

# 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:

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. Primary battery registration.

8 27-1605. Primary battery stewardship plan.

9 27-1607. Annual report; plan audit.

10 27-1609. Agency responsibilities.

11 27-1611. Retailer obligations.

12 27-1613. Administrative fee.

13 27-1615. Penalties.

14 27-1617. Rulemaking; procedure.

15 § 27-1601. Definitions.

16 When used in this title:

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

18 2. "Brand" means a name, symbol, word, or traceable mark that identi-  
19 fies a primary battery and attributes the primary battery to the owner  
20 or licensee of the brand as the producer.

21 3. "Collection rate" means a percentage by weight that each producer  
22 or producers collects by an established date. The collection rate shall  
23 be calculated by weight based on the percentage of primary batteries  
24 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.

LBD01044-01-7

1 weight of primary batteries that were estimated to have been sold in the  
2 state by participating producers during the three previous calendar  
3 years. Estimates of primary batteries sold in the state may be based on  
4 a reasonable pro rata calculation based on national sales.

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

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

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

13 7. "Primary battery" means a nonrechargeable battery weighing two  
14 kilograms or less, including alkaline, carbon-zinc, and lithium metal.

15 Primary battery shall not mean:

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

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

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

22 8. "Primary battery stewardship plan" or "plan" means a plan submitted  
23 to the commissioner pursuant to section 27-1605 of this title by an  
24 individual producer or by two or more producers acting collectively.

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

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

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

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

36 10. "Program" or "stewardship program" means the system for the  
37 collection, transportation, recycling, and disposal of primary batteries  
38 implemented pursuant to an approved primary battery stewardship plan.

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

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

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

51 § 27-1603. Primary battery registration.

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

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

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

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

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

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

22 § 27-1605. Primary battery stewardship plan.

23 1. Primary battery stewardship plan required. On or before April  
24 first, two thousand eighteen, each producer selling, offering for sale,  
25 or offering for promotional purposes a primary battery in the state  
26 shall individually or as part of a primary battery stewardship organiza-  
27 tion submit a primary battery stewardship plan to the commissioner for  
28 review.

29 2. Primary battery stewardship plan; minimum requirements. Each prima-  
30 ry battery stewardship plan shall include, at a minimum, all of the  
31 following elements:

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

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

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

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

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

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

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

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

51 d. Method of disposition. Each primary battery stewardship plan shall  
52 include a description of the method that will be used to responsibly and  
53 properly manage discarded primary batteries and ensure that the compo-  
54 ponents of the discarded primary batteries, to the extent economically and  
55 technically feasible, are recycled.

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

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

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

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

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

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

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

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

33 § 27-1607. Annual report; plan audit.

34 1. Annual report. On or before April first, two thousand twenty, 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  
39 producers acting cooperatively 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's plan or the plan of producers acting coopera-  
45 tively;

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

1 collecting and recycling primary batteries. The independent auditor  
2 shall examine the cost-effectiveness of the program and compare it to  
3 that of collection programs for primary batteries in other jurisdic-  
4 tions. The independent auditor shall make recommendations to the  
5 commissioner on ways to increase program efficacy and cost-effective-  
6 ness.

7 § 27-1609. Agency responsibilities.

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

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

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

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

26 5. Registrations. The commissioner shall accept, review, and approve  
27 or deny primary battery stewardship plans submitted under section  
28 27-1605 of this title.

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

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

39 § 27-1611. Retailer obligations.

40 1. Sale prohibited. Except as set forth under subdivision two of this  
41 section, beginning January first, two thousand nineteen, no retailer  
42 shall sell or offer for sale a primary battery unless the retailer has  
43 reviewed the department's website required in subdivision six of section  
44 27-1609 of this title to determine that the producer of the primary  
45 battery is implementing an approved battery stewardship plan.

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

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

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

56 § 27-1613. Administrative fee.

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

6 2. Disposition of fee. The fees collected under subdivision one of  
7 this section shall be deposited in the hazardous waste remedial fund  
8 under section ninety-seven-b of the state finance law.

9 § 27-1615. Penalties.

10 A producer who violates the requirements of this title shall be  
11 subject to a civil penalty not to exceed one thousand dollars per day  
12 for each day of noncompliance.

13 § 27-1617. Rulemaking; procedure.

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

16 § 2. The department of environmental conservation shall work with  
17 primary battery manufacturers to explore ways to develop labeling high-  
18 lighting the existence of battery recycling programs.

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