**DRAFT 2014 BILL – RCW 70.275 Mercury-Containing Lights**

*Notes:*

* *Highlighted dates need further discussion (the dates in this draft may change)*
* *Program review and sunset still under discussion (JLARC review sections)*

**BILL DESCRIPTION**: Relating to financing for stewardship of mercury-containing lights

**NEW SECTION - Finding**

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.

**70.275.020 - Definitions.**

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 picking up 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 andthat deliver no more than ten mercury-containing lights to registered collectors for a product stewardship program on any given day; and
     (b) A household generator or other person who purchases mercury-containing lights at retail and that utilizes a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and that discards no more than ten mercury-containing lights into those programs on any given day.
   (4) "Department" means the department of ecology.
   (5) “Environmental handling charge” means the charge approved by the department to be applied to each mercury-containing light sold in or into the state of Washington for sale at retail in Washington to cover all administrative and operational costs associated with the product stewardship program, including the fee for the department’s administration and enforcement.

 (5) "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.
     (6) "Hazardous substances" or "hazardous materials" means those substances or materials identified by rules adopted under chapter [70.105](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.105) RCW.
     (7) "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.
     (8) "Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.
     (9) "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.
     (10) "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.
     (11) "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.
     (12) "Processing" means recovering materials from unwanted products for use as feedstock in new products. Processing must occur at permitted facilities.

     (13) "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;
     (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 an unbranded mercury-containing light that is sold or has been sold in or into Washington state; or
     (d)(i) Sells or sold at 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.

     (14) "Product stewardship" means a requirement for a producer of mercury-containing lights sold in or into the state of Washington for sale at retail 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.

     (15) "Product stewardship plan" or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented.
     (16) "Product stewardship program" or "program" means the methods, systems, and services financed and provided by producers of mercury-containing lights generated by covered entities that addresses product stewardship and includes collecting, transporting, reusing, recycling, processing, and final disposition of unwanted mercury-containing lights, including a fair share of orphan products.
     (17) "Recovery" means the collection and transportation of unwanted mercury-containing lights under this chapter.
     (18)(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.
     (19) "Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.
     (20) "Residuals" means nonrecyclable materials left over from processing an unwanted product.

     (21) "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.
     (22)(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.
     (23) "Stakeholder" means a person who may have an interest in or be affected by a product stewardship program.

     (24) "Stewardship organization" means an organization designated by a producer or group of producers to act as an agent on behalf of each producer to operate a product stewardship program.
     (25) "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.

**70.275.030 - Product stewardship program**.

(1) Every producer of mercury-containing lights sold in or into Washington state for residential use must participate in a product stewardship program operated by a stewardship organization for that product, financed in the manner provided by 70.275.050, including the department's costs for administering and enforcing this chapter. Producers shall inform the department of their participation in a program through the inclusion of their name in a plan submitted pursuant to RCW 70.275.040.   .

 (2) A stewardship organization operating a product stewardship program must pay all administrative and operational costs associated with their program or programs, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a stewardship organization shall finance, as described in 70.275.050, 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 locations, a stewardship organization shall finance, as described in 70.275.050, the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations.
     (3) Product stewardship programs shall collect unwanted mercury-containing lights delivered from covered entities for reuse, recycling, processing, or final disposition, and not charge a fee when lights are dropped off or delivered into the program.

     (4) Product stewardship programs shall provide, at a minimum, no cost services in all cities in the state with populations greater than ten thousand and all counties of the state on an ongoing, year-round basis.
     (5) 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.
     (6) No product stewardship program required under this chapter may use federal or state prison labor for processing unwanted products.

     (7) Product stewardship programs for mercury-containing lights must be fully implemented six months after the department approves the product stewardship plan in accordance with 70.275.050.

**70.275.040 - Submission of proposed product stewardship plans — Department to establish rules — Public review — Plan update — Annual report.**

(1) A stewardship organization submitting a proposed product stewardship plan under RCW [70.275.030](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.275&full=true" \l "70.275.030)(2)(b) must submit that plan by June 1st of the year prior to the planned implementation. For the plan submitted June 1, 2014, the effective date of the program shall be November 1, 2014.

     (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 stewardship organization and participating 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;
     (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 information promoting safe handling of mercury-containing lights, waste prevention and recycling. 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 retailto fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be described as a Washington or Department of Ecology recycling fee at the point of retail sale;
     (f) A description of the financing system required under RCW [70.275.050](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.275&full=true#70.275.050);
     (g) How mercury and other hazardous substances will be handled for collection through final disposition;
     (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 web site and at the department's headquarters.
     (4) At least two years from the start of the product stewardship program and once every four years thereafter, the 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) No later than June 1, 2015 and each June 1 thereafter the stewardship organization shall submit an annual report to the department describing the results of implementing their plan for the prior calendar year to the department describing the results of implementing its plan and include an independent financial audit with the annual report. The department may adopt rules for reporting requirements. Financial information included in the annual report will include but not be limited to:

 (a) The amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

 (b) Identification of confidential business information submitted in the annual report; and

 (c) Cost of the mercury-containing lights product stewardship program, including line item costs for:

 (i) Program operations, which may include delivery for transportation and processing costs by service providers and collection costs;

 (ii) Communications, which may include media, printing and fulfillment, public relations, and other projects;

 (iii) Administration, which may include personnel, 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.

 (d) Beginning in 2023, each stewardship organization shall include in annual report an analysis of the percent of total sales of lights sold at retail to covered entities in Washington that mercury-containing lights constitute, the estimated number of mercury-containing lights in use by covered entities in the state, and the projected number of unwanted mercury-containing lights to be recycled in future years.

 (6) All plans and reports submitted to the department must be made available for public review on the department's web site and at the department's headquarters.

**70.275.050 - Financing the mercury-containing light recycling program.**

 (1) The stewardship organization must recommend to the department, an environmental handling charge to be added to the price of each of its participating producers’ mercury-containing lights sold in or into the state of Washington for sale at retail in Washington. 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, including the department’s annual fee required by 70.275.050(4), and a prudent reserve. The stewardship organization must consult with 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 household 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 cost of collecting, transporting, and recycling unwanted household mercury-containing lights delivered from covered entities to collection locations identified in 70.275.030(2);

 (d) The administrative costs of the stewardship organization including the department’s annual fee, described in 70.275.050(4); and

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

(2) The department must review the stewardship organization’s recommended environmental handling charge and must approve the recommended charge within thirty (30) days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in 70.275.040. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, and recyclers. Once the environmental handling charge is approved by the department, the environmental handling charge shall be remitted by producers as provided in 70.275.050(5) to the stewardship organization for each mercury-containing light sold in or into Washington for sale at retail in Washington. Each producer shall either:

 (a) Beginning July 1, 2014, but no sooner than ninety days after department approves the environmental handling charge, add the charge to the price of each of its household mercury-containing lights paid by the producer’s retail customers distributing the mercury-containing light for sale at retail in Washington, who must add the charge to the retail price of each producer’s mercury-containing light, and remit the charge to the stewardship organization on behalf of the retailer, or

 (b) By agreement, ensure that, beginning July 1, 2014, but no sooner than ninety days after the department approves the environmental handling charge, the retailer selling the producer’s brand of mercury-containing lights adds the charge to the price of each of the producer’s mercury-containing lights that the entity sells in or into Washington for sale at retail in Washington and that the retailer remits the charge to the stewardship organization.

(3) No later than August 1 of any year, stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department’s review and approval under 70.275.050(2) to ensure that there are sufficient revenues to fund the cost of the program for the next year.

(4) Beginning March 1, 2015 and each year thereafter, stewardship organization shall pay to the department an annual fee equivalent to five thousand dollars for each participating producer to cover the department’s administrative and enforcement costs.

(5) Except as provided in a plan approved by the department, the environmental handling charge to be transmitted by retailers or producers (who received payment from retailers identified in subsection 70.275.050(2)(a)) to the stewardship organization shall be due and payable monthly on or before the last day of the month following each calendar month. The first payment shall be due to the stewardship organization November 15, 2014 based on charges received during the tenth calendar month of 2014. The payments shall be accompanied by a return in the form as prescribed by the stewardship organization. Plans may adopt less frequent payment schedules.

**NEW SECTION – Antitrust Immunity – State Action Doctrine**

(1) It is the intent of the legislature that a producer, group of producers, 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, group of 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 of mercury-containing lights, and entities in the distribution chain in determination and implementation of the environmental handling charge authorized by this chapter.

**70.275.140 - 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.**

 (1) The department may adopt rules necessary to implement, administer, and enforce this chapter.
     (2) The department may adopt rules to establish performance standards for product stewardship programs and may establish administrative penalties for failure to meet the standards.

     (3) By December 31 of each year the department shall post on the department website a product stewardship program status report that will include:

 (a) An estimate of the overall statewide recycling rate for mercury-containing lights purchased at retail and the percentage of that recycling rate attributable to the product stewardship program;

 (b) The projected number of unwanted mercury-containing lights to be returned to the stewardship program in future years;

 (c) Recommendations for changes to the provisions of this chapter including a recommendation on the appropriateness of a sunset date for the product stewardship program; and

 (d) A summary of stakeholder comments as required in 70.275.140 (4), (5) and (6).

     (4) Beginning October 1, 2014, the department shall annually invite comments from local governments, communities, and citizens to report their satisfaction with services provided by product stewardship programs. This information must 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.
     (5) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the impacts of the requirements of this chapter on the availability or purchase of energy efficient lighting within the state. If the department determines that evidence shows the requirements of this chapter have resulted in negative impacts on the availability or purchase of energy efficient lighting in the state, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for changes to the provisions of this chapter.
     (6) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the availability of energy efficient nonmercury lighting to replace mercury-containing lighting within the state. If the department determines that evidence shows that energy efficient nonmercury-containing lighting is available and achieves similar energy savings as mercury lighting at similar cost, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for legislative changes to reduce mercury use in lighting..

     (7) 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.

**NEW SECTION – Ecology provides information to JLARC for 2024 review**

 (1) The department will establish performance measures and a data collection plan for submittal to the joint legislative audit and review committee within one year of the effective date of this legislation, as required by RCW 43.131.061.

 (2) The department will provide a program performance report by January 1, 2024 to the governor and the appropriate committees of the legislature. The program performance report will be based on surveys, reports and evaluations required in RCW 70.275.140. The program performance report will provide information on the factors detailed in RCW 43.131.071.

 (3) By July 1, 2024, the joint legislative audit and review committee shall complete a program review, as provided in this chapter, of the mercury-containing lights product stewardship program and consider the appropriateness of a termination date for the product stewardship program and repeal of this chapter.

**NEW SECTION - JLARC Review – add section to RCW 43.131**

The joint legislative audit and review committee must conduct a program review, as provided in this chapter, of the product stewardship program for mercury-containing lights, established in sections 1 through 14, chapter 130, Laws of 2010. The review must be completed by July 1, 2024.

**NEW SECTION**.

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.