

Elements of an All Battery EPR Bill January 21, 2016

<p>#1: PRODUCT SCOPE: What products are covered by the EPR law?</p> <p>Preferred Model: “Battery” means a primary battery that weighs 2 kilograms or less, or a rechargeable battery or battery pack weighing less than 5 kilograms.</p> <p>Battery does <u>not</u> mean: 1) a battery that is not intended or designed to be easily removable from a product, other than by the manufacturer; 2) A battery contained within a medical device, as specified in Section 360c of Title 21 of the United States Code, if, when the device or battery is discarded, the device or battery must be treated as infectious waste.</p> <p>Rechargeable battery does <u>not</u> include:</p> <ul style="list-style-type: none"> o A battery that contains an electrolyte as a free liquid o A battery or battery pack that employs lead-acid technology, unless the battery or battery pack is sealed.
<p>Additional Comments</p> <ul style="list-style-type: none"> • New products entering the market place, historic, and orphaned products are all included. See below under #10 Convenience Standard – “All stewardship program collection sites must accept all batteries, regardless of device type or brand. “
<p>#2: COVERED ENTITIES: Groups that may use the producer funded recycling program</p> <p>Preferred Model: Includes all generators of batteries (e.g., households, businesses, etc.)</p> <p>Additional Comments</p> <ul style="list-style-type: none"> • Ensure no conflicts with state dangerous or hazardous waste regulations.
<p>#3: RESPONSIBLE PARTY: Defines who is responsible for funding and managing the recycling program</p> <p>Preferred Model: “Producer” does not include any person who manufactures, sells, offers for sale, distributes or imports into the country for sale in the state a primary-battery-containing product if such product uses only primary batteries supplied by a producer participating in an approved battery stewardship plan.</p> <p>De Minimis Standard: Any producer who annually sells, offers for sale, distributes or imports into the country for sale in the state batteries, including batteries contained within battery-containing products, with a total of less than 2000 units, or with a total retail value of less than \$2000 dollars, is exempt.</p>

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Producers meeting the De Minimis Standard shall register with a stewardship plan for purposes of being listed as a compliant producer.

Alternative A (CT preferred approach): Untiered definition

“Producer” means one of the following with regard to a battery that is sold, offered for sale, or distributed in the state:

- (A) Any person who owns or licenses a trademark or brand under which a battery or battery-containing product is sold, offered for sale or distributed;
- (B) Any person who imports the battery or battery-containing product into the country for sale or distribution in the state.

Alternative B (CA preferred approach): Tiered definition coupled with sales ban for non-compliant producers

“Producer” means any of the following with regard to a battery that is sold, offered for sale, or distributed in the state:

- (A) The person who manufactures the covered product and who sells, offers for sale, or distributes the product in the state.
- (B) If there is no person who is the producer of the product for the purpose of paragraph (A), the producer of the covered product is the person who imports the product into the state for sale or distribution.
- (C) If there is no person who is the producer for the purpose of paragraphs (A) and (B), the producer is the person who sells the product in the state.

And legislation must:

Specify a sales ban of non-covered products at the Producer level only

Alternative Approaches:

- No De Minimis exemption, but allow for enforcement discretion.

Additional Comments

- Brand owner needs to be defined in the producer/BCP definition.
- Suggest language to capture internet sales, “offered for sale in or into.”
- If “producer” definition includes the following language “brand under which a battery or battery-containing product is sold, offered for sale...” as above, “brand” definition needs to consider this.
- Battery-containing product manufacturers and producers could both be considered under a separate category of “obligated entities” or “steward” rather than considered as “producers.”
- The untiered definition of producer (Alternative A) allows for enforcement at any level or multiple levels in the supply chain, giving flexibility in enforcement. When the tiered definition of producer is coupled with a sales ban at the producer level (Alternative B1), it allows for streamlined enforcement at any level in the supply chain, and ensures that there is always an entity to hold responsible for joining a stewardship organization and/or submitting a program plan.

- The “producer” exemption above addresses primary, and not rechargeable, battery-containing products because 1) unlike primary batteries, most rechargeable batteries are sold with a product, and 2) because of this, rechargeable-battery-containing product producers currently are members of the existing voluntary product stewardship program, and existing rechargeable battery EPR programs in the US and Canada, and it is not practical to recommend changing that long-standing, existing funding structure.

#4: BATTERY-CONTAINING PRODUCT MANUFACTURER REQUIREMENTS/OBLIGATIONS

Preferred Model:

“Battery-containing product” means a rechargeable-battery-containing product or a primary-battery-containing product.

“Producer” does not include any person who manufactures, sells, offers for sale, distributes or imports into the country for sale in the state a primary battery-containing product if such product uses only primary batteries supplied by a producer participating in an approved battery stewardship plan.

Battery-containing product (BCP) manufacturers will be defined as “producers,” but, if they are primary BCP manufacturers, they can opt out if they can certify to a stewardship organization that they are only using compliant batteries.

BCP manufacturer responsibilities include:

- Knowing if the brands they use in BCPs are compliant.
- Fulfilling the responsibilities of a producer, either individually or through a stewardship organization, or only using batteries in BCPs that are in compliance. If only using compliant batteries, a BCP manufacturer can determine its compliance by review of the producers and brands listed on the Internet web site of approved plans.

Additional Comments

- The “producer” exemption above addresses primary, and not rechargeable, battery-containing products because: 1) unlike primary batteries, most rechargeable batteries are sold with a product; and 2) because of this, rechargeable-battery-containing product producers currently are members of the existing voluntary product stewardship program, and existing rechargeable battery EPR programs in the US and Canada, and it is not practical to recommend changing that long-standing, existing funding structure.

#5: RETAILER REQUIREMENTS/OBLIGATIONS

Preferred Model:

“Retailer” means any person who sells batteries or battery-containing products in this state or offers batteries or battery-containing products in this state to a consumer.

The collections of any producer that also functions as a retailer, and that is not part of a stewardship organization, need not meet the “statewide” requirement, provided that they collect batteries at all of their retail locations and that they accept all battery types and brands covered under this law on a free, continuous, convenient, and accessible basis.

No retailer shall sell or offer for sale a battery or battery-containing product unless the producer of the battery or battery containing product has a battery stewardship plan approved by the Department, is a member of a battery stewardship organization with a battery stewardship plan approved by the Department, or is exempt from the requirement to have such a plan or participate in such an organization, as determined by a review of the producers and brands listed on the Internet web site of approved plans

If the plan is operated by a producer that is a single retailer, including a retailer with more than one physical location, the annual report is not required to provide a summary financial statement that documents the financing of the plan.

Retailer responsibilities include:

- Knowing if the brands of batteries and BCPs they sell are compliant.
- Only selling batteries and BCPs that are in compliance, and can comply by review of the producers and brands listed on the Internet web site of approved plans.

Retailers are allowed to “sell through” stock of non-compliant batteries for up to a year from the effective date of the law, or within a year from the time the producer/stewardship organization website(s) list the non-compliant battery brand(s).

Alternative Approaches:

- Retailers are allowed to “sell through” stock of non-compliant batteries for up to six months from the effective date of the law.
- A single retailer that is a producer, including a retailer with more than one physical location, is not exempt from producer requirements, including providing a summary financial statement that documents the financing of the plan.

Additional Comments

- List of compliant batteries and BCPs must be provided and retailers may use it to determine which batteries and BCPs are compliant.
- Collection sites must visibly promote drop off at their location.
- Retailers can meet the requirement to know whether brands of batteries and battery-containing products they sell are compliant, by going on a website managed by the stewardship organization or by establishing requirements in their supply chain.
- If a retailer chooses to participate as a collection point, then the stewardship plan can address how they educate the consumers (e.g., that retailers must make educational materials available to consumers as provided by producers or the stewardship organization).

#6: STEWARDSHIP ORGANIZATION(S)

Preferred Model:

Allows compliance by individual producers, as well as multiple producers that form a stewardship organization(s).

The stewardship organization(s) responsibilities shall include:

- Development and submittal of a stewardship plan that meets the requirements of stewardship plan contents set out below in #11 Stewardship Plan Contents.
- Including the list of battery brands and battery-containing product brands covered in each plan and on a publicly available website that it maintains. A requirement for maintaining/updating the websites would be included.
- Identifying that a producer is using a compliant battery and ensuring that producers are participating.
- Ensuring that a manufacturer of a battery-containing product is using a compliant battery.
- Identifying BCP manufacturers that are using compliant batteries, and including these manufacturers on a list posted to their website.
- Proposing performance goals in the program plan subject to approval by the Department.
- Pursuing, as necessary, private right of action to recoup funds from non-compliant and under-performing producers, which includes outreach and assistance to ensure that the entity knows the law prior to any enforcement action.
- Indicating in the plan how retailers will be notified about their obligation to sell only compliant brands.
- Developing and providing outreach and educational materials about the program to be used by retailers, government agencies, and non-profit organizations.
- The entity submitting the plan is responsible for all costs for battery collection, transportation, processing, education, administration, agency reimbursement, recycling and end of life handling in accordance with environmentally sound management practices

Any producer who supplies batteries to a retailer shall provide, or have such producer's battery stewardship organization provide, the retailer with educational materials describing collection opportunities for batteries.

Additional Comments

- If a BCP manufacturer is identified as using compliant batteries through inclusion on a list of compliant batteries and compliant BCP manufacturers, *all* batteries sold with products manufactured by the BCP must be in compliance.

#7: STATE AGENCY ROLE

Preferred Model:

The Department's responsibilities shall include:

- Reviewing, requiring changes in, and approving program plans and annual reports, if acceptable.
- Maintaining links to producer/stewardship organization websites that list compliant brands for retailer and BCP manufacturers to determine their compliance.
- Developing reports, if required by the Legislature, including recommended changes, and posting on the Department website.

- **General compliance and enforcement:**
 - Enforcement is a primary responsibility of the Department, which takes compliance action involving outreach and assistance to ensure that the entity knows the law prior to initiating enforcement proceedings. Compliance efforts may be in concert with the industry’s Private Right of Action. The stewardship organization could move ahead with its action while compliance action is in process.
 - Enforcement authority should be given to the implementing agency to enforce against non-compliant brand owners and retailers and to the Attorney General’s office to take civil action if warranted.
 - Specific to retailers, those that sell their own brand are considered brand owners, while those that sell other brands are only covered under the Do Not Sell provision. Retailers must comply with “Do Not Sell” provisions for batteries or BCPs that are not in compliance, and there will not be a mandate regarding the way in which they must demonstrate compliance (e.g., retailers can check listings of approved batteries and BCPs, stipulate in contracts with their suppliers that batteries and BCPs be compliant, etc.). It is the retailer’s obligation to know if the brands they sell are compliant. The Department is the only entity that can enforce against retailers selling non-compliant batteries or BCPs.

Additional Comments

- The Department will not individually inform all retailers, but will assist in educational / outreach efforts generally, and when non-compliant retailer comes to their attention, including through notification by SO to the Department.

#8: FUNDING MECHANISM: Method of defining producers’ financial obligations

Preferred Model:

The battery stewardship program(s) must provide for internalized producer or organization financed end-of-life management for discarded batteries collected.

The producers must ensure adequate funding is available to fully implement approved stewardship plans including battery collection and processing, education, and evaluation, as well as covering state agency costs for administration and enforcement. Authorizes state oversight agency to recover its full costs associated with oversight and enforcement.

Alternative Approaches:

- Washington worked with Paint Care to include a cost reimbursement model in proposed paint legislation to cover agency costs. This model gets away from a per producer fee, and since agency costs do not tend to remain constant throughout the life of the program, a flat fee makes less sense. This approach allows flexibility to adjust for the workload (more at the start of the program, less as the program matures). The model works as follows:
 - Beginning April 1, 2016, and annually thereafter, the department shall determine the department's costs required to be paid by each stewardship organization sufficient to cover only the department's costs of administering and enforcing paint stewardship programs under this chapter. Any unspent money from the previous twelve-month period must be retained in the paint product stewardship account created by this act and applied to reduce payments by the stewardship organizations in the following year.

If there is more than one stewardship organization implementing a paint stewardship program in Washington, the fee will be divided equally between programs.

Additional Comments

- Legislation must define cost responsibilities so that it is clear what costs producers/stewardship organizations are responsible for, not responsible for, and which costs are negotiated.
- Negotiation for reimbursement to local governments from producers/stewardship organizations for labor costs during collection/consolidation of batteries should be allowed.

#9: PERFORMANCE GOAL

Preferred Model:

“Performance goal” means a metric proposed in a battery stewardship plan to measure, on an annual basis, the performance of that plan, taking into consideration technical feasibility and economic practicality, in achieving continuous, meaningful progress in improving the rate of battery recycling in the state, and any other specified goal of the program. Performance goals shall include, but not be limited to target collection rates, target recycling efficiencies by battery recycling process, and goals for convenience and accessibility.

"Collection rate" means a percentage, by weight, that each producer with an individual plan or battery stewardship organization collects by an established date and that is calculated by dividing the total weight of the batteries that are collected during a calendar year by the average annual weight of batteries that were estimated to have been sold in the state by participating producers during the previous three calendar years whenever such estimate is based on a reasonable pro rata calculation based on national sales.

Recycling and reuse shall be preferred over any other management method for collected batteries, to the extent that recycling is technologically feasible and economically practical.

Not later than accompanying the second annual report, and at least every two years thereafter, the producer or stewardship organization shall submit updated performance goals to the Department for approval, that are based on the experience of the program up to that point.

Alternative A: “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.

Alternative B: “Recycling” means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

Alternative Approaches:

Goals can be set in one of three ways depending on state specific circumstances: (1) Goals, or a formula to derive goals based on prior year collections, are set in statute; (2) Statute gives the oversight agency the authority to set goals; or (3) Stewardship organization(s) propose their own goals in their plans, but the oversight agency has the authority to change, approve, or reject them.

Define clear and firm convenience standards and recycling goals.

Clearly articulate, in the legislation, that it is the producer's responsibility to manage the batteries in accordance with the waste hierarchy, which may be included in the statute.

Additional Comments

- If disposal is chosen, then the annual report must identify the steps being taken to make recycling cost-effective.
- Legislation should: 1) require maximizing the reuse of materials and recycling of collected batteries; and 2) require transparency on all processors and final disposition of materials.
- Regarding the definition of "Recycling" which excludes slag (Alternative B), use of slag as a soil amendment could be designated as a beneficial use while not being considered recycling.

#10: CONVENIENCE STANDARD

Preferred Model:

The stewardship program shall:

- provide for free, continuous, convenient, and accessible statewide opportunities for the receipt of discarded batteries from any person in the state with a discarded battery that was discarded in the state; and
- provide suitable collection containers at, or make other mutually agreeable arrangements for, any permitted or authorized municipal facilities (e.g., transfer stations, and municipal offices) for segregated, discarded batteries, at no cost to such municipality.

The collections of any producer that also functions as a retailer, and that is not part of a stewardship organization, need not meet the "statewide" requirement, provided that they collect batteries at all of their retail locations and that they accept all battery types and brands covered under this law on a free, continuous, convenient, and accessible basis.

All stewardship program collection sites must accept all batteries, regardless of device type or brand.

The legislation or the stewardship plan must define an accessibility metric.

Sample Language:

Accessibility Metric:

Preferred minimum standards are: one permanent collection site within a 15 mile radius for 95% of residents, and one additional site for every 30,000 residents in densely populated areas, as well as an explanation in the plan(s) of how areas without a collection site and island/isolated areas will be served. Allow for events to supplement.

Alternative Approaches:

An objective, measurable minimum convenience standard can be defined (e.g., number of collection sites required within a geographic area and/or population served). This standard will be state specific and should apply equally to all manufacturers and stewardship plans.

Convenience standards can be set in one of three ways depending on state specific circumstances: in legislation, developed by the state agency, or proposed in a stewardship plan and approved by the state agency.

Additional Comments

- If this is left to future legislation, it might be difficult to establish after the original bill is adopted.
- Any retail store selling batteries shall be included as collectors if they volunteer and are qualified.
- The plan(s) shall address how existing battery collectors, transporters, consolidators, processors and curbside services may integrate with the program. Collection network should incorporate/utilize existing infrastructure to the extent practical.

#11: STEWARDSHIP PLAN CONTENTS

Preferred Model: The stewardship plan will:

- (1) Identify each producer participating in the plan and their brands of batteries and battery containing products;
- (2) Describe the financing method used to implement the plan. An organization may choose to allocate costs based upon a mutually agreeable, non-discriminatory method. Absent such an agreement, the method shall allocate costs of collecting and recycling batteries directly attributable to each battery type and other costs shall be allocated on the basis of the respective weights of types of batteries collected;
- (3) Establish performance goals for each of the first three years of the program;
- (4) Define an accessibility standard, if not already specified in the legislation;
- (5) Describe how the convenience standard will be met;
- (6) Identify proposed facilities to be used by the program and how the batteries will be managed in an environmentally sound way;
- (7) Detail how the program will promote the recycling of discarded batteries; and
- (8) The plan must propose goals for increasing public awareness and include a description of the public education program.

The plan shall describe how the stewardship organization will collect and recycle batteries roughly equivalent to the stewardship organization’s national market share of sales of batteries. Any stewardship organization composed of greater than 50% of the national market share shall ensure that their plan provides statewide collection opportunities for participants. All plans shall accept all battery types and brands covered under this law on a free, continuous, convenient, and accessible basis.

Not sooner than five years after implementation of a plan, the Department may require any producer or stewardship organization to submit a revised plan if the approved plan is not meeting performance goals.

Additional Comments

- Plans(s) should require a strategy to increase collection amounts/rates over time towards a reasonable optimal target.

- Legislation must clearly state when plans must be updated/amended, and the process for doing so. Processes are defined to adjust targets and revise plans to improve collection performance. Achieving or missing targets should trigger changes to the plan.
- Consider requirement for public review of plans.
- Include strategies for managing and reducing the life cycle impacts of a covered product (e.g., producer/manufacturer may identify goals that address: the use of virgin material in the manufacture of a covered product, recycled content and recyclability; consumption of water or energy; use or generation of hazardous substances; carbon footprint; product's longevity);
- Describe the consultation process used to consult with affected stakeholders prior to plan submittal and during implementation (e.g., consulting an advisory committee)
- Identify market development opportunities for collected materials.

#12: OUTREACH AND EDUCATION REQUIREMENTS

Preferred Model:

A plan must include a public education and outreach program. The plan must provide a detailed and comprehensive list of promotion activities including, but not limited to: 1) website development and maintenance; 2) development and distribution of periodic press releases and articles; and 3) outreach/education materials that may be used by retailers, government agencies, and nonprofit organizations.

A producer or their stewardship organization shall provide marketing, outreach, training, and/or education for stakeholders, including consumers. Any producer who supplies batteries to a retailer shall provide, or have such producer's battery stewardship organization provide, the retailer with educational materials describing collection opportunities for batteries.

Additional Comments

- Evaluation of success of education and outreach efforts is included in annual report requirements (see below in #22 Reporting Requirements)
- Provide education/outreach to the public at all collection sites (e.g., HHWs, libraries, government facilities, etc.).
- If a retailer chooses to participate as a collection point, then the stewardship plan can address how they educate the consumers (e.g., that retailers must make educational materials available to consumers as provided by producers or the stewardship organization).

#13: ANTI-TRUST & COMPETITION

Preferred Model:

Each producer and battery stewardship organization shall be immune from liability for any claim of a violation of antitrust law or unfair trade practice, if such conduct is a violation of antitrust law, to the extent such producer or organization is exercising authority pursuant to the provisions of this law.

#14: REIMBURSEMENT

Preferred Model:

Reimbursement from another producer or SO can be requested only after the producer/SO achieves the collection rate performance goal. Reimbursable costs include: 1) costs of collection, transport, recycling, and other methods of disposition; and 2) reasonable educational/promotional and admin costs. The department will not be required to provide assistance or participate in a reimbursement request or independent audit of the request.

Alternative Approaches:

Delete requirement for target collection to be met before reimbursement could be sought. If two stewardship organizations incur costs to process each other's batteries, then they should be able to net out and invoice or sue, regardless of how much they have collected. Allowing reimbursement only after targets met encourages setting low targets.

#15: PREEMPTION

Preferred Model:

Alternative Approaches:

Include a requirement to restrict smaller jurisdictions from separate labeling provisions. Other specific preemptions might be considered.

Additional Comments

- Where a state battery stewardship law results in effective EPR outcomes, the need for local governments to regulate is reduced.
- If a bill preempts existing ordinances, it should not lower existing standards.

#16: LABELING

Preferred Model:

Batteries must be labeled to identify the chemistry employed in storing energy in the battery regardless of whether it is a replacement battery, or is packaged with or contained in a battery –containing product. Producers are responsible for ensuring that batteries are labeled. Sales of batteries that are not properly labeled are prohibited.

Additional Comments

- Very small batteries (button batteries) could be exempted from the requirement to label. CT DEEP has included "to the extent feasible" in their draft bill as a practical exemption from this requirement.
- Early versions of bills proposed in Washington required the batteries to bear a "mark" clearly identifying the battery manufacturer.

<p>#17: DISPOSAL BAN</p> <p>Preferred Model: No disposal ban, but recycling shall be preferred over any other disposal method for batteries, to the extent that recycling is technologically feasible and economically practical.</p> <p>Alternative Approaches: A disposal ban, unless otherwise approved by the environmental agency.</p> <p>Additional Comments</p> <ul style="list-style-type: none"> • Include reference to waste hierarchy here. • California already bans batteries from solid waste disposal and encourages use of the solid waste hierarchy.
<p>#18: CIVIL ACTION</p> <p>Preferred Model: Permitted when more than \$1000 dollars in actual reimbursable costs are incurred. Actions brought against a producer who participates in a battery stewardship organization that covers multiple producers shall be brought against the organization and not the individual producer. The state agency will not be required to provide assistance or participate in any civil action.</p>
<p>#19: PENALTIES FOR VIOLATION(S) AND ENFORCEMENT</p> <p>Preferred Model: Provides for orders to correct or abate violations including remedial measure and civil penalties. Civil penalties and enforcement are the responsibility of the state agency.</p> <ul style="list-style-type: none"> • Specifies a sales ban of non-covered products through the tiered definition of producers (i.e., more efficient enforcement of smaller groups first). • Fines not permitted to be paid by assessment funds <p>Additional Comments Washington would require clear articulation of enforcement authority with reference to specific violations and penalties/fines.</p>
<p>#20: ADMINISTRATIVE FEES</p> <p>Preferred Model: Administrative fees are paid by producers, and are sufficient to cover state agency oversight costs, including planning, plan review, annual oversight, enforcement, and other directly related tasks. Specific fee amounts will be determined by individual states.</p> <p>Alternative Approaches: See previous comment under #8 Funding Mechanism regarding Washington’s reimbursement model approach which gets away from a per producer fee and allows flexibility to adjust for the workload (more at the start of the program, less as the program matures).</p>

#21: AUDIT REQUIREMENT

Preferred Model:

Manufacturer programs are independently audited annually with audit results included in manufacturer plans or reports to the state agency.

Additional Comments

- Provide for audit requirement only if SOs/producers are requesting reimbursement. In this case, producers/stewardship organizations can audit each other. When there is no assessment, there is no need for a financial audit.

#22: REPORTING REQUIREMENTS

Preferred Model:

Each producer or stewardship organization shall submit an annual report which will be posted on the state agency's website. The report must include:

- (1) The weight of batteries collected pursuant to the program;
- (2) The weight and type of material recycled from batteries collected under the program, in total, and by battery recycling process;
- (3) A report of the estimated total sales, by weight, of batteries and batteries contained in or with battery-containing products sold in the state by or on behalf of participating producers, for the each of the previous three calendar years;
- (4) The collection rate achieved in the prior year, and how this rate was calculated;
- (5) The manner in which the collected batteries were managed and recycled, including a discussion of best available technologies and recycling efficiency rates;
- (6) If any batteries were disposed, the actions being taken to make recycling more cost-effective in future;
- (7) A summary financial statement that documents the financing of the plan and is sufficiently detailed to indicate program costs and expenditures, and provide transparency so that funds collected in state are spent on the state program. The statement should provide the total cost of the implementing the stewardship program broken out by administrative, collection, transportation and disposition, and communications costs. The summary financial statement is required to document the financing of the plan except as follows:
 - (A) If the plan is operated by a producer that is a single retailer, including a retailer with more than one physical location, the report is not required to provide this information.
 - (B) If the producer or organization operates a program in another state, in addition to this state, the producer or organization may submit a financial statement that includes all of those states, including this state, breaking out financial information pertinent to this state by best estimates and stating the methods by which such estimates were made;
- (8) A summary of the education and outreach that supports the program and what, if any, changes were made;
- (9) Where information is posted for the public;
- (10) An updated map indicating the location of all drop points in the state with appropriate website links;
- (11) The manner in which the collected batteries or battery-containing products were sorted, consolidated and processed;

- (12) Information on progress made towards targets and an explanation of why performance goals were not met, if applicable;
- (13) An evaluation of the effectiveness of methods and processes used to achieve performance goals of the program, including an evaluation of the success of education and outreach efforts; and
- (14) Recommendations for any changes to the program.

Not later than accompanying the second annual report, and at least every two years thereafter, the producer or organization shall submit updated performance goals to the Department for approval, that are based on the experience of the program up to that point.

The Department must post all plans and reports of the battery recycling program on the Department's web-site, and, if required by the Legislature, report every ___X___ years (state-specific) on the status of the battery recycling program and post the report on the department's web-site.

Alternative Approaches:

- A producer or organization operating a program in another state, in addition to this state, is not exempt from providing sufficiently detailed financial documentation to indicate program costs and expenditures, and provide transparency so that funds collected in state are spent on the state program (e.g., in-state expense estimates based on per capita costs across several states would be insufficient). This may be state specific.
- A single retailer, including a retailer with more than one physical location, is not exempt from producer requirements, including providing a summary financial statement that documents the financing of the plan.

Additional Comments

- Include data broken out by battery chemistry.
- If possible examine collection rates with some geographic element so we can see if certain parts of the state need additional services or promotional activities.
- Describe when an independent third party audit of the program is required to be provided as part of annual report (may not be every year).
- An independent financial audit of the stewardship program should include a breakdown of the program's expenses such as collection, recycling, education, and overhead.

#23: IMPLEMENTATION SCHEDULE

Preferred Model:

Each state will determine its own implementation or phase-in schedule.

Additional Comments

- Allow adequate time between bill passage and plan submittal.
- Allow adequate time between plan submittal/approval and program start.
- Consider when assessment (if applicable) goes into effect.
- Consider when agency work begins and when costs will be covered.
- Be wary of phased start if assessment goes into effect but collection network is not complete.

OTHER: Washington would like authority to write rules if necessary.