



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

**Agency:** Department of Ecology AO # 15-04

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** Ecology is amending Chapter 173-910 WAC Mercury-Containing Lights Product Stewardship Program. The purpose of this rulemaking, consistent with the authorizing statute in Chapter 70.275 RCW, is to achieve a statewide goal of recycling all end-of-life mercury-containing lights by 2020 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.

The approach to stewardship implemented by the rule was significantly altered by the 2014 Legislature. We have revised the rule to reflect and incorporate changes made to the underlying statute. Changes include the requirement to fund the program through an environmental handling charge, revised requirements for stewardship plans and annual reports including independent financial audits, changes in the number of lights that can be recycled per day, changes in definitions, sunset provisions, and other changes as directed by the Legislature.

**Citation of existing rules affected by this order:**

Repealed:

Amended: Chapter 173-910 WAC – Mercury-Containing Lights Product Stewardship Program

Suspended:

**Statutory authority for adoption:** RCW 70.275.040, RCW 70.275.110, RCW 70.275.140

**Other authority :**

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR # 16-07-035 on March 10, 2016.

Describe any changes other than editing from proposed to adopted version: See attachment A.

Name: Kirsten Miller, phone (360) 407-6707  
Publication Coordinator fax (360) 407-6102  
Department of Ecology e-mail kirsten.miller@ecy.wa.gov  
Address: PO Box 47600  
Olympia, WA 98504-7600

**Date adopted:** 8/23/16

**NAME** Maia D. Bellon

**SIGNATURE**

**TITLE**  
Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** August 24, 2016

**TIME:** 9:10 AM

**WSR 16-17-146**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>13</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in the agency's own initiative:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>13</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>0</u>	Amended	<u>13</u>	Repealed	<u>0</u>

## Attachment A: Differences between the proposed rule and adopted rule.

There are some differences between the proposed rule filed on March 10, 2016 and the adopted rule filed on August 23, 2016. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them.

### **WAC 173-910-010 Purpose:**

Every producer of mercury-containing lights sold in or into Washington state for sale at retail must ~~fully finance and~~ participate in the product stewardship program.

Ecology deleted the text "fully finance and" for consistency with other changes in the rule to implement the new financing mechanism.

### **WAC 173-910-020 Applicability:**

(7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state at retail.

Ecology added the text "at retail" at the end of the definition to provide clarity and consistency with the statute.

### **WAC 173-910-100 Definitions:**

~~"Fully finance and participate"~~ means the obligation of each producer of mercury-containing lights sold in or into Washington to ~~fund its share of program costs and join in an~~ register with and participate in an approved product stewardship program.

Ecology deleted the words "fully finance and" as well as "fund its share of program costs and join in an" since this language reflected the original funding mechanism. This definition was moved to keep the definitions in alphabetical order.

### **WAC 173-910-100 Definitions:**

~~"Producer's cost": means each participating producer's portion of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.~~

Ecology deleted this definition for consistency with other amendments related to the change in funding mechanism, which reflects statutory changes.

### **WAC 173-910-100 Definitions:**

~~"Independent plan" means a plan for collecting, transporting, processing and recycling of mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization designated by a producer or group of producers.~~

~~"Standard Plan": means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization~~

Ecology deleted the "Standard Plan" definition for consistency with other amendments since it was from the former process requiring department-requested proposals for a department-contracted program. We also deleted the "Independent Plan" definition. All references to the "standard plan" and the "independent plan" were deleted from the rule.

### **WAC 173-910-100 Definitions:**

**"Product stewardship plan" or "plan"** means a detailed plan describing the manner in which a product stewardship program will be implemented. ~~A product stewardship plan can either be the standard plan or an independent plan.~~ for collecting, transporting, processing, and recycling mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization.

With the deletion of the "Standard Plan" and "Independent Plan" definitions that were part of the former process requiring department-requested proposals for a department-contracted program, we modified the "Product Stewardship Plan or Plan" definition to include the descriptive text regarding what is required for the overall program.

**WAC 173-910-210 Producers of mercury-containing lights:**

~~(2) Each producer must participate in a product stewardship program by: (a) Funding its producer ((share)) cost of the department-approved standard plan and program operated by the ((department-contracted)) stewardship organization; or (b) Funding its producer ((share)) cost of and operating, either individually or jointly, an independent plan and program approved by the department.~~

Ecology deleted this text since it refers to the former department-contracted program prior to the legislative changes. The remaining subsections (3 through 5) became subsections 2 through 4.

**WAC 173-910-210 Producers of mercury-containing lights:**

~~(43) Producers The stewardship organization must pay all administrative and operational costs associated with the ~~standard program or the independent program~~ plan in which they participate, except for the collection costs associated with curbside and mail-back collection programs.....”~~

Ecology deleted the word “Producers” and added “The stewardship organization” to accurately reflect the way the program is funded through the Environmental Handling Charge. References to the standard program and the independent program were deleted since those were in place for the former department-contracted program.

**WAC 173-910-210 Producers of mercury-containing lights:**

~~(43) .....For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a stewardship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations. The stewardship organization’s administrative and operational costs are not required to include a collection location’s cost of receiving, accumulating and storing, and packaging mercury-containing lights.~~

This language from the statute was proposed to be added under the stewardship organization requirements in WAC 173-910-310(11). In the final rule, we also added the same language at the end of WAC 173-910-210(3) for clarity.

**WAC 173-910-210 Producers of mercury-containing lights:**

~~(54) The producer must satisfy the following requirements: (a) Meet its financial obligations to the plan, ~~which includes the department’s annual fee;~~~~

The reference to the department’s annual fee was deleted because the product stewardship organization is responsible for paying the department’s annual fee consistent with the amended statute. This subsection was renumbered to become (4) in the final rule.

**WAC 173-910-310 Stewardship organization requirements:**

~~(1) ~~The~~ A stewardship organization will implement ~~the~~ a department-approved ~~standard plan and independent stewardship organizations will implement department-approved independent plans.~~~~

Ecology deleted text referring to a “standard plan” and an “independent plan” and changed “the” to “a” in two places since there won’t be a department-contracted plan consistent with the amended statute.

**WAC 173-910-520 Collector Requirements:**

~~(7)(f) Use packaging and shipping material that will minimize the release of mercury into the environment by volatilization or any other means and minimize breakage and use mercury vapor barrier packaging as defined in RCW 70.275.020(10) if mercury lights are transported by the United States Postal Service or a common carrier; and~~

We added language from the statute at RCW 70.275.070(1)(d) for clarity and consistency because WAC 173-910-320(1)(c) (from RCW 70.275.030(2), last sentence) cites to the subsection where mercury vapor barrier packaging was proposed to be added, and the subsection didn’t include the specific requirement to use this type of packaging.

**WAC 173-910-610 Participation requirements:**

~~(6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights at retail must work with stewardship organizations to:~~

Ecology added the second reference to “at retail” in the final rule language for clarity and consistency.