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S.254

An act relating to including rechargeable batteries and battery-containing products under the State battery stewardship program

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. chapter 168 is amended to read:

CHAPTER 168. PRODUCT STEWARDSHIP FOR PRIMARY BATTERIES
AND RECHARGEABLE BATTERIES

Subchapter 1. Definitions

§ 7581. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Natural Resources.

(2)(A) “Battery-containing product” means an electronic product that contains primary or rechargeable batteries that are easily removable or is packaged with rechargeable or primary batteries.

(B) A “battery-containing product” does not include an electronic product regulated under an approved plan implemented under chapter 166 of this title.

(C) A “battery-containing product” does not include an electronic product if:

1 (i) the only batteries contained in or supplied with the battery-
2 containing product are supplied by a producer that has joined a registered
3 battery stewardship organization as the producer for that covered battery; and

4 (ii) the producer of the covered batteries that are included in a
5 battery-containing product provides a written certification of that membership
6 to both the producer of the battery-containing product containing one or more
7 covered batteries and the battery stewardship organization of which the battery
8 producer is a member.

9 (3) “Brand” means a name, symbol, word, or traceable mark that
10 identifies a primary or rechargeable battery and attributes the ~~primary~~ battery
11 to the owner or licensee of the brand as the producer.

12 (3)(4) “Calendar year” means the period commencing January 1 and
13 ending December 31 of the same year.

14 (4)(5) “Collection rate” means a percentage by weight that each
15 producer or ~~primary~~ battery stewardship organization collects by an established
16 date. The collection rate shall be calculated by dividing the total weight of the
17 ~~primary~~ batteries that are collected during a calendar year by the average
18 annual weight of ~~primary~~ batteries that were estimated to have been sold in the
19 State by participating producers during the previous three calendar years.
20 Estimates of ~~primary~~ batteries sold in the State may be based on a reasonable
21 pro rata calculation based on national sales.

1 ~~(5)(6)~~ “Consumer” means any person who presents or delivers any
2 number of primary batteries to a collection facility that is included in an
3 approved primary battery stewardship plan “Covered battery” means a primary
4 battery or rechargeable battery.

5 ~~(6)(7)~~ “Consumer product” means any product that is regularly used or
6 purchased to be used for personal, family, or household purposes. “Consumer
7 product” shall not mean a product primarily used or purchased for industrial or
8 business use “Covered entity” means a person who presents to a collection
9 facility or event that is included in an approved collection plan any number of
10 covered batteries.

11 ~~(7)(8)~~ “Discarded primary battery” means a primary battery that is no
12 longer used for its manufactured purpose “Damaged and defective lithium
13 battery” means a lithium battery that has been damaged or is defective for
14 safety reasons or that has the potential of producing a dangerous evolution of
15 heat, fire, or short circuit, as referred to in 49 C.F.R. § 173.185(f) or as updated
16 by the Secretary by rule to maintain consistency with federal standards.

17 ~~(8)(9)~~ “Easily removable” means readily detachable from a product by a
18 person without the use of tools or with the use of common household tools.

19 ~~(9)(10)~~ “Participate” means to appoint a ~~primary~~ battery stewardship
20 organization ~~or rechargeable battery stewardship organization~~ to operate on

1 behalf of oneself and to have that appointment accepted by the stewardship
2 organization.

3 ~~(10)~~(11) “Primary battery” means a nonrechargeable battery weighing
4 ~~two kilograms~~ 4.4 pounds or less, including alkaline, silver oxide, zinc air,
5 carbon-zinc, and lithium metal batteries. Beginning on January 1, 2026,
6 “primary battery” includes a nonrechargeable battery weighing more than
7 4.4 pounds but not more than 25 pounds. “Primary battery” ~~shall~~ does not
8 mean:

9 (A) ~~a battery intended for industrial, business-to-business, warranty~~
10 ~~or maintenance services, or nonpersonal use;~~

11 ~~(B) a battery that is sold in a computer, computer monitor, computer~~
12 ~~peripheral, printer, television, or device containing a cathode ray tube;~~

13 ~~(C) a battery that is not easily removable or is not intended to be~~
14 ~~removed from a consumer product~~ from a battery-containing product; and or

15 ~~(D)~~(B) a battery ~~that is sold or used in a medical device, as that term~~
16 ~~is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as~~
17 ~~may be amended~~ contained within a medical device, as specified in 21 U.S.C.
18 § 321(h) as it existed on July 1, 2024, that is not designed and marketed for
19 sale or resale at retail locations for personal use.

20 ~~(11)~~(12) “Primary battery Battery producer,” “battery-containing
21 product producer,” or “producer” means one of the following with regard to a

1 ~~primary~~ battery or battery-containing product that is sold or offered for sale in
2 the State:

3 (A) a person who manufactures a ~~primary~~ battery or battery-
4 containing product and who sells or offers for sale that ~~primary~~ battery or
5 battery-containing product in the State under the person's own name or brand;

6 (B) if subdivision (A) of this subdivision ~~(11)~~(12) does not apply, a
7 person who owns or licenses a trademark or brand under which a ~~primary~~
8 battery or battery-containing product is sold or offered for sale whether or not
9 the trademark is registered; or

10 (C) if subdivisions (A) and (B) of this subdivision ~~(11)~~(12) do not
11 apply, a person who imports a ~~primary~~ battery or battery-containing product
12 into the State for sale.

13 ~~(12)~~(13) "~~Primary battery~~ Battery stewardship organization" means an
14 organization appointed by one or more producers to act as an agent on behalf
15 of a producer or producers to design, submit, implement, and administer a
16 ~~primary~~ battery stewardship plan under this chapter.

17 ~~(13)~~(14) "~~Primary battery~~ Battery stewardship plan" or "plan" means a
18 plan submitted to the Secretary pursuant to section 7584 of this title by an
19 individual producer or a ~~primary~~ battery stewardship organization.

1 ~~(14)~~(15) “Program” or “stewardship program” means the system for the
2 collection, transportation, recycling, and disposal of ~~primary~~ batteries
3 implemented pursuant to an approved battery stewardship plan.

4 ~~(15)~~(16)(A) “Rechargeable battery” means:

5 (i) one or more voltaic or galvanic cells, electrically connected to
6 produce electric energy and designed to be recharged ~~and weighing less than~~
7 ~~11 pounds; or~~

8 (ii) ~~a battery pack designed to be recharged that weighs less than~~
9 ~~11 pounds and that is designed to provide less than 40 volts direct current.~~
10 weighing not more than 25 pounds; or

11 (iii) having a watt-hour rating of not more than 2,000 watt-hours.

12 (B) “Rechargeable battery” ~~shall~~ does not mean:

13 (i) a battery that is not easily removable ~~or is not intended or~~
14 ~~designed to be removed from the covered product, other than by the~~
15 ~~manufacturer~~ from a battery-containing product;

16 (ii) a battery that contains electrolyte as a free liquid;

17 (iii) a battery ~~or battery pack~~ that employs lead-acid technology,
18 unless the battery ~~or battery pack~~:

19 (I) is sealed;

20 (II) contains no liquid electrolyte; and

1 (III) ~~is intended by its manufacturer to power a handheld device~~
2 ~~or to provide uninterrupted backup electrical power protection for stationary~~
3 ~~consumer products or stationary office equipment~~ weighs not more than 11
4 pounds; or

5 (iv) ~~a battery intended for industrial, business-to-business,~~
6 ~~warranty or maintenance services, or nonpersonal use~~ a battery recalled by the
7 producer for safety reasons; or

8 (v) a battery contained within a medical device, as specified in
9 21 U.S.C. § 321(h) as it existed on July 1, 2024, that is not designed and
10 marketed for sale or resale principally at retail for personal use.

11 (16) ~~“Rechargeable battery steward” means a person who:~~

12 (A) ~~manufactures a rechargeable battery or a rechargeable product~~
13 ~~that is sold, offered for sale, or distributed in the State under its own brand~~
14 ~~name;~~

15 (B) ~~owns or licenses a trademark or brand under which a~~
16 ~~rechargeable battery or rechargeable product is sold, offered for sale, or~~
17 ~~distributed in the State, whether or not the trademark is registered; or~~

18 (C) ~~if subdivisions (A) and (B) of this subdivision (16) do not apply,~~
19 ~~imports a rechargeable battery or rechargeable product into the State for sale or~~
20 ~~distribution.~~

1 ~~(17) “Rechargeable battery stewardship organization” means an entity~~
2 ~~registered by the Secretary pursuant to section 7588 of this title that is either a~~
3 ~~single rechargeable battery steward operating on its own behalf; an~~
4 ~~organization appointed by one or more rechargeable battery stewards to~~
5 ~~operate a plan in which each steward is participating; or a retailer or franchisor~~
6 ~~of retailers operating a plan on behalf of itself or its franchisees.~~

7 ~~(18) “Rechargeable product” means a consumer product that contains or~~
8 ~~is packaged with a rechargeable battery at the time the product is sold, offered~~
9 ~~for sale, or distributed in the State. “Rechargeable product” shall not mean:~~

10 ~~(A) a product from which a rechargeable battery is not easily~~
11 ~~removable or is not intended or designed to be removed from the product other~~
12 ~~than by the manufacturer; or~~

13 ~~(B) a medical device, as that term is defined in the Federal Food,~~
14 ~~Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.~~

15 ~~(19)~~(17) “Recycling” means any process by which discarded products,
16 components, and ~~by products~~ byproducts are transformed into new usable or
17 marketable materials in a manner in which the original products may lose their
18 identity, but does not include energy recovery or energy generation by means
19 of combusting discarded products, components, and ~~by products~~ byproducts
20 with or without other waste products.

1 ~~(20)~~(18) “Retailer” means a person who offers a primary covered
2 battery or battery-containing product for sale ~~to any consumer or business at~~
3 ~~retail~~ in the State through any means, including remote offerings such as sales
4 outlets, catalogues, or an internet website.

5 ~~(21)~~(19) “Secretary” means the Secretary of Natural Resources.

6 Subchapter 2. Primary Battery Stewardship Program

7 § 7582. SALE OF PRIMARY BATTERIES, RECHARGEABLE

8 BATTERIES, AND BATTERY-CONTAINING PRODUCTS

9 (a) Sale prohibited. Except as set forth under ~~subsections (b) and (c)~~
10 subsection (b) of this section, ~~beginning on January 1, 2016~~, a producer of a
11 primary battery, of a rechargeable battery, or of a battery-containing product
12 shall not sell, offer for sale, or deliver to a retailer for subsequent sale a
13 primary battery, a rechargeable battery, or a battery-containing product unless:

14 (1) the producer or the primary battery stewardship organization in
15 which the producer is participating is registered under an approved and
16 implemented primary battery stewardship plan;

17 (2) the producer or primary battery stewardship organization has paid
18 the fee under section 7594 of this title; and

19 (3) the name of the producer and the producer’s brand are designated on
20 the Agency website as covered by an approved primary battery stewardship
21 plan.

1 (b) New producers.

2 (1) A producer of a primary battery who, after January 1, 2016, seeks to
3 sell, offer for sale, or offer for promotional purposes in the State a primary
4 battery not previously sold in State shall notify the Secretary prior to selling or
5 offering for sale or promotion a primary battery not covered by an approved
6 ~~primary~~ battery stewardship plan.

7 (2) A producer of a rechargeable battery or battery-containing product
8 who, after January 1, 2026, seeks to sell, offer for sale, or offer for promotional
9 purposes in the State a rechargeable battery or battery-containing product not
10 previously sold in State shall notify the Secretary prior to selling or offering for
11 sale or promotion a rechargeable battery or battery-containing product not
12 covered by an approved battery stewardship plan.

13 (3) The Secretary shall list a producer who supplies notice under this
14 subsection as a “new producer” on the Agency’s website. A producer that
15 supplies notice under this subsection shall have 90 days, not including the time
16 required for public comment under subsection 7586(c) of this section, to either
17 join an existing ~~primary~~ battery stewardship organization or submit a ~~primary~~
18 battery stewardship plan for approval to the State.

19 ~~(c) Exemption. A producer who annually sells, offers for sale, distributes,~~
20 ~~or imports in or into the State primary batteries with a total retail value of less~~
21 ~~than \$2,000.00 shall be exempt from the requirements of this chapter.~~

1 § 7583. ~~PRIMARY~~ BATTERY STEWARDSHIP ORGANIZATION;
2 REQUIREMENTS; REGISTRATION

3 (a) Participation in a ~~primary~~ battery stewardship organization. A producer
4 of ~~primary~~ covered batteries or battery-containing products may meet the
5 requirements of this chapter by participating in a ~~primary~~ battery stewardship
6 organization that undertakes the producer's responsibilities under
7 sections 7582, 7584, and 7585 of this title.

8 (b) Qualifications for a ~~primary~~ battery stewardship organization. To
9 qualify as a ~~primary~~ battery stewardship organization under this chapter, an
10 organization shall:

11 (1) commit to assume the responsibilities, obligations, and liabilities of
12 all producers participating in the ~~primary~~ battery stewardship organization;

13 (2) not create unreasonable barriers for participation by producers in the
14 ~~primary~~ battery stewardship organization; and

15 (3) maintain a public website that lists all producers and producers'
16 brands covered by the ~~primary~~ battery stewardship organization's approved
17 collection plan.

18 (c) Registration requirements.

19 (1) ~~Beginning on March 1, 2015 and annually thereafter, a primary~~
20 Annually, a battery stewardship organization shall file a registration form with
21 the Secretary. The Secretary shall provide the registration form to a ~~primary~~

1 battery stewardship organization. The registration form shall require
2 submission of the following information:

3 (A) a list of the producers participating in the ~~primary~~ battery
4 stewardship organization;

5 (B) the name, address, and contact information of a person
6 responsible for ensuring a producer's compliance with this chapter;

7 (C) a description of how the ~~primary~~ battery stewardship
8 organization proposes to meet the requirements of subsection (a) of this
9 section, including any reasonable requirements for participation in the ~~primary~~
10 battery stewardship organization; and

11 (D) the name, address, and contact information of a person for a
12 nonmember manufacturer to contact on how to participate in the ~~primary~~
13 battery stewardship organization to satisfy the requirements of this chapter.

14 (2) A renewal of a registration without changes may be accomplished
15 through notifying the Secretary on a form provided by the Secretary.

16 § 7584. ~~PRIMARY BATTERY STEWARDSHIP PLAN~~

17 (a) ~~Primary battery~~ Battery stewardship plan required. ~~On or before June 1,~~
18 ~~2015, each~~ Each producer selling, offering for sale, distributing, or offering for
19 promotional purposes a primary battery, a rechargeable battery, or a battery-
20 containing product in the State shall individually or as part of a ~~primary~~ battery

1 stewardship organization submit a ~~primary~~ battery stewardship plan to the
2 Secretary for review.

3 (b) ~~Primary battery~~ Battery stewardship plan; minimum requirements.

4 Each ~~primary~~ battery stewardship plan shall include, at a minimum, all of the
5 following elements:

6 (1) List of producers and brands. Each ~~primary~~ battery stewardship plan
7 shall list:

8 (A) all participating producers and contact information for each of
9 the participating producers; and

10 (B) the brands of ~~primary~~ batteries or battery-containing products
11 covered by the plan.

12 (2) Free collection. Each ~~primary~~ battery stewardship plan shall provide
13 for the collection of ~~primary~~ covered batteries from ~~consumers~~ covered entities
14 at no cost to ~~consumers~~ covered entities. A producer shall not refuse the
15 collection of a ~~primary~~ covered battery based on the brand or producer of the
16 ~~primary~~ battery.

17 (3) Collection; convenience. ~~Each primary~~ Except for damaged and
18 defective lithium batteries and lithium-ion batteries with over 300 watt-hours,
19 each battery stewardship plan shall:

20 (A) Allow all retailers ~~who meet requirements specified in the plan,~~
21 all municipalities, ~~and all~~ certified solid waste management facilities, and

1 certified salvage yards that meet requirements specified in the plan to opt in to
2 be a collection facility.

3 (B) Provide, at a minimum, ~~no~~ not fewer than two collection facilities
4 in each county in the State that provide for collection throughout the year.

5 (C) Provide for the acceptance ~~from a consumer~~ of up to 100
6 batteries per visit. A collection facility may agree to accept more than 100
7 batteries per visit ~~from a consumer~~.

8 (4) Collection of damaged and defective lithium batteries and lithium-
9 ion batteries with over 300 watt-hours. Each battery stewardship plan shall:

10 (A) allow any certified solid waste facility to collect damaged and
11 defective lithium batteries and lithium-ion batteries with over 300 watt-hours,
12 provided that facility can meet the safety requirements as outlined in the
13 stewardship plan;

14 (B) include how the program will provide packaging consistent with
15 the requirements found in the U.S. Department of Transportation Hazardous
16 Materials Regulations and the necessary forms and instructions for the safe
17 transportation of damaged or defective lithium batteries and lithium-ion
18 batteries with over 300 watt-hours at no cost to certified solid waste facilities;
19 and

20 (C) unless otherwise approved by the Secretary, provide throughout
21 the year not fewer than two collection facilities, at a minimum, in each county

1 in the State for the collection of damaged and defective lithium batteries and
2 lithium-ion batteries with over 300 watt-hours.

3 (5) Method of disposition. Each ~~primary~~ battery stewardship plan shall
4 include a description of the method that will be used to responsibly manage
5 discarded ~~primary~~ batteries to ensure that the components of the discarded
6 ~~primary~~ batteries, to the extent economically and technically feasible, are
7 recycled.

8 ~~(5)~~(6) Roles and responsibilities. A ~~primary~~ battery stewardship plan
9 shall list all key participants in the ~~primary~~ battery collection chain, including:

10 (A) the number and name of the collection facilities accepting
11 ~~primary~~ the batteries to be collected under the plan, including the address and
12 contact information for each facility;

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

15 (C) the name, address, and contact information of the recycling
16 facilities that process the collected ~~primary~~ batteries.

17 ~~(6)~~(7) Education and outreach. A ~~primary~~ battery stewardship plan shall
18 include an education and outreach program. The education and outreach
19 program may include mass media advertising in radio or television broadcasts
20 ~~or~~ newspaper publications of general circulation in the State, retail displays,
21 articles in trade and other journals and publications, social media and internet

1 sites, and other public educational efforts. The education and outreach
2 program shall describe the outreach procedures that will be used to provide
3 notice of the program to businesses, municipalities, certified solid waste
4 management facilities, retailers, wholesalers, and haulers. At a minimum, the
5 education and outreach program shall notify the public of the following:

6 (A) that there is a free collection program for all ~~primary~~ batteries;

7 and

8 (B) the location of collection points and how to access the collection
9 program.

10 ~~(7)~~(8) Reimbursement. A ~~primary~~ battery stewardship plan shall
11 include a reimbursement procedure that is consistent with the requirements of
12 subchapter 4 of this chapter.

13 ~~(8)~~(9) Performance goal; collection rate. A ~~primary~~ battery stewardship
14 plan shall include a collection rate performance goal for the primary batteries
15 and rechargeable batteries subject to the plan. The collection rate includes the
16 estimated total weight of primary batteries and rechargeable batteries that will
17 be sold or offered for sale in the State by the producer or the producers
18 participating in the ~~primary~~ battery stewardship plan.

19 (10) Safety training. A battery stewardship plan shall describe how it
20 shall provide safety training for collection locations, including handling

1 damaged and defective lithium batteries and lithium-ion batteries with over
2 300 watt-hours.

3 (11) Fair compensation. Each battery stewardship plan shall provide a
4 description of how municipalities and certified solid waste management
5 facilities acting as battery collection facilities for the program shall be fairly
6 compensated for labor and material costs associated with collecting, sorting,
7 storing, and shipping batteries.

8 (c) Implementation.

9 (1) A producer or a primary battery stewardship organization shall
10 implement the collection plan not later than six months after the date of a final
11 decision by the Secretary on the adequacy of the collection plan.

12 (2) A producer or battery stewardship organization shall include
13 provisions in the plan for the implementation of the program in conjunction
14 with those retailers, municipalities, and certified solid waste management
15 facilities acting as collection facilities under a program. No transportation or
16 recycling cost shall be imposed on retailers, municipalities, or certified solid
17 waste management facilities acting as collection facilities under a program. A
18 producer or a primary battery stewardship organization shall provide retailers,
19 municipalities, and certified solid waste management facilities acting as
20 collection facilities products or equipment for setting up a collection point and

1 for providing for the pickup of collected ~~primary~~ batteries, including arranging
2 for the management of those ~~primary~~ batteries.

3 § 7585. ANNUAL REPORT; PLAN AUDIT

4 (a) Annual report. ~~On or before March 1, 2017 and annually thereafter~~
5 Annually, a battery producer or a ~~primary~~ battery stewardship organization
6 shall submit a report to the Secretary that contains the following:

7 (1) the weight of ~~primary covered~~ batteries collected by chemistry by
8 the producer or the ~~primary~~ battery stewardship organization in the prior
9 calendar year;

10 (2) ~~the estimated percentage, by weight, of rechargeable batteries~~
11 ~~collected by the producer or the primary battery stewardship organization in~~
12 ~~the prior calendar year;~~

13 ~~(3)~~ the percentage of ~~primary covered~~ batteries collected in the prior
14 calendar year that are from producers who are not participating in any
15 approved stewardship plan, based on periodic sorting of ~~primary~~ batteries by
16 the reporting producer;

17 ~~(4)~~(3) the collection rate achieved in the prior calendar year under the
18 ~~primary~~ battery stewardship plan, including a report of the estimated total sales
19 data by weight for ~~primary covered~~ batteries sold in the State for the previous
20 three calendar years;

1 ~~(5)~~(4) the locations for all collection points set up by the ~~primary battery~~
2 ~~producers covered by the primary~~ battery stewardship plan and contact
3 information for each location;

4 ~~(6)~~(5) examples and description of educational materials used to
5 increase collection;

6 ~~(7)~~(6) the manner in which the collected ~~primary covered~~ batteries were
7 managed;

8 ~~(8)~~(7) any material change to the ~~primary~~ battery stewardship plan
9 approved by the Secretary pursuant to section 7586 of this title; and

10 ~~(9)~~(8) the cost of implementation of the ~~primary~~ battery stewardship
11 plan, including the costs of collection, recycling, education, and outreach.

12 (b) Plan audit. After five years of implementation of an approved ~~primary~~
13 battery stewardship plan, a ~~primary covered~~ battery producer or ~~primary~~
14 battery stewardship organization shall hire an independent third party to
15 conduct a one-time audit of the ~~primary~~ battery stewardship plan and plan
16 operation. The auditor shall examine the effectiveness of the ~~primary~~ battery
17 stewardship plan in collecting and recycling ~~primary covered~~ batteries. The
18 independent auditor shall examine the cost-effectiveness of the plan and
19 compare it to that of collection plans or programs for ~~primary covered~~ batteries
20 in other jurisdictions. The independent auditor shall submit the results of the

1 audit to the Secretary as part of the annual report required under subsection (a)
2 of this section.

3 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

4 (a) Approval of plan. Within 90 days after receipt of a proposed ~~primary~~
5 battery stewardship plan, not including the time required for public comment
6 under chapter 170 of this title, the Secretary shall determine whether the plan
7 complies with the requirements of section 7584 of this title. If the Secretary
8 determines that a plan complies with the requirements of section 7584 of this
9 title, the Secretary shall notify the applicant of the plan approval in writing. If
10 the Secretary rejects a ~~primary~~ battery stewardship plan, the Secretary shall
11 notify the applicant in writing of the reasons for rejecting the plan. An
12 applicant whose plan is rejected by the Secretary shall submit a revised plan to
13 the Secretary within 45 days ~~of~~ following receiving notice of rejection. A
14 ~~primary~~ battery stewardship plan that is not approved or rejected by the
15 Secretary within 90 days, not including the time required for public comment
16 under chapter 170 of this title, ~~of~~ following submission by a producer shall be
17 deemed approved.

18 (b) Plan amendment; changes. Any changes to a proposed ~~primary~~ battery
19 stewardship plan shall be approved by the Secretary in writing. The Secretary,
20 in ~~his or her~~ the Secretary's discretion or at the request of a producer, may

1 require a producer or a ~~primary~~ battery stewardship organization to amend an
2 approved plan.

3 (c) Public review. When the Secretary receives a request to approve or
4 amend a ~~primary~~ battery stewardship plan under this subchapter, the Secretary
5 shall proceed in accordance with chapter 170 of this title.

6 (d) [Repealed.]

7 (e) Registrations. The Secretary shall accept, review, and approve or deny
8 ~~primary~~ battery stewardship organization registrations submitted under
9 section 7583 of this title.

10 (f) Agency website. The Secretary shall maintain a website that includes a
11 copy of all approved ~~primary~~ battery stewardship plans, the names of
12 producers with approved plans, participation in approved plans, or other
13 compliance with this chapter. The website shall list all of an approved primary
14 battery producer's, rechargeable battery producer's, and battery-containing
15 product producer's brands covered by a ~~primary~~ battery stewardship plan filed
16 with the Secretary. The Secretary shall update information on the website
17 within 10 days ~~of~~ following receipt of notice of any change to the listed
18 information. The website shall list all known primary battery producers,
19 rechargeable battery producers, and battery-containing product producers
20 exempt from the requirements of this chapter under subsection 7582(c) of this
21 title.

1 (g) Term of ~~primary~~ battery stewardship plan. A ~~primary~~ battery
2 stewardship plan approved by the Secretary under this section shall have a
3 term not to exceed five years, provided that the ~~primary~~ battery producer or
4 ~~primary~~ battery stewardship organization remains in compliance with the
5 requirements of this chapter and the terms of the approved plan.

6 § 7587. RETAILER OBLIGATIONS

7 (a) Sale prohibited. Except as set forth in subsection (b) of this section, no
8 retailer shall sell or offer for sale a ~~primary~~ battery on or after January 1, ~~2016~~
9 2026 unless the producer of the ~~primary~~ battery is implementing an approved
10 ~~primary~~ battery stewardship plan, is a member of a ~~primary~~ battery
11 stewardship organization implementing an approved ~~primary~~ battery
12 stewardship plan, or is exempt from participation in an approved plan, as
13 determined by review of the producers listed on the Agency website required
14 in subsection 7586(f) of this title.

15 (b) Inventory exception; expiration or revocation of producer registration.
16 A retailer shall not be responsible for an unlawful sale of a primary battery,
17 rechargeable battery, or battery-containing product under this subsection if:

18 (1) the retailer purchased the primary battery weighing 4.4 pounds or
19 less prior to January 1, 2016 and sells the primary battery on or before January
20 1, 2017; ~~or~~

1 (2) the retailer purchased the primary battery weighing more than 4.4.
2 pounds, battery-containing product, or rechargeable battery, prior to January 1,
3 2026 and sells the primary battery, battery-containing product, or rechargeable
4 battery on or before January 1, 2027; or

5 (3) the producer's ~~primary~~ battery stewardship plan expired or was
6 revoked, and the retailer took possession of the in-store inventory of primary
7 batteries, rechargeable batteries, or battery-containing products prior to the
8 expiration or revocation of the producer's ~~primary~~ battery stewardship plan.

9 (c) Educational material. A producer or ~~primary~~ battery stewardship
10 organization supplying ~~primary~~ covered batteries to a retailer shall provide the
11 retailer with educational materials describing collection opportunities for
12 primary batteries and rechargeable batteries. The retailer shall make the
13 educational materials available to consumers.

14 Subchapter 3. Registration of Rechargeable Battery Stewardship Organization
15 § 7588. ~~REGISTRATION OF RECHARGEABLE BATTERY~~

16 ~~STEWARDSHIP ORGANIZATION~~

17 ~~(a) A rechargeable battery steward or rechargeable battery stewardship~~
18 ~~organization shall register with the Secretary in order to seek reimbursement~~
19 ~~under subchapter 4 of this chapter.~~

20 ~~(b) The Secretary shall register a rechargeable battery steward or~~
21 ~~rechargeable battery stewardship organization upon:~~

1 ~~(1) submission of a registration form provided by the Secretary that~~
2 includes:

3 ~~(A) the name of a rechargeable battery steward implementing an~~
4 individual program or a list of the producers participating in a rechargeable
5 battery stewardship organization; and

6 ~~(B) the name, address, and contact information of a person~~
7 responsible for implementing the rechargeable battery stewardship program;

8 ~~(2) a determination by the Secretary that the rechargeable battery~~
9 steward or rechargeable battery stewardship organization offers to
10 municipalities, certified solid waste management facilities, and retailers a year-
11 round free collection and recycling program. [Repealed.]

12 Subchapter 4. Reimbursement

13 § 7589. REIMBURSEMENT; AUTHORIZATION

14 (a) Reimbursement of primary battery producers and rechargeable battery
15 producers.

16 (1) A producer or a ~~primary~~ battery stewardship organization operating
17 under an approved ~~primary~~ battery stewardship plan that collects primary
18 batteries and rechargeable batteries ~~or rechargeable batteries~~ that are not listed
19 under its approved plan shall be entitled to reimbursement from the following
20 entities of reimbursable costs per unit of weight incurred in collecting the
21 batteries:

1 ~~(A)~~ the producer of the collected primary battery or rechargeable
2 battery or the ~~primary~~ battery stewardship organization representing the
3 producer of the collected primary battery; or rechargeable battery

4 ~~(B)~~ the ~~rechargeable battery steward responsible for the collected~~
5 ~~rechargeable batteries or, where the rechargeable battery steward responsible~~
6 ~~for the collected rechargeable batteries is participating in a rechargeable~~
7 ~~battery stewardship organization, the stewardship organization.~~

8 (2) Reimbursement may be requested by a collecting primary battery
9 producer or rechargeable battery producer or ~~primary~~ battery stewardship
10 organization only after that producer or battery stewardship organization has
11 achieved the collection rate performance goal approved by the Secretary under
12 section 7584 of this title.

13 ~~(b) Reimbursement of rechargeable battery stewardship organization. A~~
14 ~~registered rechargeable battery steward or rechargeable battery stewardship~~
15 ~~organization shall be entitled to reimbursement from the producer of the~~
16 ~~collected primary battery or the primary battery stewardship organization~~
17 ~~representing the producer of the collected primary battery.~~

18 ~~(e)~~ Reimbursable costs. Under this subchapter, reimbursement shall be
19 allowed only for those costs incurred in collecting the batteries subject to the
20 reimbursement request. Reimbursable costs include:

1 (1) costs of collection, transport, recycling, and other methods of
2 disposition identified in a ~~primary~~ battery stewardship plan approved pursuant
3 to section 7586 of this title; and

4 (2) reasonable educational, promotional, or administrative costs.

5 § 7590. REIMBURSEMENT PROCESS

6 (a) Reimbursement request.

7 (1) A ~~primary~~ battery producer, ~~primary or~~ battery stewardship
8 organization, ~~or rechargeable battery stewardship organization~~ that incurs
9 reimbursable costs under section 7589 of this title shall submit a request to the
10 producer of the collected ~~primary~~ battery or the ~~primary~~ battery stewardship
11 organization in which the producer is participating ~~or the rechargeable battery~~
12 ~~stewardship organization~~ responsible for the collected ~~rechargeable~~ covered
13 battery.

14 (2) A producer or ~~primary~~ battery stewardship organization ~~or~~
15 ~~rechargeable battery stewardship organization~~ that receives a request for
16 reimbursement may, prior to payment and within 30 days ~~of~~ following receipt
17 of the request for reimbursement, request an independent audit of submitted
18 reimbursement costs.

19 (3) The independent auditor shall be responsible for verifying the
20 reasonableness of the reimbursement request, including the costs sought for

1 reimbursement, the amount of reimbursement, and the reimbursable costs
2 assessed by each of the two programs.

3 (4) If the independent audit confirms the reasonableness of the
4 reimbursement request, the producer, ~~primary~~ or battery stewardship
5 organization, ~~or rechargeable battery stewardship organization~~ requesting the
6 audit shall pay the cost of the audit and the amount of the reimbursement
7 calculated by the independent auditor. If the independent audit indicates the
8 reimbursement request was not reasonable, the producer or ~~primary~~ battery
9 stewardship organization that initiated the reimbursement request shall pay the
10 cost of the audit and the amount of the reimbursement calculated by the
11 independent auditor.

12 (b) Role of Agency. The Agency shall not be required to provide
13 assistance or otherwise participate in a reimbursement request, audit, or other
14 action under this section, unless subject to subpoena before a court of
15 jurisdiction.

16 Subchapter 5. Private Right of Action

17 § 7591. PRIVATE RIGHT OF ACTION

18 (a) Action against producer with no ~~primary~~ battery stewardship plan. A
19 producer, ~~a primary~~ or a battery stewardship organization implementing an
20 approved ~~primary~~ battery stewardship plan in compliance with the
21 requirements of this chapter, ~~a rechargeable battery steward, or a rechargeable~~

1 ~~battery stewardship organization~~ may bring a civil action against another
2 producer or ~~primary~~ battery stewardship organization for damages when:

3 (1) the plaintiff producer, ~~primary or~~ battery stewardship organization,
4 ~~rechargeable battery steward, or rechargeable battery stewardship organization~~
5 incurs more than \$1,000.00 in actual reimbursable costs collecting, handling,
6 recycling, or properly disposing of primary batteries or rechargeable batteries
7 sold or offered for sale in the State by that other producer;

8 (2) the producer from whom damages are sought:

9 (A) can be identified as the producer of the collected primary
10 batteries or rechargeable batteries from a brand or marking on the discarded
11 battery or from other information available to the plaintiff producer, ~~primary or~~
12 battery stewardship organization, ~~rechargeable battery steward, or rechargeable~~
13 ~~battery stewardship organization~~; and

14 (B) does not operate or participate in an approved ~~primary~~ battery
15 stewardship organization in the State or is not otherwise in compliance with
16 the requirements of this chapter.

17 (b) Action against producer with an approved ~~primary~~ battery stewardship
18 plan. A battery producer, ~~a primary or a~~ battery stewardship organization in
19 compliance with the requirements of this chapter, ~~a rechargeable battery~~
20 ~~steward, or a rechargeable battery stewardship organization~~ may bring a civil
21 action for damages against a ~~primary~~ battery producer or ~~primary a~~ battery

1 stewardship organization in the State that is in compliance with the
2 requirements of this chapter, provided that the conditions of subsection ~~(d)~~(c)
3 of this section have been met.

4 (c) ~~Action against rechargeable battery stewardship organization. A~~
5 ~~producer, a primary battery stewardship organization in compliance with the~~
6 ~~requirements of this chapter, a rechargeable battery steward, or a rechargeable~~
7 ~~battery stewardship organization may bring a civil action for damages against a~~
8 ~~rechargeable battery stewardship organization registered by the Secretary,~~
9 ~~provided that the conditions of subsection (d) of this section have been met.~~

10 ~~(d)~~ Condition precedent to cause of action. Except as authorized under
11 subsection (a) of this section, a cause of action under this section shall be
12 allowed only if:

13 (1) a plaintiff producer, primary or battery stewardship organization, ~~or~~
14 ~~rechargeable battery stewardship organization~~ submitted a reimbursement
15 request to another producer, primary or battery stewardship organization, ~~or~~
16 ~~rechargeable battery stewardship organization~~ under subchapter 4 of this
17 chapter; and

18 (2) the plaintiff producer, primary battery or stewardship organization,
19 ~~or rechargeable battery stewardship organization~~ does not receive
20 reimbursement within:

1 (A) 90 days of the reimbursement request, if no independent audit is
2 requested under subchapter 4 of this chapter; or

3 (B) 60 days after completion of an audit if an independent audit is
4 requested under subchapter 4 of this chapter, and the audit confirms the
5 validity of the reimbursement request.

6 ~~(e) Action against individual producer or steward.~~

7 ~~(1) A civil action under this section may be brought against an
8 individual primary battery producer or an individual rechargeable battery
9 steward only if the primary battery producer is implementing its own primary
10 battery stewardship plan, the primary battery producer has failed to register to
11 participate in a primary battery stewardship plan, or the rechargeable battery
12 steward is implementing its own registered rechargeable battery stewardship
13 organization.~~

14 ~~(2) A primary battery producer participating in an approved primary
15 battery stewardship plan covering multiple producers or a rechargeable battery
16 steward participating in a rechargeable battery stewardship organization
17 representing multiple stewards shall not be sued individually for
18 reimbursement.~~

19 ~~(3) An action against a primary battery producer participating in a
20 primary battery stewardship plan covering multiple producers or an action
21 against a rechargeable battery steward participating in a rechargeable battery~~

1 ~~stewardship organization shall be brought against the stewardship organization~~
2 ~~implementing the plan.~~

3 ~~(f)~~(d) Role of Agency. The Agency shall not be a party to or be required to
4 provide assistance or otherwise participate in a civil action authorized under
5 this section solely due to its regulatory requirements under this chapter, unless
6 subject to subpoena before a court of jurisdiction.

7 ~~(g)~~(e) Damages; definitions. As used in this section, “damages” means the
8 actual, reimbursable costs a plaintiff producer, primary or battery stewardship
9 ~~organization, or rechargeable battery stewardship organization~~ incurs in
10 collecting, handling, recycling, or properly disposing of primary batteries or
11 rechargeable batteries reasonably identified as having originated from another
12 primary battery producer, primary or battery stewardship organization, ~~or~~
13 ~~rechargeable battery stewardship organization.~~

14 Subchapter 6. General Provisions

15 § 7592. CONFIDENTIALITY OF SUBMITTED DATA

16 (a) Confidentiality. Reports and data submitted under this chapter shall be
17 available for public inspection and copying, provided that:

18 (1) Information protected under the Uniform Trade Secrets Act, as
19 codified under 9 V.S.A. chapter 143, or under the trade secret exemption under
20 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under
21 the Public Records Act.

1 (2) The Secretary may publish information confidential under
2 subdivision (1) of this subsection in a summary or aggregated form that does
3 not directly or indirectly identify individual producers, battery stewards,
4 distributors, or retailers.

5 (b) Omission of trade secret information. The Secretary may require, as a
6 part of a report submitted under this chapter, that the producer, ~~primary or~~
7 battery stewardship organization, ~~rechargeable battery steward, or rechargeable~~
8 ~~battery stewardship organization~~ submit a report that does not contain trade
9 secret information and is available for public inspection and review.

10 (c) Total weight of batteries. The total weight of batteries collected under
11 an approved ~~primary~~ battery stewardship plan is not confidential business
12 information under the Uniform Trade Secrets Act, as codified under 9 V.S.A.
13 chapter 143, and shall be subject to inspection and review under the Public
14 Records Act, 1 V.S.A chapter 5, subchapter 3.

15 § 7593. ANTITRUST; CONDUCT AUTHORIZED

16 (a) Activity authorized. A producer, group of producers, or ~~primary a~~
17 battery stewardship organization implementing or participating in an approved
18 ~~primary~~ battery stewardship plan under this chapter for the collection,
19 transport, processing, and end-of-life management of primary batteries and
20 rechargeable batteries is individually or jointly immune from liability for the
21 conduct under State laws relating to antitrust, restraint of trade, unfair trade

1 practices, and other regulation of trade or commerce under 9 V.S.A. chapter
2 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan,
3 implement, and comply with the producer's, group of producers', or ~~primary~~
4 battery stewardship organization's chosen system for managing discarded
5 primary batteries and rechargeable batteries. This subsection shall also apply
6 to conduct of a retailer or wholesaler participating in a producer or ~~primary~~
7 battery stewardship organization's approved ~~primary~~ battery stewardship plan
8 when the conduct is necessary to plan and implement the producer's or
9 ~~primary~~ battery stewardship organization's organized collection or recycling
10 system for discarded batteries.

11 (b) Limitations on anti-trust activity. Subsection (a) of this section shall
12 not apply to an agreement among producers, groups of producers, retailers,
13 wholesalers, or ~~primary~~ battery stewardship organizations affecting the price of
14 primary batteries or rechargeable batteries or any agreement restricting the
15 geographic area in which, or customers to whom, primary batteries or
16 rechargeable batteries shall be sold.

17 § 7594. ADMINISTRATIVE FEE

18 (a) Fees assessed. A ~~primary~~ battery producer or ~~primary~~ battery
19 stewardship organization shall pay a fee of \$15,000.00 annually for operation
20 under a ~~primary~~ battery stewardship plan approved by the Secretary under
21 section 7586 of this title.

1 (b) Disposition of fees. The fees collected under subsection (a) of this
2 section shall be deposited in the Environmental Permit Fund under 3 V.S.A.
3 § 2805.

4 § 7595. RULEMAKING; PROCEDURE

5 The Secretary may adopt rules or procedures to implement the requirements
6 of this chapter.

7 Sec. 2. 10 V.S.A. § 6621a is amended to read:

8 § 6621a. LANDFILL DISPOSAL REQUIREMENTS

9 (a) In accordance with the following schedule, no person shall knowingly
10 dispose of the following materials in solid waste or in landfills:

11 (1) Lead-acid batteries, after July 1, 1990.

12 * * *

13 (6) Nickel-cadmium batteries, small sealed lead acid batteries,
14 nonconsumer mercuric oxide batteries, rechargeable batteries, primary
15 batteries, and any other battery added by the Secretary by rule.

16 * * *

17 Sec. 3. ANR BATTERY ASSESSMENT

18 (a) On or before July 1, 2026, the Secretary of Natural Resources shall
19 complete an assessment of the opportunities, challenges, and feasibility of
20 establishing mandatory end-of-life management programs for the following
21 battery types:

- 1 (1) batteries used in hybrid and electric vehicles;
2 (2) battery energy storage systems; and
3 (3) batteries that are not easily removable from the products they power.

4 (b) The assessment required by this section shall include:

5 (1) a summary of the work and progress other states have made in
6 establishing end-of-life management programs for the three battery types listed
7 under subsection (a) of this section; and

8 (2) policy recommendations on whether mandatory end-of-life
9 management programs are necessary for the battery types listed under
10 subsection (a) of this section.

11 (c) The assessment required by this section shall be provided to the House
12 Committee on Environment and Energy and the Senate Committee on Natural
13 Resources and Energy.

14 Sec. 4. IMPLEMENTATION

15 (a) The requirements for the sale of batteries under 10 V.S.A. § 7582 shall
16 apply to primary batteries weighing less than 4.4 pounds beginning on January
17 1, 2016 and to primary batteries weighing more than 4.4. pounds but less than
18 25 pounds, rechargeable batteries, and battery-containing products beginning
19 on January 1, 2026.

20 (b) The requirement under 10 V.S.A. § 7583 for a battery stewardship
21 organization to register with the Secretary of Natural Resources currently

1 applies to producers of primary batteries as required beginning on March 1,
2 2015 and shall also apply to producers of rechargeable batteries and battery-
3 containing products beginning on March 1, 2025.

4 (c) The requirement under 10 V.S.A. § 7584 for a battery producer to
5 submit a battery stewardship plan to the Secretary of Natural Resources
6 currently applies to producers of primary batteries as required beginning on
7 June 1, 2015 and shall also apply to producers of rechargeable batteries and
8 battery-containing products beginning on June 1, 2025.

9 (d) The requirement under 10 V.S.A. § 7585 that a battery producer
10 annually report to the Secretary of Natural Resources currently applies to
11 producers of primary batteries as required beginning on March 1, 2017 and
12 shall also apply to producers of rechargeable batteries beginning on March 1,
13 2027.

14 Sec. 5. EFFECTIVE DATES

15 This act shall take effect on July 1, 2024, except that 10 V.S.A. § 7587
16 (retail sale obligation) shall take effect on January 1, 2026.