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May 28, 2024

## **RE: Call2Recycle Comments for Washington Battery Stewardship Program Rulemaking**

Thank you for the opportunity to provide written comments to the informal rulemaking. Below are the references to each clause for which the comment is written and the comment immediately below each entry.

**Section 2 (7) Definitions:** "Easily removable" means designed by the manufacturer to be removable by the user of the product with no more than commonly used household tools.

**Comment:** What would be considered a common household tool that is appropriate to use to remove the battery? The two examples recommended for discussion are 1) the concept of using a hammer or similar device that harms the integrity of the product and 2) do watch battery replacement tools meet the definition of "common household tools".

**Section 2 (14) (a) (i) and (ii) Definitions:** definitions for Producer of covered battery and for covered battery-containing product.

**Comment:** Recommend discussion as to how online sales of foreign brand owned products are addressed? In other words, does an online retailer become the "producer" if they are selling items online only that are manufactured by a foreign company and the brand is owned by a foreign company. Alternatively, perhaps the online retailer is never a producer, they must just stop selling the item (per section 4)?

**Section 5 (1) (a) Stewardship Plan components:** Lists and provides contact information for each producer, battery brand, and battery-containing product brand covered in the plan;

**Comment:** Specifically, Call2Recycle can provide the list of the producers and the list of brands but not with those two items associated with each other. Some companies would prefer to keep confidential the brands they own/produce so we do not associate brand with producer publicly. Discuss clarifying this requirement so that the data can be submitted to the department but in separate lists.

**Section 5 (1) (i) Stewardship Plan components:** Describes the financing methods used to implement the plan, consistent with section 7 of this act, including how producer fees and fee modulation will incorporate design for recycling and resource conservation as objectives, and a template reimbursement agreement, developed in consultation with local governments and other program stakeholders;



**Comment:** It is not understood what is meant by “a template reimbursement agreement”. Clarification is needed to understand the reimbursement to whom and for what. Additionally, we should define who are considered the “program stakeholders”? Lastly, does the BSO, Ecology, or another entity determine who the stakeholders are?

**Section 5 (1) (o) Stewardship Plan components** Proposes goals for increasing public awareness of the program, including subgoals applicable to public awareness of the program in vulnerable populations and overburdened communities identified by the department under chapter 70A.02 RCW, and describes how the public education and outreach components of the program under section 9 of this act will be implemented;

**Comment:** There should be more clarity on the expectations for the timing of when the communication is provided to the BSO on who is defined as a *vulnerable populations and overburdened communities* identified by the department and when that information is to be included in the Education and Outreach plan. Appropriate timelines must be set up to ensure the BSO can plan Education and Outreach efforts accordingly without frequently adjusting Education & Outreach plan. Recommend that an update to this “population” is provided no more than once a year and should be incorporated into the BSO plan in the following calendar year.

**Section 5 (2) (a) Stewardship Plan components** If there are significant changes to the methods of collection, transport, or end-of-life management of covered batteries under section 8 of this act that are not provided for in the plan. The department may, by rule, identify the types of significant changes that require a new plan to be submitted to the department for approval. For purposes of this subsection, adding or removing a processor or transporter under the plan is not considered a significant change that requires a plan resubmittal;

**Comment:** Examples of “significant changes” that would require a new plan to be submitted needs to be specified?

**Section 5 (2) (b) Stewardship Plan components** To address the novel inclusion of medium format batteries or large format batteries as covered batteries under the plan;

**Comment:** Is it the expectation that a BSO resubmit an entire plan with both portable and medium format batteries when the definition of “medium format” begins in 2029?



**Section 5 (3) (c) and (4) Stewardship Plan components** introducing the concept of a quarterly update.

**Comment:** This is the first and only time the concept of a “quarterly update” is included in the law. There is no other guidance nor parameters of what this quarterly update includes. This concept needs more explanation regarding what is expected of a BSO for a quarterly update.

**Section 7 (4)(a) Stewardship Program Components – Funding** Except for costs incurred by a local government or local government facility exercising the authority granted by section 8(4)(c) of this act, a battery stewardship organization must reimburse local governments for demonstrable costs, as defined by rules adopted by the department, incurred as a result of a local government facility or solid waste handling facility serving as a collection site for a program including, but not limited to, associated labor costs and other costs associated with accessibility and collection site standards such as storage.

**Comment:** The reimbursable costs by the BSO to local government or local government facility must be better defined to keep expenses defined for planning purposes. Call2Recycle’s recommendation is to allow the reimbursement of labor costs for these entities to prepare the batteries (i.e. terminal protection) for transportation of the collection kit. It is unclear why a local government would incur expenses for storage of batteries and/or meeting accessibility requirements.

**Section 7 (4)(c) Stewardship Program Components – Funding** A battery stewardship organization must include in its battery stewardship plan a template of the service agreement and any other forms, contracts, or other documents for use in distribution of reimbursements. The service agreement template must be developed with local government input. The entities seeking or receiving reimbursement from the battery stewardship organization are not required to use the template agreement included in the program plan and are not limited to the terms of the template agreement included in the program plan.

**Comment:** This clause uses the term “service agreement template”. Prior clauses refer to a “template reimbursement agreement”. Are these two different documents? If so, what are the differences? If they are the same, then there why are there two different names and two different groups that these are supposed to be developed in conjunction with. We need to clarify who is involved and what this entails. Lastly, if entities seeking reimbursement are not required to use the agreement developed in conjunction with government and stakeholders, then is the BSO required to develop a template that can be circumvented?

**Section 8 (2) (b) Stewardship Program Components – Collection and Management Requirements**

Medium format batteries may only be collected at household hazardous waste collection sites or other sites that are staffed by persons who are certified to handle and ship hazardous materials under federal regulations adopted by the United States department of transportation pipeline and hazardous materials safety administration.





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**Comment:** US DOT Special Permits for shipping containers of medium format collection kits, allow an exemption for the requirement to have “staffed persons who are certified to handle and ship hazardous materials”. Call2Recycle strongly recommends that clarification is added to this clause that allows for non-hazmat trained staffed site to act as collection sites for medium format batteries if a US DOT SP permits this.

### **Section 8 (3) (b) (ii) Stewardship Program Components – Collection and Management**

**Requirements** The establishment of collection sites that are accessible and convenient to overburdened communities identified by the department under chapter 70A.02 RCW, in an amount that is roughly proportional to the number and population of overburdened communities identified by the department under chapter 70A.02 RCW relative to the population or size of the state as a whole.

**Comment:** It is unclear what this clause means. More clarity is needed to better understand how many collection sites are required that are accessible and convenient to overburdened communities. Is this supposed to be a percent of the overburdened community population is within X miles of a collection site in an overburdened community?

### **Section 8 (3) (b) (iv) Stewardship Program Components – Collection and Management**

**Requirements** Collection opportunities for portable batteries at special locations where batteries are often spent and replaced, such as supervised locations at parks with stores and campgrounds;

**Comment:** Does this require that all supervised locations at parks with stores and campgrounds must have a collection site or that a portion do? If it is a portion, what is the minimum? What else might be defined as a “special location where batteries are often spent”?

### **Section 8 (4)(a) Stewardship Program Components – Collection and Management Requirements**

Battery stewardship programs must use existing public and private waste collection services and facilities, including battery collection sites that are established through other battery collection services, transporters, consolidators, processors, and retailers, where cost-effective, mutually agreeable, and otherwise practicable.

**Comment:** Does this clause include hazardous waste contractors servicing places like retail or other business locations since they would be defined as a collection service?

**Section 10 (1) (a) Reporting Requirements** An independent financial assessment of a program implemented by the battery stewardship organization, including a breakdown of the program's expenses, such as collection, recycling, education, and overhead, when required by the department;





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**Comment:** The phrase “when required by the department” is vague and does not provide why it would be required and timing. Recommend we discuss why an independent assessment would be triggered by the department. We should also place time parameters around when the request is made and when the assessment would be due to be submitted. I recommend that there is a 12-month window from when the request is made to when an assessment is due so that a BSO has the proper time to acquire an independent firm, agree on a scope of work, carry out the assessment, and have proper funding to support the assessment.

**Section 10 (1) (d) Reporting Requirements** The weight of materials recycled from covered batteries collected under the program, in total, and by method of battery recycling;

**Comment:** What is meant by “method of recycling”? Does this refer back to the recycling hierarchy?

**Section 14 (1) (b) Marking Requirements for Batteries** Beginning January 1, 2030, marked with proper labeling to ensure proper collection and recycling, by identifying the chemistry of the battery and including an indication that the battery should not be disposed of as household waste.

**Comment:** The same exception for “batteries that are less than one-half inch in diameter or does not contain a surface whose length exceeds one-half inch” that is written in (1)(a) should also be included in this clause.

**Section 14 (2) Marking Requirements for Batteries** A producer shall certify to its customers, or to the retailer if the retailer is not the customer, that the requirements of this section have been met, as provided in section 4 of this act.

**Comment:** it is not clear what is meant by “certify”. Recommend we clarify and state that certification may be a written statement by the producer as one example of certification.

Sincerely,

Carin Stuart