

# STATE OF NEW YORK

4105

2019-2020 Regular Sessions

## IN ASSEMBLY

February 1, 2019

Introduced by M. of A. ENGLEBRIGHT, BARRETT, FAHY, COLTON, THIELE, MOSLEY, GALEF, L. ROSENTHAL, SEAWRIGHT, OTIS, LUPARDO, GOTTFRIED, WILLIAMS, HUNTER, JEAN-PIERRE, GLICK -- Multi-Sponsored by -- M. of A. RAMOS -- read once and referred 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

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

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1 be calculated by weight based on the percentage of primary batteries  
2 that are collected during a calendar year, as compared to the average  
3 weight of primary batteries that were estimated to have been sold in the  
4 state by participating producers during the three previous calendar  
5 years. Estimates of primary batteries sold in the state may be based on  
6 a reasonable pro rata calculation based on national sales.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 § 27-1603. Primary battery registration.

54 1. Sale prohibited. Beginning January first, two thousand twenty-one,  
55 except as set forth under this subdivision, a producer of a primary  
56 battery shall not sell, offer for sale, or deliver to a retailer for

1 subsequent sale a primary battery unless all of the following has been  
2 met:

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

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

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

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

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

24 § 27-1605. Primary battery stewardship plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 § 27-1607. Annual report; plan audit.

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

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

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

52 c. specifies the collection facilities that failed in the previous  
53 calendar year to collect a minimum of one hundred pounds by weight of  
54 primary batteries and whether these collection facilities will be elimi-  
55 nated from the producer's plan or the plan of producers acting coopera-  
56 tively;

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

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

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

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

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

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

18 § 27-1609. Agency responsibilities.

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

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

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

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

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

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

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

50 § 27-1611. Retailer obligations.

51 1. Sale prohibited. Except as set forth under subdivision two of this  
52 section, beginning January first, two thousand twenty-one, no retailer  
53 shall sell or offer for sale a primary battery unless the retailer has  
54 reviewed the department's website required in subdivision six of section  
55 27-1609 of this title to determine that the producer of the primary  
56 battery is implementing an approved battery stewardship plan.

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

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

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

11    § 27-1613. Administrative fee.

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

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

20    § 27-1615. Penalties.

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

24    § 27-1617. Rulemaking; procedure.

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

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

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