

Call2Recycle, Inc.

Changing habits. Inspiring action.™

November 14, 2022

Address: 1200 First Street NE, 5th Floor, Washington, DC 20002

Subject: Call2Recycle comments to the Department of Energy and Environment; Notice of Proposed Rulemaking for Chapter 39 Battery Stewardship

Delivered via email to: productstewardship@dc.gov

On behalf of Call2Recycle, Inc., we are pleased to respond to the Department of Energy and Environment Notice of Proposed Rulemaking for Battery Stewardship.

BACKGROUND ON CALL2RECYCLE

Call2Recycle, Inc. (Call2Recycle), a non-profit 501(c)4, was founded in 1994 by the rechargeable battery industry who recognized the need to manage end-of-life disposal of its products and voluntarily came together to assume this responsibility. Having more than 25 years' experience, Call2Recycle recognizes the myriad of challenges and opportunities of the ever-changing dynamics surrounding battery management and supports initiatives that align with our mission to collect and recycle batteries safely and responsibly and augments established battery management solutions rather than disrupts already successful systems. Call2Recycle looks forward to sharing key considerations garnered from our experience and 140+ million pounds of batteries safely and responsibly collected for recycling.

Call2Recycle is primarily funded by more than 200 battery and battery-powered product manufacturers (stewards) to responsibly collect and recycle rechargeable batteries (along with primary batteries in select jurisdictions, including Washington, D.C. where it is the only registered Battery Stewardship Organization). Call2Recycle's stewardship program offers battery management for portable primary (weighing less than 2 kg) and rechargeable batteries (having less than 300-watt hours and weighing up to 11 lbs.).

Call2Recycle has long been an industry leader in the safe, responsible, and compliant management of batteries at end-of-life. For almost three decades, we have consistently found the most effective and innovative ways to manage batteries in all major sectors - from consumer electronics to wearable technology to electric vehicles to energy storage. This commitment to battery safety is at the core of Call2Recycle's program and integrated into every step of a battery journey – from consumer education and awareness and collection site safety training to logistics and transportation.

In the following pages, Call2Recycle's proposed changes are indicated in red. We would be happy to schedule a meeting to further discuss our comments to the Notice of Proposed Rulemaking for Battery Stewardship.

COMMENTS

3900.2

<p>Citation</p>	<p><i>If DOEE rejects an initial plan or proposed plan amendment that is required by § 3903.4, or if a revision to an approved plan is required by DOEE after two (2) years of plan implementation pursuant to section 130 of the Zero Waste Omnibus Amendment Act of 2020 (D.C. Official Code § 8-771.03(c)), the BSO shall submit an amended plan with the required corrections or revisions within forty-five (45) days of the date of the DOEE notice of rejection or required revision.</i></p>
<p>Comment</p>	<p>This proposal repeats the procedure set forth in D.C. Code, Section 8-771.03(b)(1)(B) but could be improved by addressing several foreseeable situations. For example, the draft provision fails to recognize that in some situations, a BSO may conclude that it is not worthwhile to further pursue efforts to obtain DOEE approval, and thus may choose to withdraw its application. The proposal does not address that in some situations a BSO or entity applying for BSO status may find an amendment required by the DOEE is so burdensome that it thinks efforts to resolve the issue(s) by negotiation are unlikely to be successful and, therefore, seeks a prompter resolution through OAH immediate review rather than file an amendment. The draft provision also misses an opportunity to clarify how the DOEE might make use of the authority in Section 8-771.03(b)(1)(C), if an appeal is filed, to stay the obligations of the BSO and producers. (The Code provision appears to grant both DOEE and the OAH to grant a stay.)</p> <p>These points should be addressed to provide the BSO with clear and quick options if the DOEE seeks amendments to a plan that are unacceptable to the BSO. A BSO should not be required to invest its resources in an appeal and thus further delay program implementation to accommodate a requirement from DOEE that the BSO sees as unreasonable, but that the DOEE appears unlikely to revise sufficiently to accommodate the BSO’s concerns, before seeking review. We thus suggest below revisions that retain the concepts in the proposed regulation but will provide greater flexibility.</p>
<p>Proposed change</p>	<p><i>3900.2(a).</i> <i>If DOEE rejects an initial plan or proposed plan amendment that is required by § 3903.4, or if a revision to an approved plan is required by DOEE after two (2) years of plan implementation pursuant to section 130 of the Zero Waste Omnibus Amendment Act of 2020 (D.C. Official Code § 8-771.03(c)), the BSO or applicant, shall either withdraw its proposal or submit an amended plan with the required corrections or revisions within forty-five (45) days of</i></p>

	<p><i>the date of the DOEE notice of rejection or required revision. The BSO alternatively may immediately seek OAH review of a requirement to amend its battery stewardship plan.</i></p> <p><i>3900.2(b).</i> <i>If the BSO submits a revised plan, DOEE shall review the revised plan, issue an order approving or disapproving the revised plan, and notify the BSO or applicant of the decision within 45 days after receipt of the revised plan. An applicant or BSO whose revised plan is rejected by DOEE may either withdraw its plan or appeal the decision to the Office of Administrative Hearings, pursuant to Chapter 18A of Title 2.</i></p> <p><i>3900.2(c).</i> <i>In the event of an appeal of the initial plan’s disapproval authorized in subsections (a) or (b), obligations of the BSO and producers under Chapter 7E of Title 8 shall be stayed in their entirety until final disposition of the appeal. In the event of an appeal of an amended plan’s disapproval, obligations of the BSO and producers, including collection and remittance of fees to the BSO, under Chapter 7E of Title 8 shall remain in accordance with the previously approved plan until final disposition of the appeal.</i></p>
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3900.3(b)

Citation	<i>Ensure that the collection site prominently displays the availability of drop-off at its location; and</i>
Comment	From previous experience, a BSO does not enforce the regulation nor statute. Alternatively, we recommend there is cooperation and sharing of materials or best practices between stakeholders. As such we do not advise using the word “enforce” regarding required communication on the premises of collection sites. We propose that the BSO provides materials and recommends best practices for effective messaging and outreach. Therefore, we suggest revising the statement below.
Proposed change	<i>Provide to the collection site prominently displays materials stating the availability of drop-off at its location; and</i>

3900.3 (c)

Citation	<i>Ensure that the collection site provides for the acceptance of up to one hundred (100) batteries per visit and accepts all primary and rechargeable batteries regardless of type or brand.</i>
Comment	As mentioned in the above comment, our experience has been that the BSO has not enforced portions of the statute rather we recommend that we work in partnership with stakeholders. As such we do not advise using the word “enforce” as it pertains to requiring a site to collect a minimum number of batteries per visit. We would recommend that the BSO can provide reference to the statute that cites collection sites must accept up to 100 batteries per visit. Therefore, we recommend revising the statement below.
Proposed change	<i>Ensure that</i> <i>Inform the collection site provides for the acceptance of up to one hundred (100) batteries per visit and accepts all primary and rechargeable batteries regardless of type or brand.</i>

3901.2

Citation	<p><i>A product that contains or is packaged with a primary or rechargeable battery is not a battery-containing product under this chapter if each battery producer of any primary or rechargeable battery contained in or packaged with the product:</i></p> <p><i>(a) Is a member of a BSO that has an approved battery stewardship plan; and</i></p> <p><i>(b) Has provided a written certification containing the following information to the BSO of which it is a member:</i></p> <ol style="list-style-type: none"> <i>(1) The name of the producer submitting the certification;</i> <i>(2) The brand name, product name, and other identifying information for the product that contains or is packaged with the producer’s battery;</i> <i>(3) The name, mailing address, and email address of the product producer</i> <i>(4) The brand name, product name, and other identifying information for the primary or rechargeable battery or batteries in or packaged with the product; and</i> <i>(5) Documentation that the battery producer provided a written certification of the battery producer’s membership in the BSO to the product producer.</i>
Comment	The proposed certification process fails to accommodate the need for the BSO to be protected in the event the battery producer that is supplying batteries to a product producer claiming the exemption does not comply with the battery producer’s obligations relating to those batteries, as set forth in the funding provisions of the BSO’s approved stewardship plan.

	<p>This puts the BSO at real risk. But the issue can be resolved by requiring the battery supplier to provide one additional document as part of the required certification.</p> <p>To address this situation, another paragraph should be added to the certification requirements section that assures that the BSO is able to promptly seek reimbursement from the exempted product supplier for costs incurred by the BSO in handling otherwise-exempted batteries if the battery supplier defaults on its payment obligation to the BSO. The language provided below for a new subparagraph (5) would solve this problem. It would require that all product producers and battery suppliers include in their certifications a true copy of a letter contract that addresses the concerns. (We anticipate that most BSOs would include a standard form with which producers could comply with this requirement, thus minimizing the burden of compliance on producers.) This suggested revision is necessary to ensure that BSO's have the legal capacity to maintain their ability to provide services to a customer base that is exempted from a direct relationship with the service provider (the BSO) without imposing the costs on other participants in the BSO.</p>
<p>Proposed change</p>	<p><i>A product that contains or is packaged with a primary or rechargeable battery is not a battery-containing product under this chapter if each battery producer of any primary or rechargeable battery contained in or packaged with the product:</i></p> <p><i>(a) Is a member of a BSO that has an approved battery stewardship plan; and</i></p> <p><i>(b) Has provided a written certification containing the following information to the BSO of which the battery producer # is a member:</i></p> <ol style="list-style-type: none"> <i>(1) The name of the battery producer submitting the certification;</i> <i>(2) The brand name, product name, and other identifying information for the product that contains or is packaged with the producer's battery;</i> <i>(3) The name, mailing address, and email address of the product producer;</i> <i>(4) The brand name, product name, and other identifying information for the primary or rechargeable battery or batteries in or packaged with the product; and</i> <i>(5) Documentation that the battery producer provided a written certification of the battery producer's membership in the BSO to the product producer.</i>

	<p><i>(5) A letter agreement between the product producer and the battery producer confirming (a) that the battery producer will remit to the BSO fees applicable to its batteries contained in the product producer's products sold in or into the District of Columbia, in accordance with the approved Battery Stewardship Plan; (b) that the product producer will provide to the BSO its District of Columbia sales information by a date set forth in the approved plan; (c) that, in the event the battery producer does not remit battery collection fees set forth in an approved Battery Stewardship Plan to the BSO, the product producer will do so; and (d) that the battery producer agrees to assign its rights pursuant to this Agreement to the BSO in the event of non-payment by the battery producer to the BSO.</i></p>
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3901.4

<p>Citation</p>	<p><i>If the product producer changes the batteries contained in or packaged with the product to primary or rechargeable batteries of a different producer, the product is not exempt under this section unless and until the new battery producer complies with § 3901.2.</i></p>
<p>Comment</p>	<p>Communication of any changes regarding the battery producer providing batteries to a product producer that impact the BSO's program, must be made to all stakeholders. This includes the product producer, the battery producer and the BSO administering the program. This is important because the BSO must make changes to records to properly provide reporting forms as well as route invoices to the correct stewards. Therefore, we recommend that the product producer must also notify the BSO if they change battery manufacturers from which they source the batteries contained in or packaged with their product.</p>
<p>Proposed change</p>	<p><i>If the product producer changes the batteries contained in or packaged with the product to primary or rechargeable batteries of a different producer, the product is not exempt under this section unless and until the new battery producer complies with § 3901.2. The product producer must notify the BSO of these changes.</i></p>

3902.1(c)(7)(A)

<p>Citation</p>	<p><i>Increase the percentage of people in the District who know how to recycle primary and rechargeable batteries through stewardship plan collection sites; and</i></p>
<p>Comment</p>	<p>Interpretation of this statement may mean that the percentage of people in the District who know how to recycle batteries should increase</p>

	indefinitely. In our experience, awareness metrics will increase over time but not indefinitely. Therefore, we recommend a qualifier to this statement that is also used in 3902.1(c) which is “economically and technically feasible”
Proposed change	<i>As is economically and technically feasible, increase the percentage of people in the District who know how to recycle primary and rechargeable batteries through stewardship plan collection sites; and</i>

3902.1(c)(8)(B)

Citation	<i>The extent to which collection sites across the District are open to the public, including the hours and days that collection sites are open and whether there are any limitations on public entry;</i>
Comment	The extent to which it is feasible to provide detailed information on a collections site operating hours, is provided by the collection site on our locator listing contact information for that specific site. By default, if the site is on our locator, they are open to the public. No recommended change to the language rather providing this comment for recording.
Proposed change	<i>N/A</i>

3902.1(c)(8)(C)

Citation	<i>Accommodations for people with disabilities or those who have limited or no English proficiency; and</i>
Comment	It has been our experience that all public retail, education, government, and other public buildings are required to be ADA complaint as a condition to receive a certificate of occupancy. This would mean that by default the public collection sites would be ADA complaint and meet the requirements to offer accommodations for people with disabilities. We provide a recommendation to strike this portion of the clause below.
Proposed change	<i>Accommodations for people with disabilities or those who have limited or no English proficiency; and</i>

3902.1(d)(1)

Citation	<i>How the BSO will provide for the collection from consumers of all primary and rechargeable batteries, including batteries contained in or sold with battery-containing products, on a free, regular, convenient, and accessible basis;</i>
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Comment	The phrase “all primary and rechargeable batteries” differs from the defined term used elsewhere in the statute and regulations. We recommend keeping the terminology the same and using the define terms in the statute. Therefore, we recommend the revision below.
Proposed change	<i>How the BSO will provide for the collection from consumers of all covered primary and rechargeable batteries, including batteries contained in or sold with battery-containing products, on a free, regular, convenient, and accessible basis;</i>

3902.1(d)(4)

Citation	<i>A process for decommissioning collection sites, if necessary;</i>
Comment	The term “decommission” is not clear to Call2Recycle nor is it defined in the statute or proposed regulations. Our expectation is that to “decommission” a site is described in section 3902.5 which outlines how a collection site is removed from the program. As such we would recommend tying this clause to be defined in 3902.5 per our revised wording below.
Proposed change	<i>A process for decommissioning collection sites, as described in 3902.5, if necessary;</i>

3902.4

Citation	<i>DOEE may require that a BSO submitting a battery stewardship plan include additional information or data needed to implement the Act or this chapter.</i>
Comment	In our experience changes to BSO plans or requirements for additional data is best achieved through open discussion and planning to ensure the changes are feasible and well-vetted. As such, we recommend a process that would allow for this discussion among stakeholders. We therefore recommend that these changes go through rulemaking.
Proposed change	<i>Through rulemaking, DOEE may require that a BSO submitting a battery stewardship plan include additional information or data needed to implement the Act or this chapter.</i>

3903.3(h)(1)

Citation	<i>A description of the collection sites, including: (1) For each collection site, the site name, the physical address of the site, the phone number of the site, the website for the site or parent company,</i>
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	<i>and, if available, the name and email address of a contact person at the site.</i>
Comment	We recommend harmonizing language where possible. Therefore, we recommend language in section 3903.3 for annual reporting should be the same as section 3902.1 for the plan requirements.
Proposed change	<i>A description of the collection sites, including:</i> <i>(1) For each collection site, the site name, the physical address of the site, the phone number of the site, and, if available, the website for the site or parent company, and, if available, the name and email address of a contact person at the site;</i>

3903.3(j)(2)(H)

Citation	<i>A list of all solid or hazardous waste registrations or permits applicable to the facility;</i>
Comment	Many recycling facilities conduct other services than just recycling batteries. It is best practice in our experience to ensure the scope of documents requested align with the scope of the regulation. The list of registration or permits should only apply to the recycling services provided at those locations.
Proposed change	<i>A list of all solid or hazardous waste registrations or permits applicable to the facility that pertain to recycling of batteries in that location;</i>

3903.5(a)

Citation	<i>The annual report submitted five (5) full calendar years after initial approval of the battery stewardship plan shall include:</i> <i>(a) The results of an independent third-party assessment of the battery stewardship plan and implementation of the plan that examines the effectiveness of the battery stewardship plan in collecting and recycling batteries and compares the cost-effectiveness of the plan to that of collection plans or programs for batteries in other jurisdictions; and</i>
Comment	Due to the complexity and size of the 5-year report, we recommend this not be included in the annual reports but is a separate five-year report.