

# Crystal Leatherman

## Positive:

- No Mandatory Takeback or POS Fees: Retailers appreciate that there is no requirement for retailers to participate in mandatory battery takeback programs or point-of-sale (POS) fees.
- No Mandatory Retailer Education Requirements: Members are supportive of not mandating retailer education requirements.
- Initial Enforcement Measures: Support for Ecology's approach to enforcement, which would begin with a written warning or order before escalating to financial penalties.

## Questions

- Has the list of approved battery suppliers been created or is it in the process of being created?
  - o If it is developed, please share where to find it
  - o If not yet, what is the process/timeline for the development of the supplier list

## Feedback, or Areas of Concern:

### 1. Definitions – WAC 173-905-030

- Large Format Battery:
  - o There is a request for clarification on what constitutes a "large format battery." Specifically, does this definition apply to vehicle batteries?
  - o While the "covered battery" definition explicitly states that vehicle batteries are not included, members are concerned that the definition of "large format battery" could unintentionally capture them. This could create compliance challenges if the definition is unclear.
  - o Current definition:
    - "Large format battery" means:
    - (a) A rechargeable battery that weighs more than 25 pounds or has a rating of more than 2,000 watt-hours; or
    - (b) A primary (non-rechargeable) battery that weighs more than 25 pounds.
- Potential Conflict: On page 11 of WAC 173-905-200 (Role of Retailers), the draft states:
  - Beginning January 1, 2028, a retailer may not sell, offer for sale, distribute, or otherwise make available for sale a large format battery, covered battery, or battery-containing product unless the producer of the covered battery or battery-containing product certifies to the retailer that the batteries are marked consistent with WAC 173-905-310.
- Producer Definition:
  - o The definition of "Producer" is confusing due to inconsistencies:
    - "(b) Owns a brand that sells a covered battery."
    - Brands themselves do not sell covered batteries; retailers or manufacturers do.
    - (c) Refers to battery-containing products, while (a) and (b) only reference covered batteries.
  - Concerns that the five subsections of this definition do not clearly align with the statute, making it difficult to interpret compliance requirements.

### 2. Retailer Responsibilities – WAC 173-905-200

- Compliance Burden on Retailers:
  - o The current draft places a cascading responsibility on retailers, requiring them to verify that battery producers certify participation in a stewardship organization.
  - o Concerns with this creating a paperwork and contractual burden on retailers, particularly as the

number of battery producers continues to grow across both private and external brands.

- **Conflicting Language on Certification Requirements:**

- o The draft states that producers must certify compliance directly to retailers but later states that retailers must verify compliance via the Department of Ecology's website. This creates confusion regarding the actual verification process.

Clarification needed:

- RCW 70A.555.030(2): States that a retailer is compliant if the battery/product is listed on the Department of Ecology website.

- RCW 70A.555.030(4): States that a retailer may rely on certification from the producer.

These provisions seem contradictory—does the retailer need direct certification from the producer, or is it sufficient to check the website?

- **Challenges with Battery-Containing Product Compliance:**

- o Ensuring that individual batteries within battery-containing products comply with regulations will be particularly challenging for multi-brand retailers (e.g., REI and other outdoor retailers).

- o Retailers can control compliance for their private-label brands but do not have the ability to physically inspect and verify compliance for every third-party battery-containing product they sell.