

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
S.P. 214 - L.D. 474

An Act to Establish a Stewardship Program for Primary and Rechargeable Batteries

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1604, sub-§2, as enacted by PL 1989, c. 583 and repealed and replaced by c. 878, Pt. A, §116, is amended to read:

2. Lead-acid battery retailers. A Except as provided in subsection 2-A, a person selling or offering for retail sale lead-acid batteries shall:

A. Accept, at the point of transfer, used lead-acid batteries in reasonably clean and unbroken condition from customers in a quantity at least equal to the number of new batteries purchased;

B. If a used lead-acid battery is not exchanged at the time of sale, collect a \$10 deposit on the new battery.

(1) The deposit shall be returned to the customer when the customer delivers a used lead-acid battery within 30 days of the date of sale.

(2) All funds received by a dealer as a deposit on a lead-acid battery shall be held in trust and separately accounted for by the retailer. Any interest on those funds shall inure to the benefit of the retailer. Annually on July 1st, all deposits not returned to customers in exchange for lead-acid batteries during the previous year ending June 30th shall inure to the benefit of the retailer; and

C. Post an 8 1/2" x 11" written notice that includes the display of the universal recycling symbol and the following language.

(1) "State law requires us to accept motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

(2) "A deposit of \$10 will be charged for each new lead-acid battery that is not exchanged with an old lead-acid battery."

(3) "It is illegal to dump, bury or incinerate a motor vehicle lead-acid battery or other lead-acid battery."

(4) "Recycle your used batteries."

Sec. 2. 38 MRSA §1604, sub-§2-A is enacted to read:

2-A. Relationship to other programs. A person is exempt from complying with the requirements of subsection 2 with respect to any lead-acid battery sold or offered for sale by that person if:

A. The battery is a covered battery, as defined in section 1617, subsection 1, paragraph I; and

B. The battery is managed under a covered battery stewardship program established in accordance with section 1617 and the person is participating under the program as a collection site for covered batteries.

Sec. 3. 38 MRSA §1617 is enacted to read:

§1617. Battery stewardship program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Battery" means a device consisting of one or more cells in which chemical energy is converted into electricity and used as a source of power or for power storage.

B. "Battery stewardship organization" or "stewardship organization" means a corporation, nonprofit organization or other legal entity created or designated by a producer or a group of producers to directly implement and operate a battery stewardship program in accordance with a battery stewardship plan approved by the department.

C. "Battery stewardship program" or "stewardship program" means a program financed and implemented by a producer, a group of producers or a battery stewardship organization on behalf of a producer or a group of producers in accordance with a battery stewardship plan approved by the department.

D. "Brand" has the same meaning as in section 1771, subsection 1.

E. "Collection" means the gathering of waste, including the preliminary sorting and storage of waste, for the purposes of transporting the waste to a recycling establishment.

F. "Collection container" means a container used at a collection site under a battery stewardship program that is accessible to and usable by persons bringing covered batteries to the collection site for collection. "Collection container" does not include a container used at a collection site solely to store collected covered batteries that is not accessible to or usable by persons bringing covered batteries to the collection site for collection.

G. "Collection rate" means a percentage, by weight, of covered batteries collected by a battery stewardship program in the State, calculated by dividing the total weight of covered batteries collected by the program during the prior calendar year by the average annual weight of all covered batteries estimated to have been sold into the State during the prior 3 calendar years, which may be based on reasonable pro rata calculations using national sales data, by all producers participating in the program.

H. "Collection site" means a location to which a person may bring covered batteries for collection under a battery stewardship program that is approved by the operator of the program pursuant to subsection 7 and that is operated by a retailer, wholesaler, municipality or tribal government, solid waste management facility, household hazardous waste facility or other entity.

I. "Covered battery" means a portable battery or a medium format battery. "Covered battery" does not include:

(1) Prior to January 1, 2030, a portable battery or medium format battery that is an embedded battery. Beginning January 1, 2030, "covered battery" includes a portable battery or medium format battery that is an embedded battery;

(2) A battery contained within a medical device that is not principally designed for or marketed to consumers for personal use;

(3) A large format battery;

(4) A battery that contains an electrolyte as a free liquid; or

(5) A lead-acid battery, as defined in section 1604, weighing greater than 11 pounds.

J. "Covered battery-containing product" means a product that contains or is packaged with a covered battery. "Covered battery-containing product" does not include a product that is a covered electronic device regulated under section 1610.

K. "Damaged or defective battery" means a battery that has been damaged or identified by the producer as being defective for safety reasons and that has the potential of producing a dangerous evolution of heat, fire or short circuit, as described in 49 Code of Federal Regulations, 173.185(f).

L. "Easily removable" means, with respect to a battery within a battery-containing product, designed by the producer of the product to be removable by a user of the product using common household tools.

M. "Embedded battery" means a portable battery or medium format battery that is contained within a battery-containing product and that is not intended or designed to be easily removable from the product.

N. "Large format battery" means:

(1) A primary battery that weighs more than 25 pounds; or

(2) A rechargeable battery that:

(a) Weighs more than 25 pounds; or

(b) Has a rating of more than 2,000 watt-hours.

O. "Medium format battery" means:

(1) A primary battery that weighs more than 4.4 pounds but not more than 25 pounds; or

(2) A rechargeable battery that:

(a) Weighs more than 11 pounds but not more than 25 pounds; or

(b) Has a rating of more than 300 watt-hours but not more than 2,000 watt-hours.

P. "Municipality" means a city, town, county, township, village or plantation; a refuse disposal district under chapter 17; or a regional association, as defined in section 1303-C, subsection 24.

Q. "Portable battery" means:

(1) A primary battery that weighs not more than 4.4 pounds; or

(2) A rechargeable battery that:

(a) Weighs not more than 11 pounds; and

(b) Has a rating of not more than 300 watt-hours.

R. "Primary battery" means a battery that is not designed to be and is not capable of being recharged.

S. "Producer" means, with respect to a covered battery or covered battery-containing product:

(1) If the battery or product is sold, offered for sale or distributed for sale in or into the State under a brand owned by the person that manufactures the battery or product, the person that manufactures the battery or product;

(2) If the battery or product is sold, offered for sale or distributed for sale in or into the State under a brand not owned by the person that manufactures the battery or product, the person that owns the brand under which the battery or product is sold, offered for sale or distributed for sale in or into the State;

(3) If there is no person to which subparagraph (1) or (2) applies, the person that is a licensee of the brand or trademark under which the battery or product is sold, offered for sale or distributed for sale in or into the State;

(4) If there is no person to which subparagraph (1), (2) or (3) applies that is located in the United States, the person that is the importer of record into the United States for the battery or product for the purpose of selling, offering for sale or distributing for sale the battery or product in or into the State; or

(5) If there is no person to which subparagraph (1), (2), (3) or (4) applies that has a commercial presence in the State, the person that first sells, offers for sale or distributes for sale the battery or product in or into the State.

"Producer" does not include a person that sells, offers for sale or distributes for sale a covered battery-containing product in or into the State if the covered battery contained in or packaged with the product is supplied by a producer participating in a battery stewardship program in the State for that battery, as long as the participating producer provides the person and the operator of the program with a written certification stipulating the producer's participation in the program for that battery.

"Producer" does not include a person that would otherwise be considered a producer under this paragraph if the person enters into a signed agreement with another producer that is participating in a battery stewardship program in the State to accept responsibility as producer under this section for the person's covered batteries or covered battery-containing products sold, offered for sale or distributed for sale in or

into the State, as long as the other producer provides a copy of that signed agreement to the operator of the program.

T. "Proprietary information" has the same meaning as in section 1771, subsection 6-A.

U. "Rechargeable battery" means a battery that contains one or more voltaic or galvanic cells that are electrically connected to produce electric energy and that is designed to be recharged.

V. "Recycling" has the same meaning as in section 1771, subsection 7.

W. "Recycling efficiency rate" means a percentage, by weight, calculated by dividing the weight of components and material recycled by the operator of a battery stewardship program under this section by the weight of covered batteries collected by the operator.

X. "Recycling establishment" has the same meaning as in section 2101-A, subsection 4.

Y. "Retailer" means a person that sells or offers for sale a covered battery or covered battery-containing product in or into the State or that offers, distributes or otherwise makes a covered battery or covered battery-containing product available to an individual or commercial customer for the customer's use in the State.

Z. "Tribal government" means the government of a federally recognized Indian tribe in the State.

2. Sales requirements. This subsection governs requirements for the sale, offer for sale or distribution for sale in or into the State of covered batteries, covered battery-containing products and, prior to January 1, 2030, products containing embedded batteries.

A. Beginning 180 days after the date a battery stewardship plan submitted pursuant to subsection 4 is first approved by the department in accordance with subsection 5, a producer may not sell, offer for sale or distribute for sale in or into the State a covered battery or covered battery-containing product unless the producer is participating in a battery stewardship program that is operating in accordance with an approved stewardship plan.

B. Beginning March 1, 2027, a producer participating in a battery stewardship program under this section may not sell, offer for sale or distribute for sale in or into the State a battery-containing product that contains an embedded battery unless the producer annually provides to the operator of the battery stewardship program for inclusion in the report required pursuant to subsection 8 the information for that embedded battery and product required pursuant to subsection 8, paragraph C. The operator of the battery stewardship program shall notify the department of any failure by the participating producer to provide to the operator the information for that embedded battery and product required pursuant to subsection 8, paragraph C.

This paragraph is repealed January 1, 2030.

3. Marking requirement. Except as otherwise provided by the department by rule adopted pursuant to this subsection, beginning 2 years after the date a battery stewardship plan submitted pursuant to subsection 4 is first approved by the department in accordance with subsection 5, a producer or retailer may not sell, offer for sale or distribute for sale in or into the State a covered battery or covered battery-containing product if the covered

battery or the covered battery contained in or packaged with the product is 1/2 inch or greater in diameter or has a surface with a length that is 1/2 inch or greater, unless that covered battery is marked with information that identifies the producer and chemistry of the battery and that indicates the battery should not be disposed of as household waste.

The department may adopt rules establishing marking requirements that differ from this subsection as necessary to maintain consistency with federal laws or federal regulations concerning battery labeling requirements or concerning voluntary standards for battery labeling.

4. Submission of plan; plan requirements. Not later than 6 months after the effective date of rules initially adopted by the department to implement this section pursuant to subsection 11, a producer, individually, collectively with one or more producers or through a battery stewardship organization, shall submit a proposed battery stewardship plan to the department for review and approval. The plan must cover a term of not more than 5 years and must include, at a minimum, the following information:

A. Identification of and contact information for the individual or entity submitting the plan and for each producer that will be participating in the battery stewardship program, as well as information regarding the brands of covered batteries and covered battery-containing products for each participating producer that will be managed under the plan.

(1) Pursuant to subsection 1, paragraph S, the plan must include copies of:

(a) Any written certification describing a participating producer's responsibility under the program for a covered battery supplied by the producer to a person for sale in or with a covered-battery containing product of that person; and

(b) Any signed agreement entered into by a participating producer to accept responsibility under this section for a person's covered batteries or covered battery-containing products.

(2) If the plan is submitted by a battery stewardship organization, the plan must also include:

(a) A description of the organization, including its organizational structure, administration and management, and the tasks that will be performed by the organization; and

(b) A written certification that the organization will assume the responsibilities, obligations and liabilities under this section for all producers that will be participating in the battery stewardship program;

B. A description of how the program will provide effective education and outreach to promote program use and ensure that collection options for covered batteries are understood by consumers, retailers and others, which must include, but is not limited to:

(1) A description of how the program will develop and maintain a publicly accessible website that provides information regarding the producers participating in the program and the brands of covered batteries and covered battery-containing products managed under the program; and

(2) A description of the methods to be used by the program to educate and conduct outreach to retailers regarding the prohibition under subsection 2, paragraph A on the sale of covered batteries and covered battery-containing products of a producer that is not participating in a battery stewardship program under this section;

C. A description of how the stewardship program will include a collection system for all covered battery chemistries and brands that is convenient and adequate to serve the needs of persons in both rural and urban areas and that otherwise satisfies the requirements of subsection 6. Information regarding the proposed collection system must include, but is not limited to:

(1) A list of collection sites and the street addresses of those sites proposed for use under the program;

(2) A description of the criteria that will be used to determine whether an entity will be approved to participate as a collection site for covered batteries under the program;

(3) A description of how the program will make available for voluntary use by collection sites signage, written materials and other promotional items that may be used by collection sites to inform consumers regarding end-of-life management options for batteries collected under the program;

(4) A description of the safety training procedures related to battery collection activities at collection sites that will be developed for use by collection sites under the program, including a description of the operating protocols that will be used to reduce the risk of spills or fires at collection sites, the response protocols that will be used in the event of spills or fires at collection sites and the protocols that will be used for the safe management of damaged or defective batteries collected at collection sites;

(5) Identification of proposed service providers, including sorters, transporters, processors and recycling establishments, that will be used by the program to provide for the final disposition of batteries collected through the program's collection system and a description of the method by which collected batteries will be recorded, tracked and documented from the point of collection to the point of final disposition; and

(6) Identification of and explanation for any anticipated delays in the implementation of the collection system for covered batteries that are medium format batteries, including any anticipated delays in the program's ability to collect, package, transport or process medium format batteries pursuant to the requirements of this section.

The plan must be designed to ensure that, if the implementation of the collection system for and management of covered batteries that are medium format batteries is delayed, the collection system requirements for and management of medium format batteries in accordance with subsection 6, paragraph A will be satisfied not later than 2 years after the date of commencement of collection of covered batteries under the program's collection system;

D. Proposed performance goals for the stewardship program for at least the first 3 years of program implementation, which must include, but are not limited to:

(1) A description of the promotional activities that will be undertaken and the public awareness goals that will be achieved by the stewardship program and a description of the public education and outreach strategies the program will employ to achieve those goals; and

(2) A description of how the stewardship program will be designed to achieve collection rates and recycling efficiency rates for covered batteries that are primary batteries and for covered batteries that are rechargeable batteries;

E. A description of the methods by which the producers participating in the battery stewardship program will finance the collection and transportation and the reuse, recycling or disposition of covered batteries under the program; effective education and outreach related to the program; program assessment and reporting; any incentives necessary to achieve program goals, including education and infrastructure investments made under the program; and payment to the department in accordance with subsection 11 of reasonable fees for review of the program plan and any proposed amendments and annual fees to cover the department's actual costs for the program for report review, oversight, administration and enforcement.

(1) For a program that will be implemented by or on behalf of more than one producer, the plan must include a description of the methods by which each participating producer's cost share will be determined and paid, which must be designed to equitably distribute responsibility for the costs of implementing, administering and operating the program among the participating producers and may not create unreasonable barriers to producer participation in the program.

(2) The program must be designed to provide at a minimum a half-time employee or contracted agent whose job duties are dedicated to implementing the program in the State unless the commissioner determines that a lesser staffing requirement is adequate to provide the administrative oversight, training and ongoing technical support for collection sites, education and outreach efforts, program performance assessment and reporting necessary for program implementation; and

F. Any other information required by the department.

5. Review and approval of plan; amendments. The department shall review a proposed battery stewardship plan or amendment to an approved stewardship plan in accordance with the provisions of this subsection.

A. Within 120 days after receipt of a proposed battery stewardship plan, the department shall determine whether the stewardship plan complies with the requirements of this section and the rules adopted pursuant to this section. The department shall notify the person that submitted the plan in writing regarding its decision to approve or disapprove the proposed plan. If the department disapproves a proposed stewardship plan, the written notice of disapproval must state the reason or reasons for the disapproval.

B. Upon receipt of a written notice of disapproval pursuant to paragraph A, the entity that submitted the proposed battery stewardship plan may submit a revised plan to the department within 60 days of the date of issuance of the written notice or may withdraw the plan. The department shall review and approve or disapprove a revised plan submitted under this paragraph within 90 days of receipt.

C. The operator of a battery stewardship program making a substantive change to an approved battery stewardship plan shall submit the proposed change as a plan amendment to the department for review and approval prior to implementation. If the operator determines a change is not substantive, the operator shall inform the department of the change within 30 days of implementation but need not receive department approval unless the department determines that the change is substantive.

(1) Examples of changes to an approved battery stewardship plan that are not substantive include, but are not limited to, the addition to or removal from the program of collection sites, participating producers or battery transporters, processors or recycling establishments used by the program.

(2) Examples of changes to an approved battery stewardship plan that are substantive include, but are not limited to, changes to the financing method used for funding the program.

The department shall review and approve a proposed amendment to an approved stewardship plan using the process described in paragraphs A and B.

D. A battery stewardship plan approved by the department under this subsection must be updated as necessary by the operator of the battery stewardship program and submitted for review and reapproval at least once every 5 years. If the department has determined that a program has failed to make adequate progression toward achieving the performance goals established under the approved plan pursuant to subsection 4, paragraph D, the updated plan submitted to the department under this paragraph must propose corrective measures designed to achieve those goals, as directed by the department or as proposed by the operator, which may include, but are not limited to, improvements to the convenience of the collection system, increased program investments in education or infrastructure or other improvements to the program to improve program performance.

E. A proposed battery stewardship plan, revised stewardship plan or amendment to an approved stewardship plan that is submitted to the department for review under this subsection must be made available for review on the department's publicly accessible website and the department shall accept public comment on that proposed plan or amendment for at least 30 days.

F. Within 30 days of approval by the department of a battery stewardship plan or an amendment to an approved stewardship plan pursuant to this subsection, the department shall make the approved plan available on its publicly accessible website.

6. Collection system requirements. In accordance with the provisions of this subsection, a battery stewardship program must implement and administer a collection system for covered batteries that is convenient and adequate to serve the needs of persons in both rural and urban areas. Except as otherwise provided in this section, the collection system must be designed to allow any individual, business, government entity, nonprofit organization or other person to bring a covered battery of any chemistry or brand for collection, without charge, to any collection site under the program.

A. Except as otherwise provided in this subsection, not later than one year following the commencement of collection of covered batteries under a battery stewardship program's collection system, the program must provide statewide collection

opportunities for covered batteries that are portable batteries, medium format batteries and damaged or defective batteries that include a reasonable geographic distribution of collection sites for those batteries throughout the State with:

- (1) At least one permanent collection site for portable batteries, medium format batteries and damaged or defective batteries within a 15-mile radius for at least 95% of the residents of the State;
- (2) At least one permanent collection site for portable batteries, medium format batteries and damaged or defective batteries in each county; and
- (3) At least one additional collection site for portable batteries, medium format batteries and damaged or defective batteries for each 30,000 residents in a population center in a location that provides convenient and reasonably equitable access for residents of the population center unless otherwise approved by the department.

Unless otherwise approved by the department, any delay in the satisfaction by the program of the requirements of this paragraph for medium format batteries must be consistent with any delay provisions included in the program's approved plan pursuant to subsection 4, paragraph C, subparagraph (6).

B. Except as otherwise provided in this subsection, not later than January 1, 2031, or one year following the commencement of collection of covered batteries that are embedded batteries under a battery stewardship program's collection system, whichever is later, the program must provide statewide collection opportunities for covered batteries that are embedded batteries that include a reasonable geographic distribution of collection sites for embedded batteries throughout the State with:

- (1) At least one permanent collection site for embedded batteries in each county; and
- (2) At least one additional collection site for embedded batteries for each 30,000 residents in a population center in a location that provides convenient and reasonably equitable access for residents of the population center unless otherwise approved by the department.

C. Determination of whether a battery stewardship program has satisfied the collection system requirements of this subsection must be based on geographic information modeling data and must account only for permanent collection sites available under the program. A battery stewardship program may offer one-time or recurring but nonpermanent collection events to provide additional collection opportunities for covered batteries, but nonpermanent collection events may not be counted towards the program's satisfaction of the requirements of this subsection.

D. The department may waive the requirements of paragraph A or B with respect to collection sites within a county or population center in the State if the department determines that those requirements are not practicable due to geographical constraints or that implementation by the stewardship program of an alternative collection system that does not meet those requirements will result in equivalent and more efficient collection opportunities in the county or population center.

As used in this subsection, "population center" means an urbanized area or urban cluster, as defined by the United States Department of Commerce, Bureau of the Census to identify areas of high population density and urban land use with a population of 2,500 or greater.

7. Collection site and collection event requirements and operation. This subsection governs collection sites and collection events available under a battery stewardship program.

A. Within 90 days of receiving a request from a retailer, wholesaler, municipality or tribal government, solid waste management facility, household hazardous waste facility or other entity to participate in a battery stewardship program as a collection site or to hold a collection event for covered batteries, the operator of the program shall approve that participation as long as the proposed site or event satisfies the requirements of the approved battery stewardship plan to serve as a site or event. Once a battery stewardship program has met the collection system requirements of subsection 6, the operator, with prior approval from the department, may decline additional collection site or collection event requests under this paragraph.

B. The operator of a battery stewardship program shall provide to each approved collection site or collection event under the program all appropriate collection containers, ancillary materials and staff training necessary for that participation.

(1) Collection containers provided to a collection site or collection event must be suitable for the collection of covered batteries and must be segregated from other waste that may be accepted at the site or event or, with the agreement of the entity managing the site or event, the operator may implement an alternative arrangement for covered battery collection consistent with the approved battery stewardship plan.

(2) Each collection container used at a collection site or collection event must be located within the view of a responsible person at the site or event and must be accompanied by signage made available to the site or event through the program containing information for consumers regarding end-of-life management options for batteries accepted at the site or event.

(3) All reasonable costs associated with the participation of a collection site or collection event in a battery stewardship program must be paid or reimbursed to the entity managing the site or event by the battery stewardship program.

C. A collection site or collection event may accept for collection covered batteries that are medium format batteries only if the site or event meets applicable state requirements for the management of household hazardous waste or for the management of medium format batteries.

D. A collection site or collection event may accept for collection covered batteries that are damaged or defective batteries only if the site or event is staffed by responsible persons trained to handle and prepare damaged or defective batteries for transportation. The operator of a battery stewardship program shall provide for the collection, overseen by qualified staff persons, of damaged or defective batteries at any permanent collection site under the program that meets applicable state requirements for the management of household hazardous waste or for the management of damaged or defective batteries.

E. A collection site or collection event is not required to accept, and a battery stewardship program is not required to provide or support collection opportunities for, batteries that are not covered batteries, including, but not limited to, large format batteries, batteries contained within covered electronic devices regulated under section 1610 or, prior to January 1, 2030, embedded batteries.

F. A collection site or collection event may not require a person that brings a covered battery for collection to the site or event to pay a fee associated with that collection.

G. The operator of a battery stewardship program may issue a warning to, suspend or terminate a collection site or collection event participating in the program if the site or event fails to satisfy the requirements of the approved battery stewardship plan for sites or events or if the operator determines, after consultation with the department, that the site or event poses an immediate risk to public health or safety.

8. Annual reporting requirement; record retention. In accordance with the requirements of this subsection, by May 1st of the calendar year after the calendar year in which an approved battery stewardship program is implemented, and annually thereafter, the operator of the program shall submit to the department a report on the program for the previous calendar year. The department shall make any report submitted pursuant to this subsection available on its publicly accessible website. A report submitted to the department pursuant to this subsection must include, at a minimum, the following information:

A. Contact information for the operator of the battery stewardship program and a list of producers participating in the program. The report must include, if known by the operator of the program, a list of producers not participating in the program that the operator believes are not in compliance with the requirements of this section. The report must include any information known by the operator regarding the covered batteries or covered battery-containing products of a noncompliant producer that have been sold, offered for sale or distributed for sale in or into the State;

B. The brands and universal product codes, or UPCs, of the covered batteries and covered battery-containing products of the producers participating in the battery stewardship program;

C. Beginning with the report due under this subsection in 2027 and ending with the report due in 2030, for each battery-containing product that contains an embedded battery that is sold, offered for sale or distributed for sale in or into the State by a producer participating in the battery stewardship program:

(1) A description of the product and identification of the battery chemistry and battery type of the embedded battery; and

(2) The universal product code, or UPC, of the embedded battery.

This paragraph is repealed April 1, 2030;

D. The total amount, by weight or by volume, of each type of covered battery, including covered batteries contained in covered battery-containing products, that was sold, offered for sale or distributed for sale in or into the State by each producer participating in the battery stewardship program during the prior calendar year. The report must also include information regarding the collection rate and recycling

efficiency rate for covered batteries collected under the program during the prior calendar year;

E. A complete accounting of payments made to the operator of the battery stewardship program by producers participating in the program and of expenditures made by the operator during the prior calendar year, including information regarding how the amount required to be paid by each participating producer was determined.

(1) The report must include an assessment of whether the payments required of producers participating in the program pursuant to subsection 4, paragraph E have been or are designed to incentivize improvements in the recycling efficiency rate or recyclability of covered batteries.

(2) The report must include a complete accounting of revenue derived by the operator of the battery stewardship program from the sale of covered batteries collected for recycling under the program during the prior calendar year.

(3) The report must include a description of the education and infrastructure investments made by the operator of the battery stewardship program during the prior calendar year and an evaluation of how those investments were designed to increase access to recycling for covered batteries in the State and to encourage proper management of unwanted batteries.

(4) The report must include the results of a 3rd-party financial audit of the battery stewardship program paid for by the operator of the program;

F. An assessment of the progress made by the battery stewardship program during the prior calendar year in achieving the program's performance goals set forth in the plan pursuant to subsection 4, paragraph D;

G. A description of any proposals for changes to the battery stewardship program or new investments in education or infrastructure designed to increase access to recycling for covered batteries, increase the collection rate or the recycling efficiency rate or recyclability of covered batteries, reduce program costs or otherwise increase program efficiency;

H. An estimate of the annual greenhouse gas emissions effects in the State associated with the operation of the battery stewardship program, calculated using methods directed by the department by rule; and

I. Any other information required by the department.

The operator of a battery stewardship program shall retain any record relating to the implementation and administration of the stewardship program for not less than 5 years from the date the record is created and shall make those records available to the department for inspection upon request. As used in this subsection, "universal product code" or "UPC" has the same meaning as in section 2146, subsection 1, paragraph V.

9. Battery stewardship fund required; authorized expenditures. The operator of a battery stewardship program shall establish a battery stewardship fund as a separate account or separate accounts maintained by the operator into which the operator shall deposit all payments received from participating producers in accordance with subsection 4, paragraph E and all other revenue derived by the operator from the management of the

program. The operator shall expend money within that fund only for the following authorized purposes:

A. To cover the operator's costs of implementing, administering and operating the battery stewardship program, which must be annually verified by a 3rd-party financial audit paid for from the fund as required by subsection 8, paragraph E, subparagraph (4);

B. To pay to the department all applicable fees required in accordance with subsection 11 for costs incurred by the department in implementing, administering and enforcing the requirements of this section and the rules adopted pursuant to this section;

C. To pay for or reimburse costs incurred by retailers, wholesalers, municipalities or tribal governments, solid waste management facilities, household hazardous waste facilities or other entities for their participation in the battery stewardship program as a collection site in accordance with subsection 7; and

D. To pay for investments in education or infrastructure made in accordance with subsection 10.

10. Education and infrastructure investments. In accordance with the provisions of this subsection, the operator of a battery stewardship program shall make investments in education and infrastructure to support or improve the recycling of covered batteries in the State under the program.

A. Prior to making any proposed investment in education or infrastructure, the operator shall submit the proposed investment to the department for review and approval. A proposed investment submitted to the department must incorporate any input solicited and received by the operator regarding the proposal from participating producers; municipalities, tribal governments, retailers and other entities participating in the program as collection sites; and recycling establishments, transporters and processors used by the program for the transportation, management and disposition of collected covered batteries. The department shall approve or deny a proposed investment in writing within 90 days of receipt of the proposal.

B. The department shall adopt rules setting forth criteria for its review and approval or disapproval of proposed education or infrastructure investments under this subsection. In reviewing and approving proposed education or infrastructure investments under this subsection, the department shall ensure that funding preference is given to proposals that support the solid waste management hierarchy under section 2101; promote a circular economy for batteries; increase the recyclability of batteries that are not readily recyclable in the State; increase access to recycling infrastructure in the State for batteries; improve consumer education efforts in the State regarding the recycling and recyclability of batteries; and equitably support battery recycling and education efforts in municipalities participating in the program as collection sites, particularly in those municipalities that have not previously benefited from an investment made pursuant to this subsection.

11. Department administration. The following provisions govern the administration and enforcement of this section by the department.

A. The department shall implement, administer and enforce this section and may adopt rules as necessary for those purposes. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. The operator of a battery stewardship program is responsible for payment to the department of:

(1) A reasonable fee associated with the department's review of the stewardship program's proposed stewardship plan and any proposed amendments to that plan pursuant to subsection 5. A fee required under this subparagraph must be paid to the department at the time that the proposed stewardship plan or amendment is submitted to the department for review; and

(2) A reasonable annual fee to cover the department's actual costs for annual report review, oversight, administration and enforcement for the program. An annual fee required under this subparagraph must be properly documented and provided by the department to the operator prior to or at the time the payment is required.

C. Beginning February 15, 2027, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report regarding the status of battery stewardship programs implemented under this section. The report required under this paragraph may be included in the report required pursuant to section 1772, subsection 1.

12. Relationship to other programs. A producer of a covered battery subject to the requirements of section 2165 and to the requirements of this section may submit a request to the department for a waiver from the requirements of this section with respect to that battery.

A. The department shall grant the waiver if it determines that the producer has established and is maintaining a system for the proper collection, transportation and processing of that battery in accordance with all applicable requirements of section 2165.

B. If the department grants a waiver to a producer under this subsection, the producer is relieved from complying with the requirements of this section with respect to that battery.

A producer of a covered battery subject to the requirements of section 2165 and to the requirements of this section that complies with all applicable requirements of this section is exempt from complying with the requirements of section 2165 with respect to that battery.

13. Antitrust exclusions. A producer or battery stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents, that organizes a battery stewardship program under this section is immune from liability for the producer's or stewardship organization's conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or commerce only to the extent necessary to plan and implement the producer's or stewardship organization's battery stewardship program consistent with the requirements of this section.

14. Proprietary information. Proprietary information submitted to the department pursuant to the requirements of this section or the rules adopted by the department pursuant to this section that is identified by the submitter as proprietary information is confidential

and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

Sec. 4. 38 MRSA §2165, sub-§2, as enacted by PL 1991, c. 808, §2, is amended to read:

2. Disposal ban. A person employed directly or indirectly by a government agency, or an industrial, communications or medical facility may not knowingly dispose of a dry cell mercuric oxide battery or a rechargeable battery in a manner that is not part of a collection system established under subsection 4 or under section 1617.

Sec. 5. 38 MRSA §2165, sub-§4, as enacted by PL 1991, c. 808, §2, is amended to read:

4. Manufacturer responsibility. A Except as provided under section 1617, subsection 12, a manufacturer of dry cell mercuric oxide or rechargeable batteries ~~that are subject to subsection 4~~ shall:

- A. Establish and maintain a system for the proper collection, transportation and processing of waste dry cell mercuric oxide and rechargeable batteries for purchasers in this State;
- B. Clearly inform each purchaser that intends to use these batteries of the prohibition on disposal of dry cell mercuric oxide and rechargeable batteries and of the available systems for proper collection, transportation and processing of these batteries;
- C. Identify a collection system through which mercuric oxide and rechargeable batteries must be returned to the manufacturer or to a manufacturer-designated collection site; and
- D. Include the cost of proper collection, transportation and processing of the waste batteries in the sales transaction or agreement between the manufacturer and any purchaser.