

STATE OF NEW YORK

2610

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sen. METZGER -- 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 weight of primary batteries that were estimated to have been sold in the

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

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1 state by participating producers during the three previous calendar
2 years. Estimates of primary batteries sold in the state may be based on
3 a reasonable pro rata calculation based on national sales.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 § 27-1603. Primary battery registration.

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

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

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

3 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.

4 2. New producers. A producer who, after January first, two thousand twenty-one, 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.

5 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.

6 § 27-1605. Primary battery stewardship plan.

7 1. Primary battery stewardship plan required. On or before April first, two thousand twenty, 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.

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

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

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

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

12 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.

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

14 (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;

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

16 (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.

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

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

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

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

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

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

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

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

29 g. The establishment of performance goals to measure the success of
30 the program and a description of how the program will be designed to
31 meet or exceed these goals.

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

41 § 27-1607. Annual report; plan audit.

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

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

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

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

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

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

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

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

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

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

16 § 27-1609. Agency responsibilities.

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

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

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

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

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

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

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

48 § 27-1611. Retailer obligations.

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