PRBA – The Rechargeable Battery Association
2050 M Street NW · Washington, DC 20036

September 10, 2025

Submitted electronically via
Department of Ecology Public Comment Form
https://swm.ecology.commentinput.com/?id=84Dx26bpJ9

Chris Fredley
Washington State Department of Ecology
Solid Waste Management Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: **Comments on Battery Stewardship Program Rulemaking – Chapter 173-905 WAC**

PRBA – The Rechargeable Battery Association appreciates the opportunity to submit these comments on the Department of Ecology ("Ecology" or the "Department") Battery Stewardship Program proposed rule – Chapter 173-905 WAC – published on July 23, 2025. PRBA worked extensively with Ecology and other stakeholders on the development of the battery stewardship law (Senate Bill 5144 from the 2023 Regular Session, codified at RCW 70A.555.005 et seq.).

PRBA's members manufacture lithium cells and batteries. Our members also include leading manufacturers of cellular phones, notebooks, power tools, outdoor power equipment, medical devices, electric vehicles, micromobility devices, and stationary energy storage systems, as well as battery recyclers, retailers, packaging manufacturers, and testing laboratories. PRBA actively participates in battery extended producer responsibility (EPR) legislative and regulatory discussions in multiple U.S. states and at the federal level.

Our comments focus on certain regulatory provisions regarding fees, battery marking, and battery stewardship plan requirements that are of specific concern to our members.

1. Plan Review Fee – WAC 173-905-100 (2)

There are two fees discussed in the new proposed rule: a one-time plan review fee and an annual administrative fee. The proposed regulatory language does not provide a cap for the plan review fee and allows for an assessment of additional fees on a per-hour basis if the Department's actual review costs exceed a base plan review fee. PRBA suggests the plan review fee be capped, that it be established at least six months in advance for budgeting purposes for the battery stewardship organization (BSO), and that it contains no allowance for additional per-hour fees. The State of Washington reviews stewardship plans for other product categories and should be able to determine an adequate level of funding to review a battery stewardship plan without unbudgeted additional review fees.

2. Administrative Fee – WAC 173-905-100 (3)

Like the plan review fee, the annual administrative fee also is not capped although it will be based on Ecology's costs for the previous calendar year, with an allowance for increases determined by a fiscal growth factor (FGF) as calculated under RCW 43.135.025. PRBA suggests the annual administrative fee be capped for year one and then adjusted by the FGF. This will provide BSOs with greater certainty for their budgeting and determination of producer fees.

3. Marking Requirements – WAC 173-905-310

a. Subsections (2)(a) and (b) require marking of the brand as of January 1, 2028, and use of the crossed-out wheeled bin symbol as of January 1, 2030. Aside from marking requirements for small batteries (discussed below), PRBA has no concerns with these approaches as both are consistent with common marking practices found at the state, national, and international level.

b. Subsection (2)(c) requires producers to mark their batteries with the elemental names or elemental symbols from the periodic table for the primary constituents of both the anode and cathode materials of the battery as of January 1, 2030. Labeling of components such as lead and cadmium are already required under federal law and listing other anode and cathode materials is unnecessary for collection and recycling. This level of detail is meaningless to battery users and not needed by the recyclers. Listing the common chemistry nomenclature such as lithium ion, lithium, alkaline, etc. is already required under various domestic and international standards and provides sufficient information to consumers, handlers, and recyclers for safe end-of-life management. Separately, listing the active ingredient chemical name or periodic table symbol falls out of alignment with the marking requirements in battery stewardship laws in California, Colorado, Connecticut, Illinois, and Nebraska. The requirements are also out of alignment with the EU Battery Regulation, complicating marking of products sold in various global markets.

   PRBA suggests revising Subsection (2)(c) to read as follows:

   Beginning January 1, 2030, a producer shall mark their batteries with information, such as names, symbols, or codes, that identifies the chemistry of the battery.

This will allow producers to continue to use already established requirements from standards organizations such as the American National Standards Institute (ANSI), International Electrotechnical Commission (IEC), Society of Automotive Engineers (SAE), or other equivalent domestic and international standards for communicating the chemistry of the battery. This approach allows collectors and recyclers to distinguish chemistries without complicating already crowded labels for batteries and battery-containing products.

c. Subsection (4) provides an exemption from the marking requirements in subsection (2) if the batteries do not have a surface whose length exceeds one-half inch, in which case the required markings must be placed on the packaging. Although PRBA supports a small battery marking exception, we believe that the one-half inch standard is too small. For example, this standard would result in the need to include the required markings on a CR2032 coin cell lithium battery. This would be challenging given the other battery markings required under industry standards, such as voltage, manufacturing date, ingestion warning, country of origin, and terminal markings. PRBA recommends modifying the language in Subsection (4) to use a size standard found in domestic regulations and international standards. The ANSI small battery definition in ANSI Standards C18.1M, C18.2M and C18.3M references a cell or battery that fits within a truncated cylinder of a specific size and the standards provide for marking exceptions for small batteries. The CPSC regulations reference this same cylinder size at 16 CFR § 1501.4. Accordingly, PRBA recommends that the small battery exemption in Subsection (4) adopt the CPSC reference. Additionally, because producers do mark their cells and batteries with information regarding the chemistry and this information is important for recyclers, we would apply the exemption only to the marking requirements in subsections 2(a) and 2(b). Therefore, we suggest revising subsection (4) to read as follows:

The requirements described in subsections (2)(a) and (2)(b) of this section do not apply to a battery that can fit entirely, in any orientation, into the small parts cylinder described in 16 CFR § 1501.4. In this case, the marks required in subsections (2)(a) and (2)(b) shall be placed on the packaging of the battery or battery-containing product.

4. **Management of Non-Covered Batteries - WAC 173-905-110 and 120**

Section 110 (f) states BSOs shall carry out activities including:

"Distributing educational materials to the operator of each collection site detailing how noncovered products and batteries, such as recalled batteries, should be managed."

Section 120(3)(i) states that a battery stewardship plan must include various components including:

"A description of how collection sites will be trained to deal with receiving batteries that are not required to be collected such as batteries that are not easily removable from a product or covered electronic products under chapter 70A.500 RCW."

As these products are excluded from the scope of the law and the proposed rule, a BSO should not be required to carry out activities or provide materials for their management. PRBA recommends that these provisions be deleted from the proposed regulations. At a minimum, PRBA believes these requirements should be made optional for the BSOs.

5. **Modulated fees - WAC 173-905-120**

Section 120 of the proposed regulation states a proposed battery stewardship plan <u>must</u> include various components including, in Section 120(8):

"A description of how the battery stewardship organization will structure product fees to encourage:

a) Recyclability or recycling;
b) Use of recycled content; and
c) Other design attributes that reduce the environmental impacts of covered batteries."

This wording is much more prescriptive than the language in the battery stewardship law, which states that a BSO must develop a system that <u>encourages</u>, not requires, the use of design attributes that reduce the environmental impacts of covered batteries, such as through eco-modulated fees. RCW 70A.555.060(2).

There are no standard practices for how to determine the relative worth of one eco-design criteria over another. For example, if one battery design uses recycled content while another is manufactured in a facility using only energy generated from solar arrays, which product is more eco-friendly and by how much? Who can fairly determine a winner or loser and how would a BSO verify eco-design? Without standardization around how to assess eco-design and no ability to verify eco-design, how is a BSO to manage such a program?

PRBA suggests revising (8) Fee structure to:

A description of how the stewardship ~~will~~ may structure producer fees to encourage:

* * * *

PRBA appreciates the opportunity to comment on the Battery Stewardship Program proposed rule. Our diverse membership of battery and product manufacturers, battery recyclers, retailers, packaging manufacturers, and testing laboratories play an important role in the safe management of used, waste, and damaged, defective, and recalled batteries. We would welcome the opportunity for a more robust discussion of these issues and would be pleased to host a meeting between our members and Ecology's staff.

Please contact me at 202.719.7170 or mboolish@wiley.law with any questions regarding our comments.

Sincerely,

Marc Boolish

Marc Boolish
Executive Director