery recycling programs.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.