

Zero Waste Washington (Heather Trim)

Please see attached letter

September 10, 2025



Chris Fredley
SWM Program Rule Coordinator
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: Formal comment on proposed Chapter 173-905 WAC, Battery Stewardship Program

Dear Chris,

Thank you for the opportunity to provide input on the draft rule: *Chapter 173-905 WAC - Battery Stewardship Program*.

Zero Waste Washington is a nonprofit organization that represents the public on recycling and zero waste issues. We work to drive policy change for a healthy and waste-free world. We envision a just, equitable, and sustainable future where we all produce, consume, and reuse responsibly. We advocated for the Battery Bill and look forward to its implementation.

Thank you for your hard work on the rule and the comprehensive process to include stakeholder input.

We have the following comments on the draft rule:

WAC 173-905-020 Applicability:

Because there are provisions related to consumers (i.e., prohibition on disposal of batteries), should not consumers be included in this section?

WAC 173-905-030 Definitions:

- The draft rule includes a definition, not in statute, for Brand
"Brand" means a registered or unregistered trademark, a logo, a name, a symbol, a word, an identifying or a traceable mark that identifies a covered battery and identifies the owner or licensee of the brand.

We recommend that the rule should, instead, use the Brand definition from the Recycling Reform Act, which would be clearer and less circular. This also provides consistency for state programs.

- The draft rule includes a definition for Collection event which is not clear. We recommend the edit in red:
"Collection event" means a one-time or recurring designated activity at a site used by an operator to collect covered batteries on a particular day or days, storing them less than 48 hours.

- The draft rule includes an exclusion for Battery contained within a medical device, which omits important detailed language that is in statute. We recommend restoring the statute language, incorporated in red:

"Covered battery" does not include:

A battery contained within a medical device ~~that is not marketed to consumers as specified in Title 21 U.S.C. Sec. 321(h) as it existed as of xx date, that is not designed and marketed for sale or resale principally to consumers for personal use;~~

Statute language is: A battery contained within a medical device, as specified in Title 21 U.S.C. Sec. 321(h) as it existed as of the effective date of this section, that is not designed and marketed for sale or resale principally to consumers for personal use;

- The draft rule includes a definition of "Demonstrable costs" that does not align with statute. We support the local government comments you have received on this topic.
- The draft rule definition of Producer omits the clause "offered for sale" which is in statute. This should be included to cover instances of batteries that don't end up being sold for one reason or another, shown in red:

*"Producer" means the following person responsible for meeting the requirements of chapter 70A.555 RCW and this chapter for a covered battery or battery-containing product sold, **offered for sale**, or distributed in or into Washington state:*

Statute language is: "Producer" means the following person responsible for compliance with requirements under this chapter for a covered battery or battery-containing product sold, offered for sale, or distributed in or into this state:

This same comment applies to several other instances in the draft rule.

- The draft rule definition of Producer includes a new term – third party – which is not defined. And a quick search of the definition online finds that this term does not align with the statute language for this clause. This change is not consistent with statute and could cause conflict with underlying statutory definition. The statute language should be restored (or third party should be defined to align with statute language), as shown in red:

(ii) If the battery is sold under a retail ~~or third party~~ brand or under a brand owned by a person other than the manufacturer, the brand owner is the producer;

Statute language is: If the battery is sold under a retail brand or under a brand owned by a person other than the manufacturer, the producer is the brand owner;

- The above Producer definition comments apply to the relevant subclauses for *battery containing products* within the definition
- The Producer definition is missing important subclauses that are in statute (or we could not find this in the draft rule). These should be restored:

A producer does not include any person who only manufactures, sells, offers for sale, distributes, or imports into the state a battery-containing product if the only batteries used by

the battery-containing product are supplied by a producer that has joined a registered battery stewardship organization as the producer for that covered battery under this chapter. Such a producer of covered batteries that are included in a battery-containing product must provide written certification of that membership to both the producer of the covered battery-containing product and the battery stewardship organization of which the battery producer is a member.

A person is the "producer" of a covered battery or covered battery-containing product sold, offered for sale, or distributed in or into this state, as defined in (a) of this subsection, except where another party has contractually accepted responsibility as a responsible producer and has joined a registered battery stewardship organization as the producer for that covered battery or covered battery-containing product under this chapter.

- The draft rule definition of Retailer excludes an important clause from statute referring to situations where a battery might be provided without being sold. This language should be restored, as shown in red:

"Retailer" means a person who ~~offers sells covered batteries or battery-containing products for sale at retail~~ or otherwise makes available covered batteries or battery-containing products through any means including, but not limited to, sales outlets, catalogs, or an online marketplace to a customer or business.

Statute language is: "Retailer" means a person who sells covered batteries or battery-containing products in or into this state or offers or otherwise makes available covered batteries or battery-containing products to a customer, including other businesses, for use by the customer in this state.

WAC 173-905-110 Provide education and outreach.

- The draft rule specifies "at least once each quarter" for activities. But maintaining a website could easily happen each quarter and so this clause does not add any meaningful value. We suggest rewriting so that the quarterly activity apply to all but the website:

At least once each quarter, each battery stewardship organization shall carry out activities to promote the program using education and outreach materials that are accessible for the communities where the outreach takes place.

These promotional activities include, but are not limited to:

(a) Developing and maintaining a website and a customer service number with information about the program;

- The draft rule education language about disposal is circular and unclear. We suggest editing as shown in red:

Developing and distributing education and outreach materials that will be used to inform consumers about ~~the restriction on~~ the disposal prohibitions of covered batteries and provide information on how to properly drop off or discard ~~dispose of~~ covered batteries;

- We support the local government comments you have received about vulnerable population omissions in this section and others.

WAC 173-905-120 Plan contents.

- The draft rule ecomodulation language omits the resource conservation language from the statute. There are other means of conserving resources than use of recycled content. We recommend the rule language be edited as shown in red:

Fee structure. A description of how the stewardship organization will structure producer fees to encourage:

(a) Recyclability or recycling;

(b) Use of recycled content;

(c) Conservation of resources; and

(c) Other design attributes that reduce the environmental impacts of covered batteries.

Statute language is: 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,

- The draft rule is missing an important component of the statute, in this section and other sections, related to the performance target for efficiency rate:

Statute language is: Details how the program will achieve a recycling efficiency rate, calculated consistent with section 10 of this act, of at least 60 percent for rechargeable batteries and at least 70 percent for primary batteries;

- The draft rule includes an awareness metric which is not adequate and not clear. The statute directs that there should be a goal for increasing awareness of the program, which is very different than knowing how to recycle. The language should be edited to something like, shown in red:

A goal and an accompanying A-metric to measure the percentage of people in Washington that ~~know how to recycle~~ are aware of the program to recycle and know where to recycle covered batteries through program collection sites.

Statute language is: 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

In addition, the rule language should include a requirement to establish subgoals related to vulnerable and overburdened communities, per statute.

WAC 173-905-150 Submit annual reports:

- In the draft rule, the clause about improving recycling rates allows a battery stewardship organization to break the law! The statute clearly identifies these activities as prohibited and if they occur, they should be enforced. This clause should be deleted and more appropriate language related to increasing recycling rates should be substituted, using statute language:

Improving collection and recycling rates and awareness. ~~If a battery stewardship organization disposed of covered batteries through energy recovery, incineration, or landfilling during the preceding calendar year, a description of the s~~Steps that the battery stewardship organization will take to increase battery collection and recycling rates and public awareness achieved by the program.

Statute language is: Each battery stewardship plan must include performance goals that measure, on an annual basis, the achievements of the program. Performance goals must take into consideration technical feasibility and economic practicality in achieving continuous, meaningful progress in improving:

- (a) The rate of battery collection for recycling in Washington;
- (b) The recycling efficiency of the program; and
- (c) Public awareness of the program.....

WAC 173-905-200 Role of retailers:

- In the draft rule, the statute directed retailer prohibition on selling unmarked large format batteries is omitted. This should be restored as shown in red:

Beginning January 1, 2028, retailers are prohibited from selling or distributing large format batteries, covered batteries or battery-containing products in or into the state of Washington unless they meet the marking requirements under WAC 173-905-310.

Statute language is: Beginning January 1, 2028, a producer or retailer may only sell, distribute, or offer for sale in or into Washington a large format battery, covered battery, or battery-containing product that contains a battery that is designed or intended to be easily removable from the product, if the battery is:....

WAC 173-905-400 Maintain a web page:

- The draft rule language for the website content omits the statute language related to brands. The language should be edited as shown in red:

*The department will maintain a web page that may be used by producers, retailers, and the public as a resource to determine compliance with the program and view up-to date program data. (2) Except for confidential information as granted under subsection (4) of this section, the department will post the following information to its website:
(a) Beginning January 1, 2027, a list of producers and their brands that participate in an approved plan;*

Statute language is: Maintaining a website that lists producers and their 24brands that are participating in an approved plan,....

WAC 173-905-500 Collection sites and collection events.

- We support the local government comments you have received about local government collection sites and collection events.

General comment

It appears that the draft rule is missing (or we could not find the language) related to civil actions by the battery stewardship organization. If this language is not needed in rule, we would appreciate an explanation as to why this has not been included.:

A battery stewardship organization implementing an approved plan may bring a civil action or actions to recover costs, damages, and fees, as specified in this section, from a producer who sells or otherwise makes available in Washington covered batteries or battery-containing products not included in an approved plan in violation of the requirements of this chapter. An action under this section may be brought against one or more defendants. An action may only be brought against a defendant producer when the stewardship program incurs costs in Washington, including reasonable incremental administrative and program promotional costs, in excess of \$1,000 to collect, transport, and recycle or otherwise dispose of the covered batteries 16or battery-containing products of a nonparticipating producer.

(b) A battery stewardship organization may bring a civil action against a producer of a recalled battery to recover costs associated with handling a recalled battery.....

Finally, we appreciate that you have kept the General Battery Disposal and Collection Requirements section complete and intact.

Thank you for consideration of our comments. I can be reached at heather@zerowastewashington.org or (206) 441-1790.

Sincerely,



Heather Trim
Executive Director