

1

H.695

2

Introduced by Representative Klein of East Montpelier

3

Referred to Committee on

4

Date:

5

Subject: Conservation and development; solid waste; product stewardship;

6

batteries

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Statement of purpose of bill as introduced: This bill proposes to establish a

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product stewardship program for discarded batteries.

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An act relating to establishing a product stewardship program for primary

10

batteries

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

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

13

CHAPTER 168. PRODUCT STEWARDSHIP

14

FOR PRIMARY BATTERIES

15

§ 7581. DEFINITIONS

16

As used in this chapter:

17

(1) "Agency" means the Agency of Natural Resources.

18

(2) "Brand" means a name, symbol, word, or traceable mark

19

that identifies:

1 ~~(A) a primary battery and attributes the primary battery to the owner~~  
2 ~~or licensee of the brand as the producer; or~~

3 (B) a primary battery-containing product and attributes the primary  
4 battery to the owner or licensee of the primary battery-containing product as  
5 the producer.

6 (3) "Calendar year" means the period commencing January 1 and  
7 ending December 31 of the same calendar year.

8 (4) "Collection rate" means a percentage by weight that each producer  
9 or stewardship organization collects by an established date. The collection rate  
10 shall be calculated by weight based on the percentage of primary batteries,  
11 including primary batteries taken from primary battery-containing products,  
12 that are collected during a calendar year, as compared to the average weight of  
13 primary batteries, including those in primary battery-containing products, that  
14 were estimated to have been sold in the State by participating producers during  
15 the three previous calendar years. Estimates of primary batteries sold in the  
16 State may be based on a reasonable pro rata calculation based on national  
17 sales.

18 (5) "Consumer" means any person who presents or delivers any number  
19 of primary batteries to a collection facility that is included in an approved  
20 primary battery stewardship plan.

1 ~~(6) “Discarded primary battery” means a primary battery that is no~~  
2 ~~longer used for its manufactured purpose.~~

3 ~~(7) “Easily removable” means readily detachable by a person without~~  
4 ~~the use of tools or with the use of common household tools.~~

5 ~~(8) “Primary battery” means a nonrechargeable battery weighing two~~  
6 ~~kilograms or less, including alkaline, carbon-zinc, lithium metal, and other~~  
7 ~~batteries typically generated as waste.~~

8 ~~(9) “Primary battery-containing product” means a primary battery~~  
9 ~~contained in or packed with products such as cameras, watches, calculators,~~  
10 ~~flashlights, lanterns, portable radios, toys, and clocks. “Primary~~  
11 ~~battery-containing product” shall not mean any of the following:~~

12 ~~(A) a primary battery that is sold in a covered electronic device, as~~  
13 ~~defined in subdivision 7551(8) of this title;~~

14 ~~(B) a primary battery that is not easily removable or is not intended~~  
15 ~~or designed to be removed from the product, other than by the~~  
16 ~~manufacturer; and~~

17 ~~(C) a primary battery that is sold or used in an implanted medical~~  
18 ~~device, as that term is defined in the federal Food, Drug, and Cosmetic Act,~~  
19 ~~21 U.S.C. § 321(h), as amended.~~

20 ~~(10) “Primary battery stewardship organization” or “stewardship~~  
21 ~~organization” means an organization appointed by one or more producers to~~

1 ~~act as an agent on behalf of a producer or producers to design, submit,~~  
2 implement and administer a primary battery stewardship plan under  
3 this chapter.

4 (11) “Primary battery stewardship plan” or “plan” means a plan  
5 submitted to the Secretary pursuant to section 7583 of this title by an  
6 individual producer or a primary battery stewardship organization.

7 (12)(A) “Producer” means one of the following with regard to a primary  
8 battery or a primary battery-containing product that is sold, offered for sale, or  
9 distributed in the State:

10 (i) a person who manufactures a primary battery, or a primary  
11 battery-containing product, and who sells, offers for sale, or distributes that  
12 primary battery, or that primary battery-containing product, in the State under  
13 the person’s own name or brand;

14 (ii) if subdivision (A)(i) of this subdivision (12) does not apply, a  
15 person who owns or licenses a trademark or brand under which a primary  
16 battery or primary battery-containing product is sold, offered for sale, or  
17 distributed in the State, whether or not the trademark is registered; or

18 (iii) if subdivisions (A)(i) and (ii) of this subdivision (12) do not  
19 apply, a person who imports a primary battery or a primary battery-containing  
20 product into the State for sale or distribution.

1 ~~(B) "Producer" shall not mean a person who manufactures, sells,~~  
2 offers for sale or imports a primary battery-containing product in the State if  
3 that person:

4 (i) affirms that it only uses primary batteries supplied by a  
5 producer participating in an approved battery stewardship program; and

6 (ii) reports to the Secretary the estimated number of primary  
7 batteries in the person's primary battery-containing products estimated to be  
8 sold in the State. Estimates of primary batteries contained in primary  
9 battery-containing products sold in the State may be based on a reasonable pro  
10 rata calculation of national sales of the primary battery-containing products.

11 (13) "Program" or "stewardship program" means the system for the  
12 collection, transportation, recycling, and disposal of primary batteries  
13 implemented pursuant to an approved primary battery stewardship plan.

14 (14)(A) "Rechargeable battery" means:

15 (i) one or more voltaic or galvanic cells, electrically connected to  
16 produce electric energy and designed to be recharged and weighing less than  
17 11 pounds; or

18 (ii) a battery pack designed to be recharged that weighs less than  
19 11 pounds and that is designed to provide less than 40 volts direct current.

1 ~~(B) "Rechargeable battery" shall not mean:~~

2 ~~(i) a battery that is not easily removable or is not intended or~~  
3 ~~designed to be removed from the covered product, other than by~~  
4 ~~the manufacturer;~~

5 ~~(ii) a battery that contains electrolyte as a free liquid; or~~

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

8 ~~(I) is sealed;~~

9 ~~(II) contains no liquid electrolyte; and~~

10 ~~(III) is intended by its manufacturer to power a handheld device~~  
11 ~~or to provide uninterrupted backup electrical power protection for stationary~~  
12 ~~consumer products or stationary office equipment.~~

13 ~~(15) "Rechargeable battery steward" means a person who:~~

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

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

1 ~~(C) if subdivisions (A) and (B) of this subdivision (15) do not apply,~~  
2 imports a rechargeable battery or rechargeable product into the State for sale  
3 or distribution.

4 (16) "Rechargeable product" means a product that contains or is  
5 packaged with a rechargeable battery at the time the product is sold, offered for  
6 sale, or distributed in the State. "Rechargeable product" shall not mean:

7 (A) a product from which a rechargeable battery is not easily  
8 removable or is not intended or designed to be removed from the product,  
9 other than by the manufacturer; or

10 (B) an implanted medical device, as that term is defined in the federal  
11 Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

12 (17) "Recycling" means any process by which discarded products,  
13 components, and by-products are transformed into new usable or marketable  
14 materials in a manner in which the original products may lose their identity,  
15 but does not include energy recovery or energy generation by means of  
16 combusting discarded products, components, and by products with or without  
17 other waste products.

18 (18) "Retailer" means a person who offers a primary battery or a  
19 primary battery-containing product for sale to any consumer or business at  
20 retail in the State through any means, including remote offerings such as sales  
21 outlets, catalogues, or an Internet website.

1 ~~(19) "Secretary" means the Secretary of Natural Resources.~~

2 § 7582. SALE OF PRIMARY BATTERY OR PRIMARY

3 BATTERY-CONTAINING PRODUCT; STEWARDSHIP

4 ORGANIZATION REGISTRATION

5 (a) Sale prohibited. Beginning January 1, 2016, except as set forth under  
6 subsections (c) and (d) of this section, a producer of a primary battery or  
7 primary battery-containing product shall not sell, offer for sale, or deliver to a  
8 retailer for subsequent sale a primary battery or primary battery-containing  
9 product unless all of the following has been met:

10 (1) the producer or stewardship organization is registered under an  
11 approved and implemented primary battery stewardship plan;

12 (2) the producer or stewardship organization has paid the fee under  
13 section 7591 of this title; and

14 (3) the name of the producer and the producer's brand are designated on  
15 the Agency website as covered by an approved primary battery  
16 stewardship plan.

17 (b) Primary battery stewardship organization registration requirements.  
18 Beginning September 1, 2015, and annually thereafter, a stewardship  
19 organization shall file a registration form with the Secretary. The Secretary  
20 shall provide the registration form to a stewardship organization. The  
21 registration form shall include:



1 ~~(1) a list of the producers of primary batteries and primary battery~~  
2 ~~containing products participating in the stewardship organization;~~

3 ~~(2) a list of the brands of primary batteries and primary battery~~  
4 ~~containing products of each producer participating in the stewardship~~  
5 ~~organization; and~~

6 ~~(3) the name, address, and contact information of a person responsible~~  
7 ~~for ensuring the producer's compliance with this chapter.~~

8 ~~(c) New producers. A producer who, after January 1, 2015, seeks to sell,~~  
9 ~~offer for sale, or offer for promotional purposes in the State a primary battery~~  
10 ~~or primary battery-containing product not previously sold in State, shall notify~~  
11 ~~the Secretary prior to selling or offering a product not covered by a~~  
12 ~~stewardship plan in the State. The Secretary shall list a producer who supplies~~  
13 ~~notice under this subsection as a "new producer" on the Agency's website. A~~  
14 ~~producer that supplies notice under this subsection shall have 90 days to either~~  
15 ~~join an existing primary battery stewardship organization or to submit a~~  
16 ~~primary battery stewardship plan for approval to the State.~~

17 ~~(d) Exemption. A producer who annually sells, offers for sale, distributes,~~  
18 ~~or imports in the State primary batteries or primary battery-containing products~~  
19 ~~with a total retail value of less than \$500.00 shall be exempt from the~~  
20 ~~requirements of this chapter.~~

~~§ 7583. PRIMARY BATTERY STEWARDSHIP PLAN~~

~~(a) Primary battery stewardship plan required. On or before April 1, 2015, each producer selling, offering for sale, or offering for promotional purposes a primary battery or primary-containing product in the State shall individually or as part of a primary battery stewardship organization submit a primary battery stewardship plan to the Secretary for review.~~

~~(b) Primary battery stewardship plan; minimum requirements. Each primary battery stewardship plan shall include, at a minimum, all of the following elements:~~

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

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

~~(B) the brands of primary batteries covered by the plan.~~

~~(2) 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.~~

~~(3) Collection; convenience. Each primary battery stewardship plan shall:~~

1 ~~(A) allow all retailers that sell primary batteries or primary~~  
2 ~~battery-containing products covered under the plan and all municipalities to~~  
3 ~~opt to be collection facility;~~

4 ~~(B) provide, at a minimum, no fewer than two collection facilities in~~  
5 ~~each county in the State; and~~

6 ~~(C) provide for the acceptance from a consumer of up to 20 batteries~~  
7 ~~per visit. A collection facility may agree to accept more than 20 batteries per~~  
8 ~~visit from a consumer.~~

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

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

16 ~~(A) the number and name of the collection facilities accepting~~  
17 ~~primary batteries under the plan, including the address and contact information~~  
18 ~~for each facility; and~~

19 ~~(B) the name and contact information of a transporter or contractor~~  
20 ~~collecting primary batteries from collection facilities.~~

1 ~~(C) the name, address, and contact information of the recycling~~  
2 facilities that processes the collected primary batteries or primary  
3 battery-containing products.

4 (6) Education and outreach. A primary battery stewardship plan shall  
5 include an education and outreach program. The education and outreach  
6 program may include media advertising, retail displays, articles in trade and  
7 other journals and publications, and other public educational efforts. The  
8 education and outreach program shall describe the outreach procedures that  
9 will be used to provide notice of the program to businesses, municipalities,  
10 retailers, wholesalers, and haulers. At a minimum, the education and outreach  
11 program shall notify the public of the following:

12 (A) that there is a free collection program for all primary  
13 batteries; and

14 (B) the location of collection points and how to access the  
15 collection program.

16 (7) Reimbursement.

17 (A) A primary battery stewardship plan shall include a procedure  
18 under which the producer or stewardship organization submitting the plan shall  
19 reimburse another primary battery producer or stewardship organization with  
20 an approved plan for the actual direct costs per unit of weight incurred in  
21 collecting the brands or products of the producer submitting the plan. Direct

1 ~~costs include costs of collection, transport, recycling and other actual~~  
2 ~~environmental management costs, plus an additional negotiated amount not to~~  
3 ~~exceed 10 percent to reflect a reasonable contribution for indirect costs,~~  
4 ~~including permitting fees, overhead, personnel costs, administration, insurance,~~  
5 ~~legal or accounting costs, education and outreach, or any other costs.~~

6 (B) A producer or primary battery stewardship organization that  
7 receives a request for reimbursement may, prior to payment and within 30 days  
8 of receipt of the request for reimbursement, request an independent audit of  
9 submitted reimbursement costs. If the independent audit confirms the  
10 reasonableness of the reimbursement request, the producer or primary battery  
11 stewardship organization requesting the audit shall pay the cost of the audit.

12 (c) Implementation. A producer or a primary battery stewardship  
13 organization shall include provisions in the plan for the implementation of the  
14 program in conjunction with those retailers and municipalities acting as  
15 collection facilities under a program. Implementation of the program shall be  
16 at no cost to retailers or municipalities acting as collection facilities under a  
17 program. A producer or a primary battery stewardship organization shall  
18 provide retailers and municipalities acting as collection facilities products or  
19 equipment for setting up a collection point and for providing for the pickup of  
20 collected primary batteries, including arranging for the management of those  
21 primary batteries.

~~§ 7584. ANNUAL REPORT; PLAN AUDIT~~

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

~~(1) the weight of primary batteries collected by the producer or the stewardship organization in the prior calendar year;~~

~~(2) the collection rate achieved in the prior calendar year;~~

~~(3) specifies the collection facilities that failed in the previous calendar year to collect a minimum of 100 pounds by weight of primary batteries and whether these collection facilities will be eliminated from the producer or a primary battery stewardship organization's plan;~~

~~(4) the locations for all collection points set up by the producers covered by the plan and contact information for each location;~~

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

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

~~(7) any material change to the primary battery stewardship plan; and~~

~~(8) the cost of implementation of the program, including the costs of collection, recycling, education, and outreach.~~

~~(b) Plan audit. Once every five years, a producer or stewardship organization shall hire an independent third party to audit the plan and plan~~

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

7 § 7585. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;  
8 REQUIREMENTS; REGISTRATION

9 (a) Participation in a stewardship organization. A producer may meet the  
10 requirements of this chapter by participating in a primary battery stewardship  
11 organization that undertakes the producer's responsibilities under sections  
12 7582, 7583, and 7584 of this title.

13 (b) Qualifications for a stewardship organization. To qualify as a  
14 stewardship organization under this chapter, an organization shall:

15 (1) commit to assume the responsibilities, obligations, and liabilities of  
16 all producers participating in the stewardship organization;

17 (2) not create unreasonable barriers for participation by producers in the  
18 stewardship organization; and

19 (3) maintain a public website that lists all producers and producers'  
20 brands covered by the primary battery stewardship organization's approved  
21 collection plan.

1 ~~(c) Registration requirements.~~

2 ~~(1) Beginning January 1, 2015 and annually thereafter, a stewardship~~  
3 ~~organization shall file a registration form with the Secretary. The Secretary~~  
4 ~~shall provide the registration form to a stewardship organization. The~~  
5 ~~registration form shall include:~~

6 ~~(A) a list of the producers participating in the stewardship~~  
7 ~~organization;~~

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

10 ~~(C) a description of how the stewardship organization meets the~~  
11 ~~requirements of subsection (a) of this section, including any reasonable~~  
12 ~~requirements for participation in the stewardship organization; and~~

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

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

18 ~~(d) Primary battery-containing products; notification. Producers of a~~  
19 ~~battery-containing product who choose to fulfill the requirements of this~~  
20 ~~chapter by participation in a stewardship organization under subsection (a) of~~  
21 ~~this section shall notify each product stewardship organization operating an~~



1 ~~approved program that the primary batteries contained within or packaged with~~  
2 their products are covered by a primary battery producer participating in a  
3 stewardship program, and shall provide the name of the products, as well as the  
4 identity of its primary battery supplier, brand, weight, chemistry, estimated  
5 number of batteries contained in, or packaged with, the products sold in the  
6 State, and such other details as the primary battery stewardship organization  
7 may reasonably require. A primary battery stewardship organization in which  
8 the primary battery supplier is participating shall, as part of the list submitted  
9 under subsection 7583(b) of this title, include the producer of the primary  
10 battery-containing product as a participant in its program, subject to any  
11 limitations or exceptions as may be indicated by the information submitted by  
12 the primary battery-containing product producer.

13 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

14 (a) Approval of plan. Within 90 days after receipt of a proposed  
15 stewardship plan, the Secretary shall determine whether the plan complies with  
16 the requirements of section 7583 of this title. If the Secretary approves a plan,  
17 the Secretary shall notify the applicant of the plan approval in writing. If the  
18 Secretary rejects a plan, the Secretary shall notify the applicant in writing of  
19 the reasons for rejecting the plan. An applicant whose plan is rejected by the  
20 Secretary shall submit a revised plan to the Secretary within 45 days of  
21 receiving notice of rejection.

1 ~~(b) Plan amendment; changes. Any changes to a proposed stewardship~~  
2 ~~plan shall be approved by the Secretary in writing. The Secretary, in his or her~~  
3 ~~discretion or at the request of a producer, may require a producer or a primary~~  
4 ~~battery stewardship organization to amend an approved plan.~~

5 (c) Public notice. The Secretary shall post all proposed and approved  
6 primary battery stewardship plans on the Agency's website, subject to the  
7 confidentiality provisions of section 7588 of this title.

8 (d) Public input. The Secretary shall establish a process under which a  
9 primary battery stewardship plan, prior to plan approval or amendment, is  
10 available for public review and comment.

11 (e) Registrations. The Secretary shall accept, review, and approve or deny  
12 primary battery stewardship organization registrations submitted under section  
13 7583 of this title.

14 (f) Agency website. The Secretary shall maintain a website that includes  
15 the names of producers with approved plans or participation in approved plans.  
16 The website shall list all of an approved producer's brands covered by the  
17 stewardship plan filed with the Secretary. The Secretary shall update  
18 information on the website within 10 days of receipt of notice of any change to  
19 the listed information.

20 (g) Term of stewardship plan. A primary battery stewardship plan  
21 approved by the Secretary under this section shall have a term not to exceed

1 ~~five years, provided that the producer remains in compliance with the~~  
2 ~~requirements of this chapter and the terms of the approved plan.~~

3 § 7587. RETAILER OBLIGATIONS

4 (a) Sale prohibited. Except as set forth under subsection (b) of this section,  
5 beginning January 1, 2016, no retailer shall sell or offer for sale a primary  
6 battery or primary battery-containing product unless the retailer has reviewed  
7 the Agency website required in subsection 7586(f) of this title to determine  
8 that the producer of the primary battery or primary battery-containing product  
9 is implementing an approved collection plan or is a member of a  
10 stewardship organization.

11 (b) Inventory exception; expiration or revocation of manufacturer  
12 registration. A retailer shall not be responsible for an unlawful sale of a  
13 primary battery or primary battery-containing product under this subsection if:

14 (1) the retailer purchased the primary battery or primary  
15 battery-containing product prior to January 1, 2016 and sells the battery or  
16 product on or before January 1, 2017; or

17 (2) the producer's stewardship plan expired or was revoked, and the  
18 retailer took possession of the in-store inventory of primary batteries or  
19 primary battery-containing products prior to the expiration or revocation of the  
20 producer's stewardship plan.

~~§ 7588. CONFIDENTIALITY OF SUBMITTED DATA~~

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

~~(1) Information protected under the Uniform Trade Secrets Act, as codified under 9 V.S.A. chapter 143, or under the trade secret exemption under 1 V.S.A. § 317(c)(9) shall not be available for public inspection and copying.~~

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

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

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

§ 7589. ANTITRUST; CONDUCT AUTHORIZED

(a) Activity authorized. A producer, group of producers, or stewardship organization implementing or participating in an approved stewardship plan under this chapter for the collection, transport, processing, and end-of-life management of primary batteries are individually or jointly immune from liability for the conduct under State laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan, implement, and comply with the producer's, group of producers', or stewardship organization's chosen system for managing discarded primary batteries. This subsection shall also apply to conduct of a retailer or wholesaler participating in a producer or stewardship organization's approved plan when the conduct is necessary to plan and implement the producer's or stewardship organization's organized collection or recycling system for discarded batteries

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

§ 7590. ADMINISTRATIVE FEE

(a) Fee assessed. A producer or stewardship organization shall pay a fee of \$15,000.00 annually for operation under a stewardship plan approved by the Secretary under section 7586 of this title.

(b) Disposition of fee. The fees collected under subsection (a) of this section shall be deposited in the environmental permit fund under 3 V.S.A. § 2805.

§ 7591. PRIVATE RIGHT OF ACTION

(a) A producer or a primary battery stewardship organization implementing an approved plan in compliance with the requirements of this chapter may bring a civil action against another producer or stewardship organization for damages when:

(1) the plaintiff producer or stewardship organization incurs more than \$3,000.00 in actual direct costs collecting, handling, recycling, or properly disposing of primary batteries sold or offered for sale in the State by another producer;

(2) the producer from whom damages are sought:

(A) can be identified as the producer of the collected batteries from a brand or marking on the discarded battery or from other information available to the plaintiff producer or stewardship organization; and

1 ~~(B) does not operate an approved battery stewardship program in the~~  
2 ~~State.~~

3 (b)(1) A producer or primary battery stewardship organization  
4 implementing an approved plan in compliance with the requirements of this  
5 chapter may bring a civil action for damages against another producer or  
6 stewardship organization that is implementing an approved plan in the  
7 State when:

8 (A) the plaintiff producer or stewardship organization submitted a  
9 reimbursement request to another producer or stewardship organization under  
10 the procedure approved under subdivision 7583(b)(8) of this title;

11 (B) the plaintiff producer does not receive reimbursement within:

12 (i) 60 days of the request, if no independent audit is requested  
13 under the procedure approved under subdivision 7583(b)(8) of this title; or

14 (ii) 30 days after completion of an audit if an independent audit is  
15 requested under the procedure approved under subdivision 7583(b)(8) of this  
16 title and the audit confirms the validity of the reimbursement request.

17 (2) A civil action under this subsection may be brought against an  
18 individual producer only if the producer is implementing its own primary  
19 battery stewardship plan. A producer participating in an approved primary  
20 battery stewardship plan covering multiple producers shall not be sued  
21 individually for reimbursement. An action against a producer participating in a

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

3 ~~(c) As used in this section, "damages" means:~~

4 ~~(1) the actual, direct costs a plaintiff producer incurs in collecting,~~  
5 ~~handling, recycling, or properly disposing of primary batteries reasonably~~  
6 ~~identified as having originated from a noncompliant producer;~~

7 ~~(2) exemplary damages not exceeding three times the costs incurred~~  
8 ~~under subdivision (1) of this subsection; and~~

9 ~~(3) the prevailing plaintiff producer's attorney's fees and costs of~~  
10 ~~bringing the action.~~

11 § 7592. REIMBURSEMENT OF RECHARGEABLE BATTERY

12 STEWARDS

13 (a) Reimbursement of rechargeable battery stewards. A primary battery  
14 producer or primary battery stewardship organization shall reimburse operators  
15 of a bona fide rechargeable battery stewardship organization, or other person  
16 operating a bona fide rechargeable battery stewardship program, for actual  
17 direct costs per unit of weight incurred by the bona fide rechargeable battery  
18 stewardship organization in the collection of primary batteries supplied by  
19 producers participating in an approved primary battery stewardship program in  
20 the State. Direct costs include costs of collection, transport, recycling and  
21 other actual environmental management costs, plus an additional negotiated



1 ~~amount not to exceed 10 percent to reflect a reasonable contribution for~~  
2 indirect costs, including permitting fees, overhead, personnel costs,  
3 administration, insurance, legal or accounting costs, education and outreach, or  
4 any other costs.

5 (b) Request for audit. A producer or primary battery stewardship  
6 organization that receives a request for reimbursement from a rechargeable  
7 battery steward may, prior to payment and within 30 days of the request for  
8 reimbursement, request an independent audit of the requested reimbursement  
9 costs. If the independent audit confirms the reasonableness of the  
10 reimbursement request, the producer or primary battery stewardship  
11 organization requesting the audit shall pay the cost of the audit.

12 (c)(1) Civil action for failure to reimburse. A rechargeable battery steward  
13 or other person operating a bona fide program to collect used rechargeable  
14 batteries for recycling in the State may bring a civil action for damages against  
15 a primary battery producer or primary battery stewardship organization that is  
16 implementing an approved plan in the State when:

17 (A) the rechargeable battery steward submitted a reimbursement  
18 request to another producer or stewardship organization under subsection (b)  
19 of this section;

20 (B) the rechargeable battery steward does not receive  
21 reimbursement within:

1 ~~(i) 60 days of the request, if no independent audit is requested~~

2 under subsection (b) of this section; or

3 (ii) 30 days after completion of an audit if an independent audit is  
4 requested under subsection (b) of this section and the audit confirms the  
5 validity of the reimbursement request.

6 (2) A civil action under this subsection may be brought against an  
7 individual primary battery producer only if the producer is implementing its  
8 own primary battery stewardship plan or the producer has failed to register to  
9 participate in a plan. A primary battery producer participating in an approved  
10 primary battery stewardship plan covering multiple producers shall not be sued  
11 individually for reimbursement. An action against a primary battery producer  
12 participating in a stewardship plan covering multiple producers shall be  
13 brought against the stewardship organization implementing the plan.

14 (d) Procedure; bona fide rechargeable battery stewardship program.

15 (1) The Secretary may require a primary battery producer or a primary  
16 battery stewardship organization to submit the procedure for reimbursement  
17 under this section to the Secretary for approval.

18 (2) The Secretary, in his or her discretion, shall approve a rechargeable  
19 battery stewardship program as bona fide under this section.

1 § 7593. PENALTIES

2 A producer who violates the requirements of this chapter shall be subject to  
3 a civil penalty not to exceed \$1,000.00 per day for each day of noncompliance.

4 § 7594. 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. § 8003(a) is amended to read:

8 (a) The Secretary may take action under this chapter to enforce the  
9 following statutes and rules, permits, assurances, or orders implementing the  
10 following statutes:

11 \* \* \*

12 (22) 10 V.S.A. chapter 164A, collection and disposal of  
13 mercury-containing lamps; ~~and~~

14 (23) 24 V.S.A. § 2202a, relating to a municipality's adoption and  
15 implementation of a solid waste implementation plan that is consistent with the  
16 State Solid Waste Plan; and

17 (24) 10 V.S.A. chapter 168, relating to the collection and disposal of  
18 primary batteries.

19 Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

20 (a) This chapter shall govern all appeals of an act or decision of the  
21 Secretary, excluding enforcement actions under chapters 201 and 211 of this

1 ~~title and rulemaking, under the following authorities and under the rules~~

2 adopted under those authorities:

3 (1) The following provisions of this title:

4 \* \* \*

5 (Q) chapter 164A (collection and disposal of mercury-containing  
6 lamps).

7 (R) chapter 32 (flood hazard areas).

8 (S) chapter 168 (collection and disposal of primary batteries).

9 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

10 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

11 Sec. 4. EFFECTIVE DATE

12 ~~This act shall take effect on passage.~~

*Sec. 1. 10 V.S.A. chapter 168 is added 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) “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) “Calendar year” means the period commencing January 1 and ending December 31 of the same year.

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

(5) “Consumer” means any person who presents or delivers any number of primary batteries to a collection facility that is included in an approved primary battery stewardship plan.

(6) “Consumer product” means any product that is regularly used or purchased to be used for personal, family, or household purposes. “Consumer product” shall not mean a product primarily used or purchased for industrial or business use.

(7) “Discarded primary battery” means a primary battery that is no longer used for its manufactured purpose.

(8) “Easily removable” means readily detachable by a person without the use of tools or with the use of common household tools.

(9) “Participate” means to appoint a primary battery stewardship organization or rechargeable battery stewardship organization to operate on behalf of oneself and to have that appointment accepted by the stewardship organization.

(10) “Primary battery” means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, and lithium metal batteries. “Primary battery” shall not mean batteries intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use.

(11) “Primary battery producer” or “producer” means one of the following with regard to a primary battery that is sold, offered for sale, or distributed in the State:

(A) a person who manufactures a primary battery and who sells, offers for sale, or distributes that primary battery in the State under the person’s own name or brand;

(B) if subdivision (A) of this subdivision (11) does not apply, a person who owns or licenses a trademark or brand under which a primary battery is

sold, offered for sale, or distributed in the State, whether or not the trademark is registered; or

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

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

(13) “Primary battery stewardship plan” or “plan” means a plan submitted to the Secretary pursuant to section 7584 of this title by an individual producer or a primary battery stewardship organization.

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

(15)(A) “Rechargeable battery” means:

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

(ii) a battery pack designed to be recharged that weighs less than 11 pounds and that is designed to provide less than 40 volts direct current.

(B) “Rechargeable battery” shall not mean:

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

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

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

(I) is sealed;

(II) contains no liquid electrolyte; and

(III) is intended by its manufacturer to power a handheld device or to provide uninterrupted backup electrical power protection for stationary consumer products or stationary office equipment; or

(iv) a battery intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use.

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

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

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



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

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

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

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

(B) an implanted medical device, as that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

(19) “Recycling” means any process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity.

but does not include energy recovery or energy generation by means of combusting discarded products, components, and by products with or without other waste products.

(20) “Retailer” means a person who offers a primary battery for sale to any consumer or business at retail in the State through any means, including remote offerings such as sales outlets, catalogues, or an Internet website.

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

Subchapter 2. Primary Battery Stewardship Program

§ 7582. SALE OF PRIMARY BATTERIES

(a) Sale prohibited. Except as set forth under subsections (c) and (d) of this section, beginning on January 1, 2016, a producer of a primary battery shall not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery unless the producer has complied with the requirements of subsection (b) of this section.

(b) Requirements for sale. No producer shall sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery in the State unless:

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

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

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

(c) New producers.

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

(2) The Secretary shall list a producer who supplies notice under this subsection as a "new producer" on the Agency's website. A producer that supplies notice under this subsection shall have 90 days, not including the time required for public comment under subsection 7586(c) of this section, to either join an existing primary battery stewardship organization or submit a primary battery stewardship plan for approval to the State.

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

§ 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;  
REQUIREMENTS; REGISTRATION

(a) Participation in a primary battery stewardship organization. A producer of primary batteries may meet the requirements of this chapter by participating in a primary battery stewardship organization that undertakes the producer's responsibilities under sections 7582, 7584, and 7585 of this title.

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

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

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

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

(c) Registration requirements.

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

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

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

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

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

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

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

§ 7584. PRIMARY BATTERY STEWARDSHIP PLAN

(a) Primary battery stewardship plan required. On or before June 1, 2015, each producer selling, offering for sale, distributing, 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 Secretary for review.

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

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

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

(B) the brands of primary batteries covered by the plan.

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

(3) Collection; convenience. Each primary battery stewardship plan shall:

(A) Allow all retailers who meet requirements specified in the plan, all municipalities, and all certified solid waste management facilities to opt to be a collection facility.

(B) Provide, at a minimum, no fewer than two collection facilities in each county in the State that provide for collection throughout the year.

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

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

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

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

(B) the name and contact information of a transporter or contractor collecting primary batteries from collection facilities.

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

(6) Education and outreach. A primary battery stewardship plan shall include an education and outreach program. The education and outreach program may include mass media advertising in radio or television broadcasts or newspaper publications of general circulation in the State, retail displays,

articles in trade and other journals and publications, and other public educational efforts. The education and outreach program shall describe the outreach procedures that will be used to provide notice of the program to businesses, municipalities, certified solid waste management facilities, retailers, wholesalers, and haulers. At a minimum, the education and outreach program shall notify the public of the following:

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

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

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

(8) Performance goal; collection rate. A primary battery stewardship plan shall include a collection rate performance goal for the primary batteries subject to the plan.

(c) Implementation. A producer or a primary battery stewardship organization shall include provisions in the plan for the implementation of the program in conjunction with those retailers, municipalities, and certified solid waste management facilities acting as collection facilities under a program. No transportation or recycling cost shall be imposed on retailers,



municipalities, or certified solid waste management facilities acting as collection facilities under a program. A producer or a primary battery stewardship organization shall provide retailers, municipalities, and certified solid waste management facilities acting as collection facilities products or equipment for setting up a collection point and for providing for the pickup of collected primary batteries, including arranging for the management of those primary batteries.

§ 7585. ANNUAL REPORT; PLAN AUDIT

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

(1) the weight of primary batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(2) the collection rate achieved in the prior calendar year under the primary battery stewardship plan;

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

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

(5) the manner in which the collected primary batteries were managed;

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

(7) the cost of implementation of the primary battery stewardship plan, including the costs of collection, recycling, education, and outreach.

(b) Plan audit. After five years of implementation of an approved primary battery stewardship plan, a primary battery producer or primary battery stewardship organization shall hire an independent third party to conduct a one-time audit of the primary battery stewardship plan and plan operation. The auditor shall examine the effectiveness of the primary battery stewardship plan in collecting and recycling primary batteries. The independent auditor shall examine the cost-effectiveness of the plan and compare it to that of collection plans or programs for primary batteries in other jurisdictions. The independent auditor shall submit the results of the audit to the Secretary as part of the annual report required under subsection (a) of this section.

§ 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

(a) Approval of plan. Within 90 days after receipt of a proposed primary battery stewardship plan, not including the time required for public comment under subsection (c) of this section, the Secretary shall determine whether the plan complies with the requirements of section 7584 of this title. If the Secretary determines that a plan complies with the requirements of section 7584 of this title, the Secretary shall notify the applicant of the plan approval

in writing. If the Secretary rejects a primary battery stewardship plan, the Secretary shall notify the applicant in writing of the reasons for rejecting the plan. An applicant whose plan is rejected by the Secretary shall submit a revised plan to the Secretary within 45 days of receiving notice of rejection. A primary battery stewardship plan that is not approved or rejected by the Secretary within 90 days, not including the time required for public comment under subsection (c) of this section, of submission by a producer shall be deemed approved.

(b) Plan amendment; changes. Any changes to a proposed primary battery stewardship plan shall be approved by the Secretary in writing. The Secretary, in his or her discretion or at the request of a producer, may require a producer or a primary battery stewardship organization to amend an approved plan.

(c) Public notice. The Secretary shall post all proposed primary battery stewardship plans and all proposed amendments to a primary battery stewardship plan on the Agency's website for 30 days from the date the application for a plan or a plan amendment is deemed complete by the Secretary, subject to the confidentiality provisions of section 7592 of this title.

(d) Public input. The Secretary shall establish a process under which a primary battery stewardship plan, prior to plan approval or amendment, is available for public review and comment.

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

(f) Agency website. The Secretary shall maintain a website that includes a copy of all approved primary battery stewardship plans, the names of producers with approved plans, participation in approved plans, or other compliance with this chapter. The website shall list all of an approved primary battery producer's brands covered by a primary battery stewardship plan filed with the Secretary. The Secretary shall update information on the website within 10 days of receipt of notice of any change to the listed information. The website shall list all known primary battery producers exempt from the requirements of this chapter under subsection 7582(d) of this title.

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

#### § 7587. RETAILER OBLIGATIONS

(a) Sale prohibited. Except as set forth in subsection (b) of this section, no retailer shall sell or offer for sale a primary battery on or after January 1,

2016 unless the producer of the primary battery is implementing an approved primary battery stewardship plan, is a member of a primary battery stewardship organization implementing an approved primary battery stewardship plan, or is exempt from participation in an approved plan, as determined by review of the producers listed on the Agency website required in subsection 7586(f) of this title.

(b) Inventory exception; expiration or revocation of producer registration. A retailer shall not be responsible for an unlawful sale of a primary battery under this subsection if:

(1) the retailer purchased the primary battery prior to January 1, 2016 and sells the primary battery on or before January 1, 2017; or

(2) the producer's primary battery stewardship plan expired or was revoked, and the retailer took possession of the in-store inventory of primary batteries prior to the expiration or revocation of the producer's primary battery stewardship plan.

(c) Educational material. A producer or primary battery stewardship organization supplying primary batteries to a retailer shall provide the retailer with educational materials describing collection opportunities for primary batteries. The retailer shall make the educational materials available to consumers.

### Subchapter 3. Registration of Rechargeable Battery

Stewardship Organization

§ 7588. REGISTRATION OF RECHARGEABLE BATTERY

STEWARDSHIP ORGANIZATION

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

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

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

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

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

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

Subchapter 4. Reimbursement

§ 7589. REIMBURSEMENT; AUTHORIZATION

(a) Reimbursement of primary battery producers.

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

(A) the producer of the collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery; or

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

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

(b) Reimbursement of rechargeable battery stewardship organization. A registered rechargeable battery steward or rechargeable battery stewardship organization shall be entitled to reimbursement from the producer of the

collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery.

(c) Direct costs. Under this subchapter, reimbursement shall be allowed only for those direct costs incurred in collecting the batteries subject to the reimbursement request. Direct costs include costs of collection, transport, recycling, and other methods of disposition identified in a primary battery stewardship plan approved pursuant to section 7586 of this title, plus an additional negotiated amount not to exceed 10 percent of the direct costs.

§ 7590. REIMBURSEMENT PROCESS

(a) Reimbursement request.

(1) A primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization that incurs reimbursable direct costs under section 7589 of this title shall submit a request to the producer of the collected primary battery or the primary battery stewardship organization in which the producer is participating or the rechargeable battery stewardship organization responsible for the collected rechargeable battery.

(2) A producer or primary battery stewardship organization or rechargeable battery stewardship organization that receives a request for reimbursement may, prior to payment and within 30 days of receipt of the



request for reimbursement, request an independent audit of submitted reimbursement costs.

(3) The independent auditor shall be responsible for verifying the reasonableness of the reimbursement request, including the costs sought for reimbursement, the amount of reimbursement, and the direct costs assessed by each of the two programs.

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

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

#### Subchapter 5. Private Right of Action

§ 7591. PRIVATE RIGHT OF ACTION

(a) Action against producer with no primary battery stewardship plan. A producer or a primary battery stewardship organization implementing an approved primary battery stewardship plan in compliance with the requirements of this chapter may bring a civil action against another producer or primary battery stewardship organization for damages when:

(1) the plaintiff producer or primary battery stewardship organization incurs more than \$1,000.00 in actual direct costs collecting, handling, recycling, or properly disposing of primary batteries sold or offered for sale in the State by that other producer;

(2) the producer from whom damages are sought:

(A) can be identified as the producer of the collected batteries from a brand or marking on the discarded battery or from other information available to the plaintiff producer or primary battery stewardship organization; and

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

(b) Action against producer with an approved primary battery stewardship plan. A producer or primary battery stewardship organization in compliance with the requirements of this chapter may bring a civil action for damages against another producer or primary battery stewardship organization in the

State that is in compliance with the requirements of this chapter provided that the conditions of subsection (e) of this section have been met.

(c) Action against rechargeable battery stewardship organization. A producer or primary battery stewardship organization implementing an approved primary battery stewardship plan in compliance with the requirements of this chapter may bring a civil action for damages against a rechargeable battery stewardship organization registered by the Secretary provided that the conditions of subsection (e) of this section have been met.

(d) Action by rechargeable battery stewardship organization. A rechargeable battery steward may bring a civil action for damages against a primary battery producer or primary battery stewardship organization that is implementing an approved primary battery stewardship plan in the State provided that the conditions of subsection (e) of this section have been met.

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

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

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

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

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

(f) Action against individual producer or steward.

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

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

(3) An action against a primary battery producer participating in a primary battery stewardship plan covering multiple producers or an action against a rechargeable battery steward participating in a rechargeable battery stewardship organization shall be brought against the stewardship organization implementing the plan.

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

(h) Damages; definitions. As used in this section, “damages” means the actual, direct costs a plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization incurs in collecting, handling, recycling, or properly disposing of primary batteries reasonably identified as having originated from another primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization.

#### Subchapter 6. General Provisions

#### § 7592. CONFIDENTIALITY OF SUBMITTED DATA

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

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

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

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

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

§ 7593. ANTITRUST; CONDUCT AUTHORIZED

(a) Activity authorized. A producer, group of producers, or primary battery stewardship organization implementing or participating in an approved primary battery stewardship plan under this chapter for the collection, transport, processing, and end-of-life management of primary batteries is individually or jointly immune from liability for the conduct under State laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan, implement, and comply with the producer's, group of producers', or primary battery stewardship organization's chosen system for managing discarded primary batteries. This subsection shall also apply to conduct of a retailer or wholesaler participating in a producer or primary battery stewardship organization's approved primary battery stewardship plan when the conduct is necessary to plan and implement the producer's or primary battery stewardship organization's organized collection or recycling system for discarded batteries

(b) Limitations on anti-trust activity. Subsection (a) of this section shall not apply to an agreement among producers, groups of producers, retailers, wholesalers, or primary battery stewardship organizations affecting the price

of primary batteries or any agreement restricting the geographic area in which, or customers to whom, primary batteries shall be sold.

§ 7594. ADMINISTRATIVE FEE

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

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

§ 7595. RULEMAKING; PROCEDURE

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

Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON

IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

On or before January 15, 2019, the Agency of Natural Resources shall submit to the House and Senate Committees on Natural Resources and Energy a report on the progress of the primary battery stewardship program under 10 V.S.A. chapter 168. The report shall include:

(1) the amount, by weight, of primary batteries and rechargeable batteries collected under approved primary battery stewardship plans;



(2) the percentage of collected batteries not covered by or attributable to a primary battery producer implementing an approved primary battery stewardship plan or participating in an approved primary battery stewardship organization; and

(3) recommendation for any amendments to the requirements of 10 V.S.A. chapter 168, including whether additional manufacturers of batteries or battery containing products should be required to implement primary battery stewardship plans.

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

\* \* \*

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps; ~~and~~

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the State Solid Waste Plan; and

(24) 10 V.S.A. chapter 168, relating to the collection and disposal of primary batteries.

*Sec. 4. 10 V.S.A. § 8503(a) is amended to read:*

*(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:*

*(1) The following provisions of this title:*

*\* \* \**

*(Q) chapter 164A (collection and disposal of mercury-containing lamps).*

*(R) chapter 32 (flood hazard areas).*

*(S) chapter 168 (collection and disposal of primary batteries).*

*(2) 29 V.S.A. chapter 11 (management of lakes and ponds).*

*(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).*

*Sec. 5. EFFECTIVE DATE*

*This act shall take effect on passage.*