

No. 152. An act relating to including rechargeable batteries and battery-containing products under the State battery stewardship program.

(S.254)

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:

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

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

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

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

~~(4)~~(5) “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)~~(6) ~~“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~~ “Covered battery” means a primary battery or rechargeable battery.

~~(6)(7)~~ “~~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. “Covered entity” means a person who presents to a collection facility or event that is included in an approved collection plan any number of covered batteries.

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

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

~~(9)(10)~~ “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)(11)~~ “Primary battery” means a nonrechargeable battery weighing ~~two kilograms~~ 4.4 pounds or less, including alkaline, silver oxide, zinc air, carbon-zinc, and lithium metal batteries. Beginning on January 1, 2026,

“primary battery” includes a nonrechargeable battery weighing more than 4.4 pounds but not more than 25 pounds. “Primary battery” shall does not mean:

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

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

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

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

~~(11)~~(12) “Primary battery Battery producer,” “battery-containing product producer,” or “producer” means one of the following with regard to a primary battery or battery-containing product that is sold or offered for sale in the State:

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

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

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

~~(12)~~(13) “~~Primary battery~~ 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)~~(14) “~~Primary battery~~ 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)~~(15) “Program” or “stewardship program” means the system for the collection, transportation, recycling, and disposal of ~~primary~~ batteries implemented pursuant to an approved battery stewardship plan.

~~(15)~~(16)(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.~~
weighing not more than 25 pounds; or

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

(B) “Rechargeable battery” ~~shall~~ does 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~~ from a battery-containing product;

(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~~ weighs not more than 11 pounds; or

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

(v) a battery contained within a medical device, as specified in 21 U.S.C. § 321(h) as it existed on July 1, 2024, that is not designed and marketed for sale or resale principally at retail for personal 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) a medical device, as that term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.~~

~~(19)~~(17) “Recycling” means any process by which discarded products, components, and ~~by products~~ byproducts 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~~ byproducts with or without other waste products.

~~(20)~~(18) “Retailer” means a person who offers a primary covered battery or battery-containing product 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)~~(19) “Secretary” means the Secretary of Natural Resources.

Subchapter 2. ~~Primary~~ Battery Stewardship Program

§ 7582. SALE OF PRIMARY BATTERIES, RECHARGEABLE

BATTERIES, AND BATTERY-CONTAINING PRODUCTS

(a) Sale prohibited. Except as set forth under ~~subsections (b) and (c)~~ subsection (b) of this section, ~~beginning on January 1, 2016,~~ a producer of a primary battery, of a rechargeable battery, or of a battery-containing product

shall not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery, a rechargeable battery, or a battery-containing product 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.

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

(3) 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.

~~(e) 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~~ covered batteries or battery-containing products 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~~
Annually, a 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~~ Battery stewardship plan required. ~~On or before June 1, 2015, each~~ Each producer selling, offering for sale, distributing, or offering for promotional purposes a primary battery, a rechargeable battery, or a battery-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~~ 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 or battery-containing products covered by the plan.

(2) Free collection. Each ~~primary~~ battery stewardship plan shall provide for the collection of ~~primary~~ covered batteries from ~~consumers~~ covered entities at no cost to ~~consumers~~ covered entities. A producer shall not refuse the

collection of a ~~primary~~ covered battery based on the brand or producer of the ~~primary~~ battery.

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

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

(B) Provide, at a minimum, ~~no~~ not 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) Collection of damaged and defective lithium batteries and lithium-ion batteries with over 300 watt-hours. Each battery stewardship plan shall:

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

(B) include how the program will provide packaging consistent with the requirements found in the U.S. Department of Transportation Hazardous

Materials Regulations and the necessary forms and instructions for the safe transportation of damaged or defective lithium batteries and lithium-ion batteries with over 300 watt-hours at no cost to certified solid waste facilities; and

(C) unless otherwise approved by the Secretary, provide throughout the year not fewer than two collection facilities, at a minimum, in each county in the State for the collection of damaged and defective lithium batteries and lithium-ion batteries with over 300 watt-hours.

(5) 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)~~(6) 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~~ the batteries to be collected under the plan, including the address and contact information for each facility;

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

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

~~(6)~~(7) 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, social media and internet sites, 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)~~(8) Reimbursement. A ~~primary~~ battery stewardship plan shall include a reimbursement procedure that is consistent with the requirements of subchapter 4 of this chapter.

~~(8)~~(9) Performance goal; collection rate. A ~~primary~~ battery stewardship plan shall include a collection rate performance goal for the primary batteries and rechargeable batteries subject to the plan. The collection rate includes the estimated total weight of primary batteries and rechargeable batteries that will

be sold or offered for sale in the State by the producer or the producers participating in the ~~primary~~ battery stewardship plan.

(10) Safety training. A battery stewardship plan shall describe how it shall provide safety training for collection locations, including handling damaged and defective lithium batteries and lithium-ion batteries with over 300 watt-hours.

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

(c) Implementation.

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

(2) A producer or 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~~
Annually, a battery producer or a ~~primary~~ battery stewardship organization shall submit a report to the Secretary that contains the following:

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

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

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

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

~~(5)~~(4) 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;

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

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

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

~~(9)~~(8) 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 covered~~ 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 covered~~ batteries. The independent auditor shall examine the cost-effectiveness of the plan and compare it to that of collection plans or programs for ~~primary covered~~ 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 chapter 170 of this title, 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 following~~ 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 chapter 170 of this title, ~~of following~~ 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~~ the Secretary's 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 review. When the Secretary receives a request to approve or amend a ~~primary~~ battery stewardship plan under this subchapter, the Secretary shall proceed in accordance with chapter 170 of this title.

(d) [Repealed.]

(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, rechargeable battery producer's, and battery-containing product 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~~ following receipt of notice of any change to the listed information. The website shall list all known primary battery producers, rechargeable battery producers, and battery-containing product producers exempt from the requirements of this chapter under subsection 7582(c) 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, rechargeable battery, or battery-containing product on or after January 1, ~~2016~~ 2026 unless the producer of the primary battery, rechargeable battery, or battery-containing product 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, rechargeable battery, or battery-containing product under this subsection if:

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

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

(3) the producer's ~~primary~~ battery stewardship plan expired or was revoked, and the retailer took possession of the in-store inventory of primary batteries, rechargeable batteries, or battery-containing products 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~~ covered batteries to a retailer shall provide the retailer with educational materials describing collection opportunities for primary batteries and rechargeable 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. [Repealed.]~~

Subchapter 4. Reimbursement

§ 7589. REIMBURSEMENT; AUTHORIZATION

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

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

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

~~(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 rechargeable battery producer or ~~primary~~ battery stewardship organization only after that producer or battery stewardship organization 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) Reimbursable costs. Under this subchapter, reimbursement shall be allowed only for those costs incurred in collecting the batteries subject to the reimbursement request. Reimbursable costs include:~~

~~(1) 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; and~~

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

§ 7590. REIMBURSEMENT PROCESS

(a) Reimbursement request.

(1) A ~~primary battery producer, primary or battery stewardship organization, or rechargeable battery stewardship organization~~ that incurs reimbursable 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~~ covered 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~~ following 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 reimbursable costs assessed by each of the two programs.

(4) If the independent audit confirms the reasonableness of the reimbursement request, the producer, ~~primary or 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, ~~a primary or a~~ battery stewardship organization implementing an approved ~~primary~~ battery stewardship plan in compliance with the requirements of this chapter, ~~a rechargeable battery steward, or a rechargeable battery stewardship organization~~ may bring a civil action against another producer or ~~primary~~ battery stewardship organization for damages when:

(1) the plaintiff producer, ~~primary or~~ battery stewardship organization, ~~rechargeable battery steward, or rechargeable battery stewardship organization~~ incurs more than \$1,000.00 in actual reimbursable costs collecting, handling, recycling, or properly disposing of primary batteries or rechargeable 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 primary batteries or rechargeable batteries from a brand or marking on the discarded battery or from other information available to the plaintiff producer, ~~primary or~~ battery stewardship organization, ~~rechargeable battery steward,~~ or ~~rechargeable 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 battery producer, a primary or a battery stewardship organization in compliance with the requirements of this chapter, ~~a rechargeable battery steward, or a rechargeable battery stewardship organization~~ may bring a civil action for damages against a ~~primary~~ battery producer or ~~primary~~ a battery stewardship organization in the State that is in compliance with the requirements of this chapter, provided that the conditions of subsection ~~(d)~~(c) of this section have been met.

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

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

(2) the plaintiff producer, ~~primary battery or~~ 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.

~~(e) 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.~~

~~(f)~~(d) 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.

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

primary battery producer, ~~primary or~~ 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 or~~ 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 a~~ 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 and rechargeable 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 and rechargeable 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 rechargeable batteries or any agreement restricting the geographic area in which, or customers to whom, primary batteries or rechargeable 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. 10 V.S.A. § 6621a is amended to read:

§ 6621a. LANDFILL DISPOSAL REQUIREMENTS

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

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

* * *

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

* * *

Sec. 3. ANR BATTERY ASSESSMENT

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

(1) batteries used in hybrid and electric vehicles;

(2) battery energy storage systems; and

(3) batteries that are not easily removable from the products they power.

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

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

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

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

Sec. 4. IMPLEMENTATION

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

(b) The requirement under 10 V.S.A. § 7583 for a battery stewardship organization to register with the Secretary of Natural Resources currently applies to producers of primary batteries as required beginning on March 1, 2015 and shall also apply to producers of rechargeable batteries and battery-containing products beginning on March 1, 2025.

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

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

Sec. 4a. 10 V.S.A. § 7182(b) is amended to read:

(b) Stewardship organization registration requirements.

(1) On or before ~~January~~ July 1, 2025 and annually thereafter, a stewardship organization shall file a registration form with the Secretary. The Secretary shall provide the registration form to the stewardship organization.

The registration form shall include:

* * *

Sec. 4b. 10 V.S.A. § 6615f is added to read:

§ 6615f. ADMINISTRATIVE USE CONTROLS AT CONTAMINATED

SITES

(a) A petition for administrative use controls at a hazardous material contaminated site may be made by a person responding to a release at that site. The petition shall be made on a form developed by the Secretary that includes the following:

(1) a brief description of the contamination at the site and work completed under an approved corrective action plan;

(2) a legal description of the property or properties subject to administrative use controls;

(3) a digital map that shows the boundaries of the property or properties subject to the administrative use controls and any operational units on the property or properties where more detailed controls will be applied;

(4) a narrative description of the uses that are prohibited on the property under the administrative use control, including any specific restrictions applicable to operational units on the property;

(5) signatures of the property owner or persons with legal control of the property certifying that they accept the imposition of these administrative use controls on their property; and

(6) any other requirement that the Secretary requires by rule.

(b) The Secretary shall approve the administrative use controls upon finding:

(1) the administrative use controls adequately protect human health and the environment;

(2) the administrative use controls are consistent with requirements of the plan required by rules adopted pursuant to this chapter and approved by the Secretary; and

(3) the petition contains adequate information to ensure that current and future owners are aware of the restrictions.

(c) Administrative use controls may require:

(1) restrictions on the use of the property or operational units on the property where restrictions are placed;

(2) a right to access the property to ensure that the restrictions are maintained; and

(3) requirements to maintain the restrictions and report on their implementation.

(d) Administrative use controls shall be effective until a property owner or person with legal control petitions the Secretary for their removal. The Secretary shall remove the administrative use controls if the property owner:

(1) clearly demonstrates that the contamination that was the basis of the administrative use controls has naturally attenuated; or

(2) has completed a subsequent corrective action plan that either remediates the hazardous material below environmental media standards or requires alternate administrative use controls.

Sec. 5. EFFECTIVE DATES

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

Date Governor signed bill: June 3, 2024