

# STATE OF NEW YORK

1448--A

2017-2018 Regular Sessions

## IN SENATE

January 9, 2017

Introduced by Sens. AVELLA, ALCANTARA, CARLUCCI, HAMILTON, HOYLMAN, KLEIN, KRUEGER, PERALTA, SAVINO, SERRANO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

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1     3. "Collection rate" means a percentage by weight that each producer  
2 or producers collects by an established date. The collection rate shall  
3 be calculated by weight based on the percentage of primary batteries  
4 that are collected during a calendar year, as compared to the average  
5 weight of primary batteries that were estimated to have been sold in the  
6 state by participating producers during the three previous calendar  
7 years. Estimates of primary batteries sold in the state may be based on  
8 a reasonable pro rata calculation based on national sales.

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

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

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

17     7. "Primary battery" means a nonrechargeable battery weighing two  
18 kilograms or less, including alkaline, carbon-zinc, lithium metal and  
19 button/coin batteries. Primary battery shall not mean:

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

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

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

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

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

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

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

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

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

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

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

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

55     § 27-1603. Primary battery registration.

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

6 a. the producer is registered under an approved and implemented prima-  
7 ry battery stewardship plan;

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

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

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

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

27 § 27-1605. Primary battery stewardship plan.

28 1. Primary battery stewardship plan required. On or before April  
29 first, two thousand nineteen, each producer selling, offering for sale,  
30 or offering for promotional purposes a primary battery in the state  
31 shall individually or as part of a primary battery stewardship organiza-  
32 tion submit a primary battery stewardship plan to the commissioner for  
33 review.

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

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

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

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

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

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

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

51 (ii) provide, at a minimum, no fewer than two permanent collection  
52 facilities in each county in the state with a population of less than  
53 fifty thousand people; no less than three drop-off locations for coun-  
54 ties with populations between fifty thousand and one hundred thousand;  
55 and for all counties with a population greater than one hundred thou-

1 sand, at least one location within each town, village and city with a  
2 population greater than fifty thousand; and

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

6 d. Method of disposition. Each primary battery stewardship plan shall  
7 include a description of the method that will be used to responsibly and  
8 properly manage discarded primary batteries and ensure that the compo-  
9 nents of the discarded primary batteries, to the extent economically and  
10 technically feasible, are recycled.

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

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

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

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

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

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

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

34 g. The establishment of performance goals to measure the success of  
35 the program and a description of how the program will be designed to  
36 meet or exceed these goals.

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

46 § 27-1607. Annual report; plan audit.

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

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

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

54 c. specifies the collection facilities that failed in the previous  
55 calendar year to collect a minimum of one hundred pounds by weight of  
56 primary batteries and whether these collection facilities will be elimi-

1 nated from the producer's plan or the plan of producers acting coopera-  
2 tively;

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

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

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

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

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

11 2. Plan audit. Once every five years, a producer or stewardship organ-  
12 ization shall hire an independent third party to audit the plan and plan  
13 operation. The auditor shall examine the effectiveness of the program in  
14 collecting and recycling primary batteries. The independent auditor  
15 shall examine the cost-effectiveness of the program and compare it to  
16 that of collection programs for primary batteries in other jurisdic-  
17 tions. The independent auditor shall make recommendations to the  
18 commissioner on ways to increase program efficacy and cost-effective-  
19 ness.

20 § 27-1609. Agency responsibilities.

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

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

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

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

39 5. Registrations. The commissioner shall accept, review, and approve  
40 or deny primary battery stewardship plans submitted under section  
41 27-1605 of this title.

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

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

52 § 27-1611. Retailer obligations.

53 1. Sale prohibited. Except as set forth under subdivision two of this  
54 section, beginning January first, two thousand twenty, no retailer shall  
55 sell or offer for sale a primary battery unless the retailer has  
56 reviewed the department's website required in subdivision six of section

1 27-1609 of this title to determine that the producer of the primary  
2 battery is implementing an approved battery stewardship plan.

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

6 a. the retailer purchased the primary battery prior to January first,  
7 two thousand twenty and sells the battery or product on or before Janu-  
8 ary first, two thousand twenty-one; or

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

13 § 27-1613. Administrative fee.

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

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

22 § 27-1615. Penalties.

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

26 § 27-1617. Rulemaking; procedure.

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

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

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