

Chapter 70A.505 RCW
MERCURY-CONTAINING LIGHTS—PROPER DISPOSAL

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RCW 70A.505.010 Findings—Purpose. (Effective until January 1, 2035.) The legislature finds that:

(1) Mercury is an essential component of many energy efficient lights. Improper disposal methods will lead to mercury releases that threaten the environment and harm human health. Spent mercury lighting is a hard to collect waste product that is appropriate for product stewardship;

(2) Convenient and environmentally sound product stewardship programs for mercury-containing lights that include collecting, transporting, and recycling mercury-containing lights will help protect Washington's environment and the health of state residents;

(3)(a) The purpose of this chapter is to achieve a statewide goal of recycling all end-of-life mercury-containing lights through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive,

safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations;

(b) The purpose of chapter 339, Laws of 2024 is to reduce exposure to mercury by prohibiting the sale of most mercury-containing lights beginning in 2029 and to provide continuing collection of mercury-containing lights that have already entered the marketplace;

(4) Product producers must play a significant role in financing no-cost collection and processing programs for mercury-containing lights; and

(5) Providers of premium collection services such as residential curbside and mail-back programs may charge a fee to cover the collection costs for these more convenient forms of collection. [2024 c 339 s 3; 2010 c 130 s 1. Formerly RCW 70.275.010.]

Finding—Intent—2024 c 339: "(1) The legislature finds that in 2025 the state's stewardship program for the end-of-life management of mercury-containing lights is statutorily scheduled to undergo review and termination or possible extension under chapter 43.131 RCW, the sunset act. If the mercury-containing lights product stewardship program were allowed to sunset as scheduled, Washington residents would lose a consistent, convenient, and safe way to return unwanted mercury-containing lights, which will remain in use for years as existing inventory winds down, even as the lighting industry has moved away from most mercury-containing lights. Mercury-containing lights present such a significant health risk that other states have recently restricted their sale, which represents a solution to reduce the public health impacts of new lighting products, but does not address the end-of-life management issues associated with the existing light bulbs currently in use.

(2) The state's existing mercury-containing lights program, which was first enacted over a decade ago, contains policy provisions, including the establishment of a per-bulb fee attached to the sale of mercury-containing lights, that are now recognized as not representing the best practices for the design of stewardship programs.

(3) Therefore, it is the intent of the legislature to:

(a) Restrict the sale of most mercury-containing lights;

(b) Extend the implementation of the stewardship program for mercury-containing lights; and

(c) Modernize key elements of the state's mercury-containing lights stewardship program." [2024 c 339 s 1.]

RCW 70A.505.020 Definitions. (Effective until January 1, 2035.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

(2) "Collection" or "collect" means, except for persons involved in mail-back programs:

(a) The activity of accumulating any amount of mercury-containing lights at a location other than the location where the lights are used by covered entities, and includes curbside collection activities,

household hazardous waste facilities, and other registered drop-off locations; and

(b) The activity of transporting mercury-containing lights in the state, where the transporter is not a generator of unwanted mercury-containing lights, to a location for purposes of accumulation.

(3) "Covered entities" means:

(a) A household generator or other person who purchases mercury-containing lights at retail and delivers no more than the following amounts of mercury-containing lights to registered collectors for a product stewardship program on any given day:

(i) An unlimited number of compact fluorescent lamps, as defined in RCW 70A.230.020, that are mercury-containing lights under this chapter and that feature a screw base;

(ii) 15 pin-based compact or linear fluorescent lamps, as defined in RCW 70A.230.020, that are mercury-containing lights under this chapter; and

(iii) Two high-intensity discharge lamps that are mercury-containing lights under this chapter; and

(b) A household generator or other person who purchases mercury-containing lights at retail and utilizes a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and discards no more than 15 mercury-containing lights into those programs on any given day.

(4) "Department" means the department of ecology.

(5) "Environmental handling charge" or "charge" means the charge approved by the department to be applied to each mercury-containing light to be sold at retail in or into Washington state until December 31, 2028. The environmental handling charge must cover current administrative and operational costs associated with the product stewardship program, including the fee for the department's administration and enforcement.

(6) "Final disposition" means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in permitted facilities.

(7) "Hazardous substances" or "hazardous materials" means those substances or materials identified by rules adopted under chapter 70A.300 RCW.

(8) "Legacy producer" means a producer that was required to participate in the product stewardship program established by this chapter at any point in time between January 1, 2015, and December 31, 2028.

(9) "Mail-back program" means the use of a prepaid postage container, with mercury vapor barrier packaging that is used for the collection and recycling of mercury-containing lights from covered entities as part of a product stewardship program and is transported by the United States postal service or a common carrier.

(10) "Market share" means the percentage of mercury-containing lights that were products for which a producer had an obligation to participate in the program created in this chapter at any point in time between January 1, 2015, and December 31, 2028, by units sold during that period of time, as determined by the stewardship organization in RCW 70A.505.050.

(11) "Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

(12) "Mercury vapor barrier packaging" means sealable containers that are specifically designed for the storage, handling, and transport of mercury-containing lights in order to prevent the escape of mercury into the environment by volatilization or any other means, and that meet the requirements for transporting by the United States postal service or a common carrier.

(13) "Orphan product" means a mercury-containing light that lacks a producer's brand, or for which the producer is no longer in business and has no successor in interest, or that bears a brand for which the department cannot identify an owner.

(14) "Person" means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

(15) "Processing" means recovering materials from unwanted products for use as feedstock in new products.

(16) "Producer" means a person that:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, unless the brand owner is a retailer whose mercury-containing light was supplied by another producer participating in a stewardship program under this chapter;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this subsection and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this subsection do not apply, makes or made a mercury-containing light that is sold or has been sold in or into Washington state; or

(d) (i) Sells or sold at wholesale or retail a mercury-containing light; (ii) does not have legal ownership of the brand; and (iii) elects to fulfill the responsibilities of the producer for that product.

(17) "Product stewardship" means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and providing for the collection, transporting, reusing, recycling, processing, and final disposition of their products.

(18) "Product stewardship plan" or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented.

(19) "Product stewardship program" or "program" means the methods, systems, and services financed in the manner provided for under RCW 70A.505.050 and provided by producers or legacy producers of mercury-containing lights generated by covered entities that addresses product stewardship and includes arranging for the collection, transportation, recycling, processing, and final disposition of unwanted mercury-containing lights, including orphan products.

(20) "Recovery" means the collection and transportation of unwanted mercury-containing lights under this chapter.

(21) (a) "Recycling" means transforming or remanufacturing unwanted products into usable or marketable materials for use other than landfill disposal or incineration.

(b) "Recycling" does not include energy recovery or energy generation by means of combusting unwanted products with or without other waste.

(22) "Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.

(23) "Residuals" means nonrecyclable materials left over from processing an unwanted product.

(24) "Retailer" means a person who offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(25)(a) "Reuse" means a change in ownership of a mercury-containing light or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, or for use again, as in shipping materials, by the generator of the shipping materials.

(b) "Reuse" does not include dismantling of products for the purpose of recycling.

(26) "Stakeholder" means a person who may have an interest in or be affected by a product stewardship program.

(27) "Stewardship organization" means an organization designated by a producer, legacy producer, or group of producers or legacy producers to act as an agent on behalf of each producer or legacy producer to operate a product stewardship program.

(28) "Unwanted product" means a mercury-containing light no longer wanted by its owner or that has been abandoned, discarded, or is intended to be discarded by its owner. [2024 c 339 s 4; 2020 c 20 s 1414. Prior: 2014 c 119 s 2; prior: 2010 c 130 s 2. Formerly RCW 70.275.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

Finding—2014 c 119: "The legislature finds that additional flexibility is needed for mercury-containing light manufacturers to comply with the requirements of chapter 70.275 RCW in order to provide a sustainable funding mechanism and provide effective state protections to producer-operated product stewardship programs under chapter 70.275 RCW." [2014 c 119 s 1.]

RCW 70A.505.030 Product stewardship program. (Effective until January 1, 2035.) (1)(a) Every producer of mercury-containing lights sold, made available for sale, or distributed in or into Washington state for retail sale in Washington state, including legacy producers, must participate in a product stewardship program for those products, operated by a stewardship organization and financed in the manner provided by RCW 70A.505.050. Every such producer must inform the department of the producer's participation in a product stewardship program by including the producer's name in a plan submitted to the department by a stewardship organization as required by RCW 70A.505.040. Producers, including legacy producers, must satisfy these participation obligations individually or may do so jointly with other producers.

(b) Except as provided in (c) of this subsection, a stewardship organization implementing an approved program under this chapter must continue to implement an approved program until December 31, 2028, and

may continue to do so in the form and manner described in the plan approved by the department as of January 1, 2024, until December 31, 2028. The provisions of chapter 339, Laws of 2024 apply to programs that a stewardship organization must implement beginning January 1, 2029, and to the rule adoption, fee payment to the department, plan submission, and plan approval processes that predate the implementation of the new program to begin January 1, 2029. Changes to the limits of mercury-containing lights accepted at collection sites must take effect January 1, 2025.

(c) A stewardship organization may only increase the amount of the environmental handling charge established under this chapter from the amount that was approved by the department as of January 1, 2024, in a manner consistent with RCW 70A.505.050. Additional stewardship organization costs that are not adequately covered by the environmental handling charge and that derive from activities occurring between June 6, 2024, and December 31, 2028, must be funded by participant members of the stewardship organization.

(2) Until December 31, 2028, a stewardship organization operating a product stewardship program must pay administrative and operational costs associated with its current program with revenues received from the environmental handling charge imposed under the plan approved by the department prior to June 6, 2024. For program administrative and operational costs related to the implementation of program requirements in calendar year 2029, a stewardship organization may plan to use reserve funds in the possession of the stewardship organization from the environmental handling charges assessed until December 31, 2028. For program administrative and operational costs related to the planning and implementation of the program requirements that must be implemented beginning in calendar year 2030, a stewardship organization operating a product stewardship program must pay all administrative and operational costs associated with its program with revenues received from participating legacy producers. A stewardship organization may offer incentives or payments to collectors. The stewardship organization's administrative and operational costs do not include the collection costs associated with curbside and mail-back collection programs. The stewardship organization must arrange for collection service at locations described in subsection (4) of this section, which may include household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations. No such entity is required to provide collection services at their location. For curbside and mail-back programs, a stewardship organization must pay the costs of transporting mercury-containing lights from accumulation points and for processing mercury-containing lights collected by curbside and mail-back programs. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations, a stewardship organization must pay the costs of packaging and shipping materials as required under RCW 70A.505.070 or must compensate collectors for the costs of those materials, and must pay the costs of transportation and processing of mercury-containing lights collected from the collection locations.

(3) Product stewardship programs shall collect unwanted mercury-containing lights delivered from covered entities for recycling, processing, or final disposition, and are prohibited from charging a fee when lights are sold, dropped off, or delivered into the program.

(4) (a) Product stewardship programs shall provide, at a minimum, no cost services in all cities in the state with populations greater than 10,000 and all counties of the state on an ongoing, year-round basis.

(b) (i) The department may amend the convenience standards established in this section to relieve a stewardship organization of its obligation to operate a collection site or to provide a collection opportunity when it is demonstrated by the stewardship organization to:

(A) Result in the annual collection of fewer than 500 mercury-containing lights; and

(B) Not remove collection opportunities for people living in a rural county or an overburdened community.

(ii) For the purposes of this subsection (4) (b), "rural county" has the same meaning provided in RCW 82.14.370 and "overburdened community" has the same meaning provided in RCW 70A.02.010.

(5) Product stewardship programs shall promote the safe handling and recycling of mercury-containing lights to the public, including producing and offering point-of-sale educational materials to retailers of mercury-containing lights and point-of-return educational materials to collection locations.

(6) All product stewardship programs operated under approved plans must recover their fair share of unwanted mercury-containing lights as determined by the department.

(7) The department or its designee may inspect, audit, or review audits of processing and disposal facilities used to fulfill the requirements of a product stewardship program.

(8) No product stewardship program required under this chapter may use federal or state prison labor for processing unwanted products.

(9) Product stewardship programs for mercury-containing lights must be fully implemented by January 1, 2015. Product stewardship programs for mercury-containing lights meeting the new requirements of chapter 339, Laws of 2024 must be fully implemented by January 1, 2029. [2024 c 339 s 5; 2020 c 20 s 1415; 2014 c 119 s 3; 2010 c 130 s 3. Formerly RCW 70.275.030.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

Finding—2014 c 119: See note following RCW 70A.505.020.

RCW 70A.505.040 Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report. (Effective until January 1, 2035.) (1) (a) On January 1st of the year prior to implementation, each producer must ensure that a stewardship organization submits a proposed product stewardship plan on the producer's behalf to the department for approval. Plans approved by the department must be implemented by January 1st of the following calendar year.

(b) A stewardship organization that plans to implement a stewardship plan in calendar year 2029 must submit a new or updated plan by January 1, 2028. The new or updated plan under this subsection (1) (b) must address the changes required of program operations by chapter 339, Laws of 2024.

(2) The department shall establish rules for plan content. Plans must include but are not limited to:

(a) All necessary information to inform the department about the plan operator and participating producers or legacy producers and their brands;

(b) The management and organization of the product stewardship program that will oversee the collection, transportation, and processing services;

(c) The identity of collection, transportation, and processing service providers, including a description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as an appropriate collection mechanism and a list of all current and proposed collection sites to be used by the program, including the latitude and longitude of each collection site;

(d) How the product stewardship program will seek to use businesses within the state, including transportation services, retailers, collection sites and services, existing curbside collection services, existing mail-back services, and processing facilities;

(e) A description of how the public will be informed about the product stewardship program, including how consumers will be provided with information describing collection opportunities for unwanted mercury-containing lights from covered entities and safe handling of mercury-containing lights, waste prevention, and recycling. Until December 31, 2028, the description must also include information to make consumers aware that an environmental handling charge has been added to the purchase price of mercury-containing lights sold at retail to fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be described as a department recycling fee or charge at the point of retail sale. Beginning January 1, 2029, these efforts must include the development:

(i) And maintenance of a website;

(ii) And distribution of periodic press releases and articles;

(iii) And placement of public service announcements and graphic advertisements for use on social media or other relevant media platforms;

(iv) Of promotional materials about the program and the restriction on the disposal of mercury-containing lights in RCW 70A.230.160 to be used by retailers, government agencies, and nonprofit organizations;

(v) And distribution of the collection site safety training procedures procedural manual approved by the department to collection sites to help ensure proper management of unwanted mercury-containing lights at collection locations;

(vi) And implementation of outreach and educational resources targeted to overburdened communities and vulnerable populations identified by the department under chapter 70A.02 RCW that are conceptually, linguistically, and culturally accurate for the communities served and reach the state's diverse ethnic populations, including through meaningful consultation with communities that bear disproportionately higher levels of adverse environmental and social justice impacts;

(vii) And distribution of consumer-focused educational promotional materials to each collection location used by the program and accessible by customers of retailers that sell mercury-containing lights;

(viii) And distribution of safety information related to light collection activities to the operator of each collection site; and

(ix) And implementation of a periodic survey of public awareness regarding the requirements of the program established under this chapter, carried out at least every five years and the results of which must be shared with the department;

(f) A description of the financing system required under RCW 70A.505.050;

(g) How mercury and other hazardous substances will be handled for collection through final disposition, including:

(i) Mercury spill and release response plans for use by collection locations that describes the materials, equipment, and procedures that will be used to respond to any mercury release from an unwanted mercury-containing light; and

(ii) Worker safety plans for use by collection locations that describes the handling of the unwanted mercury-containing lights at the collection location and measures that will be taken to protect worker health and safety;

(h) A public review and comment process; and

(i) Any other information deemed necessary by the department to ensure an effective mercury light product stewardship program that is in compliance with all applicable laws and rules.

(3) All plans submitted to the department must be made available for public review on the department's website.

(4) No less often than three years from the dates specified in subsection (1) of this section and once every five years thereafter, each stewardship organization operating a product stewardship program must update its product stewardship plan and submit the updated plan to the department for review and approval according to rules adopted by the department.

(5) By June 1, 2016, and each June 1st thereafter, each stewardship organization must submit an annual report to the department describing the results of implementing the stewardship organization's plan for the prior calendar year, including an independent financial audit once every two years. The department may adopt rules for reporting requirements. Financial information included in the annual report must include but is not limited to:

(a) For programs operating until December 31, 2028, the amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

(b) Identification of confidential information pursuant to RCW 43.21A.160 submitted in the annual report; and

(c) The cost and revenue of the mercury-containing lights product stewardship program, including line item costs for:

(i) Program operations, including collection, transportation, and processing;

(ii) Communications, including media, printing and fulfillment, public relations, and other education and outreach projects;

(iii) Administration, including administrative personnel costs, travel, compliance and auditing, legal services, banking services, insurance, and other administrative services and supplies, and stewardship organization corporate expenses; and

(iv) Amount of unallocated reserve funds.

(6) Beginning in 2023 every stewardship organization must include in its annual report a list of all collection sites, including address and latitude and longitude, anticipated to be used by the program in the upcoming year.

(7) As a component of all new or updated plans under this chapter submitted by a stewardship organization after January 1, 2025, the stewardship organization must submit:

(a) A contingency plan demonstrating how the activities in the plan will continue to be carried out by some other entity, such as an escrow company:

(i) Until such time as a new plan is submitted and approved by the department;

(ii) In the event that the stewardship organization has been notified by the department that they must transfer implementation responsibility for the program to a different stewardship organization;

(iii) In the event that the stewardship organization notifies the department that it will cease to implement an approved plan; or

(v) [(iv)] In any other event that the stewardship organization can no longer carry out plan implementation; and

(b) 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:

(i) The rate of mercury-containing light collection for recycling in Washington;

(ii) The level of convenience and access for all residents; and

(iii) Public awareness of the program.

(8) All plans and reports submitted to the department must be made available for public review, excluding sections determined to be confidential pursuant to RCW 43.21A.160, on the department's website. [2024 c 339 s 6; 2020 c 20 s 1416; 2017 c 254 s 2; 2014 c 119 s 4; 2010 c 130 s 4. Formerly RCW 70.275.040.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

Finding—2014 c 119: See note following RCW 70A.505.020.

RCW 70A.505.050 Environmental handling charge—Collection of charges for cost of plan implementation—Annual fee. (Effective until January 1, 2035.) (1) Each stewardship organization must recommend to the department an environmental handling charge to be added to the price of each mercury-containing light sold in or into the state of Washington for sale at retail until December 31, 2028. The environmental handling charge must be designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization through calendar year 2029 of program expenses. The stewardship organization must consult with collectors, retailers, recyclers, and each of its participating producers in developing its recommended environmental handling charge. The environmental handling charge may, but is not required to, vary by the type of mercury-containing light. In developing its recommended environmental handling charge, the stewardship organization must take into consideration and report to the department:

(a) The anticipated number of mercury-containing lights that will be sold to covered entities in the state at retail during the relevant period;

(b) The number of unwanted mercury-containing lights delivered from covered entities expected to be recycled during the relevant period;

(c) The operational costs of the stewardship organization as described in RCW 70A.505.030(2);

(d) The administrative costs of the stewardship organization including the department's annual fee, described in subsection (5) of this section; and

(e) The cost of other stewardship program elements including public outreach.

(2) The department must review, adjust if necessary, and approve the stewardship organization's recommended environmental handling charge within 60 days of submittal. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, collectors, recyclers, and other entities.

(3) No sooner than January 1, 2015, and through calendar year 2028 of program implementation:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington retailers for sale at retail, and each Washington retailer shall add the charge to the purchase price of all mercury-containing lights sold at retail in this state, and the producer shall remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in this state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(4) At any time, a stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department's review, adjustment, if necessary, and approval under subsection (2) of this section to ensure that there is sufficient revenue to fund the cost of the program, current deficits, or projected needed reserves for the next year. Until December 31, 2028, a stewardship organization may submit to the department a recommended adjustment to the environmental handling charge that is designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization. The stewardship organization may propose to use revenues from environmental handling charges to cover program expenses through calendar year 2029. The department must review the stewardship organization's recommended environmental handling charge and must adjust or approve the recommended charge within thirty days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in subsection (1) of this section.

(5) (a) Beginning with calendar year 2029 of program implementation, each stewardship organization must develop and

implement a system to collect charges from participating legacy producers to cover the costs of plan implementation based on the market share of participating producers using all reasonable means and based on the best available information. A stewardship organization must determine each producer's percentage of market share by:

(i) To the extent data necessary to make such a calculation are available, dividing each legacy producer's total units of mercury-containing lights for which the producer had an obligation under this chapter sold in Washington at any point in time between January 1, 2015, and December 31, 2028, by the sum total of all units of mercury-containing lights sold in or into Washington by all participating legacy producers at any point in time between January 1, 2015, and December 31, 2028; and

(ii) To the extent that data specified in (a)(i) of this subsection are not fully available, extrapolating a reasonable approximation of a manufacturer's market share similar to the calculation specified in (a)(i) of this section [subsection] based on the data available to the stewardship organization.

(b) To determine the market share of legacy producers, a stewardship organization may:

(i) Require data from legacy producers. A stewardship organization may notify the department if a legacy producer has declined to respond within 90 days to a demand for data by a stewardship organization and the department may demand the information if it is determined to be necessary to calculate the market share of the legacy producer; and

(ii) Use any combination of the following types of data:

(A) Generally available market research data;

(B) Data historically provided by producers or retailers to a stewardship organization or the department under this chapter;

(C) Sales data supplied by producers; and

(D) Sales data provided by retailers.

(c) The amendments to the method of financing the program described in chapter 339, Laws of 2024 must be implemented by a stewardship organization by January 1, 2029.

(6) Beginning with calendar year 2029 of program implementation, each stewardship organization is responsible for all costs of participating mercury-containing light collection, transportation, processing, education, administration, agency reimbursement, recycling, and end-of-life management in accordance with environmentally sound management practices.

(7) Beginning March 1, 2015, until March 1, 2024, each stewardship organization shall pay to the department an annual fee equivalent to \$3,000 for each participating producer to cover the department's administrative and enforcement costs. Beginning March 1, 2025, each stewardship organization shall pay to the department the annual fee to cover the department's administrative and enforcement costs. The department must apply any remaining annual payment funds from the current year to the annual payment for the coming fiscal year if the collected annual payment exceeds the department's costs for a given year and increase annual payments for the coming fiscal year to cover the department's fees if the collected annual payment was less than the department's costs for a given year. The amount paid under this section must be deposited into the mercury-containing light product stewardship programs account created in RCW 70A.505.120. [2024 c 339 s 7; 2020 c 20 s 1417; 2017 c 254 s 1; 2014 c 119 s 5; 2010 c 130 s 5. Formerly RCW 70.275.050.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

Finding—2014 c 119: See note following RCW 70A.505.020.

RCW 70A.505.060 Collection and management of mercury. (Effective until January 1, 2035.) (1) All mercury-containing lights and materials recovered from mercury-containing lights collected in the state by product stewardship programs or other collection programs must be recycled and any process residuals must be managed in compliance with applicable laws.

(2) Mercury recovered from retorting and other hazardous materials must be recycled or placed in a properly permitted hazardous waste landfill, or placed in a properly permitted mercury repository. [2024 c 339 s 8; 2010 c 130 s 6. Formerly RCW 70.275.060.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

RCW 70A.505.070 Collectors of unwanted mercury-containing lights —Duties. (Effective until January 1, 2035.) (1) Except for persons involved in registered mail-back programs, a person who collects unwanted mercury-containing lights in the state, receives funding through a product stewardship program for mercury-containing lights, and who is not a generator of unwanted mercury-containing lights must:

(a) Register with the department as a collector of unwanted mercury-containing lights. Until the department adopts rules for collectors, the collector must provide to the department the legal name of the person or entity owning and operating the collection location, the address and phone number of the collection location, and the name, address, and phone number of the individual responsible for operating the collection location and update any changes in this information within thirty days of the change;

(b) Maintain a spill and release response plan at the collection location that describes the materials, equipment, and procedures that will be used to respond to any mercury release from an unwanted mercury-containing light;

(c) Maintain a worker safety plan at the collection location that describes the handling of the unwanted mercury-containing lights at the collection location and measures that will be taken to protect worker health and safety; and

(d) Use packaging and shipping material that will minimize the release of mercury into the environment and minimize breakage and use mercury vapor barrier packaging if mercury-containing lights are transported by the United States postal service or a common carrier.

(2) A person who operates a curbside collection program or owns or operates a mail-back business participating in a product stewardship program for mercury-containing lights and uses the United States postal service or a common carrier for transport of mercury-containing lights must register with the department and use mercury vapor barrier packaging for curbside collection and mail-back containers. [2024 c 339 s 9; 2010 c 130 s 7. Formerly RCW 70.275.070.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

RCW 70A.505.080 Requirement to recycle end-of-life mercury-containing lights. (Effective until January 1, 2035.) Effective January 1, 2013:

(1) All persons, residents, government, commercial, industrial, and retail facilities and office buildings must recycle their end-of-life mercury-containing lights.

(2) No mercury-containing lights may knowingly be placed in waste containers for disposal at incinerators, waste to energy facilities, or landfills.

(3) No mercury-containing lights may knowingly be placed in a container for mixed recyclables unless there is a separate location or compartment for the mercury-containing lights that complies with local government collection standards or guidelines.

(4) No owner or operator of a solid waste facility may be found in violation of this section if the facility has posted in a conspicuous location a sign stating that mercury-containing lights must be recycled and are not accepted for disposal.

(5) No solid waste collector may be found in violation of this section for mercury-containing lights placed in a disposal container by the generator of the mercury-containing light. [2010 c 130 s 8. Formerly RCW 70.275.080.]

RCW 70A.505.090 Producers must participate in an approved product stewardship program. (Effective until January 1, 2029.) As of January 1, 2013, no producer, wholesaler, retailer, electric utility, or other person may distribute, sell, or offer for sale mercury-containing lights for residential use to any person in this state unless the producer is participating in a product stewardship program under a plan approved by the department. [2010 c 130 s 9. Formerly RCW 70.275.090.]

RCW 70A.505.100 Civil penalty—Appeal—Department's authority. (Effective until January 1, 2035.) (1)(a) The department may administratively impose a civil penalty on a person who violates this chapter in an amount of up to \$1,000 per violation per day.

(b) The department may administratively impose a civil penalty of up to \$10,000 per violation per day on a person for repeated violations of this chapter or failure to comply with an order issued under (c) of this subsection.

(c) Whenever on the basis of any information the department determines that a person has violated or is in violation of this chapter, including the failure by a stewardship organization to achieve performance goals proposed in a plan or the failure by a legacy producer to respond to a requirement for information by a stewardship organization under RCW 70A.505.050, the department may issue an order requiring compliance. A person who fails to take corrective action as specified in a compliance order is liable for a civil penalty as provided in (b) of this subsection, without receiving a written warning prescribed in (e) of this subsection.

(d) A person who is issued an order or incurs a penalty under this section may appeal the order or penalty to the pollution control hearings board established by chapter 43.21B RCW.

(e) Prior to imposing penalties under this section, the department must provide a producer, legacy producer, retailer, or

stewardship organization with a written warning for the first violation by the producer, legacy producer, retailer, or stewardship organization of the requirements of this chapter. The written warning must inform a producer, legacy producer, retailer, or stewardship organization that it must participate in an approved plan or otherwise come into compliance with the requirements of this chapter within 30 days of the notice. A producer, legacy producer, retailer, or stewardship organization that violates a provision of this chapter after the initial written warning may be assessed a penalty as provided in this subsection.

(2) (a) Upon the department notifying a stewardship organization, producer, or legacy producer that it has not met a significant requirement of this chapter, the department may, in addition to assessing the penalties provided in this section, take any combination of the following actions:

(i) Issue corrective action orders to a producer or stewardship organization;

(ii) Issue orders to a stewardship organization to provide for the continued implementation of the program in the absence of an approved plan;

(iii) Revoke the stewardship organization's plan approval and require the stewardship organization to implement its contingency plan under RCW 70A.505.040;

(iv) Require a stewardship organization to revise or resubmit a plan within a specified time frame; or

(v) Require additional reporting related to compliance with the significant requirement of this chapter that was not met.

(b) Prior to taking the actions described in (a) (iii) of this subsection, the department must provide the stewardship organization, producer, or legacy producer an opportunity to respond to or rebut the written finding upon which the action is predicated. [2024 c 339 s 10; 2010 c 130 s 10. Formerly RCW 70.275.100.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

RCW 70A.505.110 Department's website to list producers participating in product stewardship plan—Required participation in a product stewardship plan—Written warning—Review of plans—Rules—Exemptions. (Effective until January 1, 2035.) (1) The department shall provide on its website a list of all producers participating in a product stewardship plan that the department has approved and a list of all producers the department has identified as noncompliant with this chapter and any rules adopted to implement this chapter.

(2) Product wholesalers, retailers, distributors, and electric utilities must check the department's website or producer-provided written verification to determine if producers of products they are selling in or into the state are in compliance with this chapter.

(3) No one may distribute or sell mercury-containing lights from producers, or any lights in or into the state from legacy producers, who are not participating in a product stewardship program or who are not in compliance with this chapter and rules adopted under this chapter.

(4) (a) The department shall serve, or send with delivery confirmation, a written warning explaining the violation to any person known to be distributing or selling mercury-containing lights from

producers, or any lights in or into the state from legacy producers, who are not participating in a product stewardship program or who are not in compliance with this chapter and rules adopted under this chapter.

(b) The department must review new, updated, and revised plans submitted by stewardship organizations. The department must:

(i) Review new, updated, and revised stewardship organization plans within 120 days of receipt of a complete plan;

(ii) Make a determination as to whether or not to approve a plan, plan update, or plan revision and notify the stewardship organization of the:

(A) Determination of approval if a plan provides for a program that meets the requirements of this chapter; or

(B) Reasons for not approving a plan. The stewardship organization must submit a new or revised plan within 60 days after receipt of the letter of disapproval. In the event that a new or revised plan submitted by a stewardship organization does not sufficiently meet the requirements of this chapter, including any deficiencies identified in the initial letter of disapproval, the department may:

(I) Use the enforcement powers specified in this chapter; or

(II) Amend the contents of the insufficient new or revised plan in a manner that ensures that the plan meets the requirements of this chapter and the department may require the stewardship organization to implement the plan as amended by the department.

(c) The approval of a plan by the department does not relieve producers or legacy producers participating in the plan from responsibility for fulfilling the requirements of this chapter.

(5) The department shall adopt rules to implement this chapter.

(6) A sale or purchase of mercury-containing lights as a casual or isolated sale as defined in RCW 82.04.040 is not subject to the provisions of this section.

(7) A person primarily engaged in the business of reuse and resale of used mercury-containing lights is not subject to the provisions of this section when selling used working mercury-containing lights, for use in the same manner and purpose for which the lights were originally purchased. [2024 c 339 s 11; 2010 c 130 s 11. Formerly RCW 70.275.110.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

RCW 70A.505.120 Mercury-containing light product stewardship programs account. (Effective until January 1, 2035.) The mercury-containing light product stewardship programs account is created in the custody of the state treasurer. All funds received from producers and stewardship organizations under this chapter and penalties collected under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2024 c 339 s 12; 2017 c 254 s 3; 2010 c 130 s 13. Formerly RCW 70.275.130.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

RCW 70A.505.130 Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging. (Effective until January 1, 2035.) (1) The department may adopt rules necessary to implement, administer, and enforce this chapter.

(2) By November 1, 2033, the department shall report to the appropriate committees of the legislature concerning the status of the product stewardship program and recommendations for changes to the provisions of this chapter.

(3) The department shall annually invite comments from local governments, communities, and residents to report their satisfaction with services provided by product stewardship programs created under this chapter. This information may be used by the department to determine if the plan operator is meeting convenience requirements and in reviewing proposed updates or changes to product stewardship plans.

(4) Beginning October 1, 2014, the department shall annually estimate the overall statewide recycling rate for mercury-containing lights and calculate that portion of the recycling rate attributable to the product stewardship program. The department may require a stewardship organization to submit data as needed for the department to make the estimations required by this subsection.

(5) The department may require submission of independent performance evaluations and report evaluations documenting the effectiveness of mercury vapor barrier packaging in preventing the escape of mercury into the environment. The department may restrict the use of packaging for which adequate documentation has not been provided. Restricted packaging may not be used in any product stewardship program required under this chapter. [2024 c 339 s 13; 2010 c 130 s 14. Formerly RCW 70.275.140.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

RCW 70A.505.140 Application of chapter to the Washington utilities and transportation commission. (Effective until January 1, 2035.) Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020. [2010 c 130 s 15. Formerly RCW 70.275.150.]

RCW 70A.505.150 Application of chapter to entities regulated under chapter 70A.300 RCW. (Effective until January 1, 2035.) Nothing in this chapter changes the requirements of any entity regulated under chapter 70A.300 RCW to comply with the requirements under that chapter. [2020 c 20 s 1418; 2010 c 130 s 16. Formerly RCW 70.275.160.]

RCW 70A.505.160 Immunity from antitrust liability. (Effective until January 1, 2035.) (1) It is the intent of the legislature that a producer, legacy producer, group of producers or legacy producers,

or stewardship organization preparing, submitting, and implementing a mercury-containing light product stewardship program pursuant to this chapter, as well as participating entities in the distribution chain, including retailers and distributors, are granted immunity, individually and jointly, from federal and state antitrust liability that might otherwise apply to the activities reasonably necessary for implementation and compliance with this chapter. It is further the intent of the legislature that the activities of the producer, legacy producer, group of producers or legacy producers, stewardship organization, and entities in the distribution chain, including retailers and distributors, in implementing and complying with the provisions of this chapter may not be considered to be in restraint of trade, a conspiracy, or combination thereof, or any other unlawful activity in violation of any provisions of federal or state antitrust laws.

(2) The department shall actively supervise the conduct of the stewardship organization, the producers and legacy producers of mercury-containing lights, and entities in the distribution chain under this chapter. [2024 c 339 s 14; 2014 c 119 s 6. Formerly RCW 70.275.170.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

Finding—2014 c 119: See note following RCW 70A.505.020.

RCW 70A.505.170 Requirements of chapter cease to apply—When.

The requirements of this chapter cease to apply beginning the earlier of:

(1) January 1, 2035; or

(2) A date determined by the department, based on the diminishing number of mercury-containing lights collected by the program reaching a de minimis level where the continued expense and environmental cost of implementing the program would result in continued costs that outweigh the benefits of continuing the program, as calculated in a cost-benefit analysis consistent with the requirements of RCW 34.05.328. Unless the department and stewardship organization agree to a different cessation date prior to 2035 without carrying out a cost-benefit analysis, the department must conduct a cost-benefit analysis under this subsection to be completed during calendar year 2031. [2024 c 339 s 18.]

Finding—Intent—2024 c 339: See note following RCW 70A.505.010.

RCW 70A.505.900 Chapter liberally construed. (Effective until January 1, 2035.) This chapter must be liberally construed to carry out its purposes and objectives. [2010 c 130 s 17. Formerly RCW 70.275.900.]

RCW 70A.505.901 Severability—2010 c 130. (Effective until January 1, 2035.) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2010 c 130 s 21. Formerly RCW 70.275.901.]