AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2176

Introduced by Assembly Member Blumenfield

February 18, 2010

An act to add Article 10.03 (commencing with Section 25210.13) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2176, as amended, Blumenfield. Hazardous waste: lighting products.

(1) Existing law, the California Lighting Efficiency and Toxics Reduction Act, administered by the Department of Toxic Substances Control, prohibits a person from manufacturing for sale or selling in the state specified general purpose lights that contain levels of hazardous substances prohibited by the European Union pursuant to the RoHS Directive. A violation of the hazardous waste control law is a crime.

This bill would enact the California Lighting Toxics Reduction and Jobs Act and would define terms, including defining a "class 1 lamp" as a lamp containing mercury and a "class 2 lamp" as a lamp that produces less than a specified amount of light per watt.

The bill would require the producer of a class 1 lamp, by September 30, 2011, to submit a product stewardship plan with regard to the collection of class 1 lamps to the department, either individually or jointly with other producers, or by entering into an agreement with a stewardship organization. The bill would require the plan to ~~require the~~

~~recycling of~~ *reasonably demonstrate how the program would contribute to the recycling of* all class 1 lamps ~~sold by a producer~~, *including the program's fair share of orphan lamps,* on ~~and after~~ *or before* January 1, 2020. The department would be required to approve the plan pursuant to a specified procedure and the producer would be required to implement the approved plan by January 1, 2012. The bill would provide for the updating of the plan and would require the plan operator, by April 1, 2013, and on or before each April 1 annually thereafter, to prepare and submit to the department a report for the immediately preceding reporting period.

The bill would require an entity submitting a plan to enter into an agreement with the department to pay the costs incurred by the department associated with the review and enforcement of the plan. The bill would require the funds to be deposited in the Lighting Product Stewardship Subaccount, which the bill would establish in the Hazardous Waste Control Account, and would authorize the department to expend the funds in the Lighting Product Stewardship Subaccount, upon appropriation by the Legislature, for those costs.

The bill would require the producer of a class 2 lamp, by January ~~1, 2014~~ *30, 2012,* and on or before January 1 annually thereafter, to pay to the commission a fee in an amount established by the commission pursuant to a specified procedure. The commission would be required to deposit the fee revenues in the Energy Efficiency Research Fund, which the bill would create in the State Treasury, and the commission would be authorized to expend the funds in the Energy Efficiency Research Fund, upon appropriation by the Legislature, for specified research and projects relating to improving class 2 lamps' lighting efficiency and reducing ~~toxic~~ *environmental* impacts from ~~lighting technologies used by~~ class 2 lamps.

The bill would prohibit a producer, wholesaler, or retailer from selling or offering for sale a class 1 lamp or class 2 lamp to a person in this state on and after January 1, 2012, unless, with regard to the class 1 lamp, the producer is participating in a product stewardship program, or, on or after ~~January 1, 2014~~ *February 1, 2012,* with regard to a class 2 lamp, unless the producer has paid the required fee. The bill would also specify procedures for the enforcement of the act. Since a violation of the hazardous waste control laws is a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The state's policy, including the California Lighting Efficiency and Toxics Reduction Act, which added Article 10.02 (commencing with Section 25210.9) to Chapter 6.5 of Division 20 of the Health and Safety Code, has put the state on a path of transition to more energy-efficient lighting, including substantially increased utilization of fluorescent lighting.

(b) Lighting products introduce hazardous waste into the environment by containing hazardous substances, such as mercury, in the lighting product itself, and by the release of hazardous substances from the production of energy, which the lighting product utilizes.

(c) Electricity generation, particularly from coal, releases mercury into the atmosphere, which contaminates waterways and fish, causing a public health risk.

(d) The less efficient a lamp is, the more hazardous waste, including mercury, is released into the atmosphere from the electricity generation associated with its use.

(e) High-efficiency bulbs, such as compact fluorescent lamps, contain mercury within the product but because these bulbs use less energy, they are responsible for smaller hazardous emissions from energy production.

(f) Low-efficiency bulbs, such as incandescent bulbs, contain no mercury but are responsible for greater hazardous substance emissions from energy production.

(g) Low-efficiency bulbs also cause greater emissions of greenhouse gases and other harmful air pollutants. The efficiency of a lamp is a reasonable indicator of its total environmental impact.

~~(g)~~

(h) The state prohibits the disposal of lighting products containing hazardous levels of metal in the solid waste stream.

~~(h)~~

(i) The hazardous waste generated by waste lighting products can be reduced and managed through recycling, but recycling opportunities are currently inconvenient or nonexistent for most consumers.

~~(i)~~

(j) Even though some types of fluorescent lighting products deliver the same level of light at the same level of efficiency as other types of these products, they may have varying levels of mercury. The Department of General Services has adopted a procurement preference favoring low-mercury fluorescent lamps.

~~(j)~~

(k) In 2007, the Legislature enacted the California Lighting Efficiency and Toxics Reduction Act which directed the Department of Toxic Substances Control to convene a lighting task force to consider and make policy recommendations to the Legislature for designing a statewide collection program for end-of-life fluorescent lamps.

~~(k)~~

(l) On September 1, 2008, the task force submitted recommendations to the Legislature on the need and options for a convenient statewide system for the collection and recycling of fluorescent lamps for residential generators.

~~(*l*)~~

(m) The purpose of this act is to establish a system for the recycling of fluorescent lamps generated by households and small businesses that is free and convenient for end users and to promote the rapid development and uptake of more efficient and low-toxicity lighting products to minimize the public health impacts from lighting.

~~(m)~~

(n) The responsibility for the end-of-life management of products and materials rests primarily with the producers who designed and profited from the product, thereby incorporating life cycle costs into the total product costs to reduce the impact on the taxpayers and ratepayers of the state and reduce the impact on human health and the environment.

~~(n)~~

(o) (1) The imposition of the fee pursuant to Section 25210.20 of the Health and Safety Code would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution because the amount and nature of the fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of inefficient lamps and there is a sufficient nexus between the fees imposed and the use of those fees to support programs.

(2) There is a clear nexus between the type and the amount of the fees imposed pursuant to this act and the environmental, public health, and societal costs resulting from inefficient lamps.

(3) It is the intent of the Legislature that the fees imposed pursuant to Section 25210.20 of the Health and Safety Code be consistent with the California Supreme Court's decision in Sinclair Paint. Co. v. State Bd. of Equalization (1997) 15 Cal.4th 866.

SEC. 2. Article 10.03 (commencing with Section 25210.13) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.03. California Lighting Toxics Reduction and Jobs in Recycling Act

25210.13. For the purposes of this article, the following terms have the following meanings:

(a) "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.

(b) "Commission" means the State Energy Resources Conservation and Development Commission.

(c) "Covered entity" means the ~~end user of a class 1 lamp, including, but not limited to, a resident or a small business, that~~ *residential end user of a class 1 lamp who* delivers not more than 15 class 1 lamps to a collection site or service operating pursuant to an approved product stewardship program for class 1 lamps.

(d) "Covered lamp" means all lamps defined under "class 1 lamps" and "class 2 lamps," either individually or as an item within a covered lamp category, including all materials that make up the covered product.

(1) "Class 1 lamp" means a lamp containing mercury.

(2) “Class 2 lamp” means a lamp that produces fewer than 45 lumens per watt.

(3) A lamp that is both a class 1 lamp and a class 2 lamp shall be subject to all of the requirements that apply to those lamps.

~~(e) “Final disposition” means the point beyond which no further processing takes place and materials from a class 1 lamp have been transformed for direct use as a feedstock in producing new products or disposed of or managed in permitted facilities.~~

~~(f) “Hazardous substance” means a substance that, when discarded, is required to be managed as a hazardous waste pursuant to this article.~~

~~(g)~~

(e) “Lamp” has the same meaning as “general purpose lights,” as defined in Section 25210.10.

~~(h) “Mercury burden” means the amount of mercury contained in a covered lamp, plus the average amount of mercury that is expected to be released into the environment by electrical generation necessary in the use of a covered lamp, including a class 2 lamp, during the course of its useful life.~~

(f) “Orphan lamp” means a covered lamp that meets any of the following conditions:

(1) The covered lamp lacks a producer’s brand.

(2) The producer of that covered lamp is no longer in business and has no successor in interest.

(3) The covered lamp bears a brand for which the department cannot identify an owner.

~~(i)~~

(g) “Plan operator” means a producer who either individually or jointly with other producers, implement the product stewardship program plan approved by the department pursuant to Section 25210.16, or, if the producer enters into an agreement with a product stewardship organization to submit the plan, on the producer’s behalf, the product stewardship program that implements the plan approved by the department pursuant to Section 25210.16.

~~(j) “Processing” means recovering material from unwanted products for use as feedstock in new products.~~

~~(k)~~

(h) “Producer” shall be determined, with regard to a covered lamp, as one of the following:

(1) The person who manufactures the covered lamp and who sells, offers for sale, or distributes the product in the state under the manufacturer's own brand.

(2) If there is no person who sells, offers for sale, or distributes the covered lamp in the state under the person's own name or brand, the producer of the covered lamp is the owner or licensee of a trademark under which a product is sold or distributed in state, whether or not the trademark is registered.

(3) If there is no person who is a producer of the covered lamp for purposes of paragraph (1) or (2), the producer of the covered lamp is the person who imports the covered lamp into the state for sale or distribution.

~~(*l*)~~

(i) "Product stewardship" means the requirement imposed pursuant to this article upon a producer of a class 1 lamp to manage and reduce adverse safety, health, and environmental impacts of the class 1 lamp throughout the life cycle of the covered lamp, including financing and providing for the collection, transporting, reusing, recycling, processing, and final disposition of the class 1 lamp.

~~(m)~~

(j) "Product stewardship plan" or "plan" means the detailed plan prepared pursuant to Section 25210.15 describing the manner in which a product stewardship program will be implemented.

~~(n)~~

(k) "Product stewardship program" or "program" means a program established pursuant to this article pursuant to a product stewardship plan that is financed and managed or provided by the producer of a class 1 lamp and that includes ~~both of the following elements:~~

~~(1) Product design for source reduction and reuse.~~

~~(2) Provisions for the collection, transportation, recycling, and disposal of unwanted products.~~

~~(o) "Recycling" means transforming or remanufacturing unwanted products into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting unwanted products with or without other waste.~~ *provisions for the collection, transportation, recycling, processing and final disposition of class 1 lamps, including the collection and* *recycling of the program's fair share of orphan lamps, as specified in subdivision (c) of Section 25210.15.*

~~(p)~~

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

~~(q)~~

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

~~(r)~~

(n) "Retailer" means a person who offers covered lamps for retail sale, as defined in Section 6007 of the Revenue and Taxation Code, 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 between a distributor and a retailer.

~~(s) "Reuse" means a change in ownership of a covered lamp or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, for use again, as in shipping materials, by the generator of the shipping materials. "Reuse" does not include dismantling of a covered lamp for the purpose of recycling.~~

~~(t)~~

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

~~(u)~~

(p) "Stewardship organization" is an entity appointed by a producer to act as an agent on behalf of the producer to administer a product stewardship program.

~~(v)~~

(q) "Unwanted product" means a covered lamp that is no longer wanted, has been abandoned or discarded, or is intended to be discarded by its owner.

~~(w)~~

(r) "Wholesale sale" means a sale that is not a retail sale, as defined in Section 6007 of the Revenue and Taxation Code.

~~(x)~~

(s) (1) "Wholesaler" means a person who engages in the sale of covered lamps for resale, in a sale that is a wholesale sale.

(2) If a person is a producer of a covered lamp and also a wholesaler, the person shall comply with the provisions of this article that apply to producers.

25210.14. (a) This article shall be known, and may be cited, as the California Lighting Toxics Reduction and Jobs in Recycling Act.

(b) The Legislature hereby finds and declares that it is the intent ~~of this article to require the recycling of all unwanted class 1 lamps~~ *of this article to require the recycling of all unwanted class 1 lamps, including orphan lamps,* by January 1, 2020, through expanded public education 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.

25210.15. (a) On or before September 30, 2011, a producer of a class 1 lamp shall submit a product stewardship program plan to the department in accordance with this section.

(b) A producer shall either individually or jointly with other producers, submit a product stewardship program plan pursuant to this section or may enter into an agreement with a stewardship organization to submit, on the producer's behalf, a product stewardship program pursuant to this section.

~~(c) (1) A producer, a group of producers, or a stewardship organization shall, at least 60 days before submitting a product stewardship plan to the department, consult with stakeholders, including, but not limited to, local governments, utilities, recyclers, haulers, retailers, environmental groups, general public, and others during the development of the plan, solicit stakeholder comments, and attempt to address any stakeholder concerns regarding the plan prior to submittal.~~

~~(2) The producer, a group of producers, or a stewardship organization shall provide documentation that demonstrates compliance with paragraph (1) when submitting the plan to the department.~~

~~(d)~~

(c) The product stewardship plan submitted to the department ~~shall include all of the following:~~ *shall meet all of the following requirements:*

(1) ~~Information~~ *Include information*, including full contact information, regarding all of the following:

(A) The organization submitting the plan.

(B) A list of all participating producers and their brands including a trademark, if applicable.

(C) If the program is to be operated by a stewardship organization, a description of management, administration, and tasks to be performed by the stewardship organization.

(2) ~~A~~ *Include a* collection system, including all of the following:

(A) Location of collection sites and other collection services to be used by the program.

(B) How unwanted products from all covered entities will be collected in all cities in the state with populations greater than 10,000 and in all counties of the state.

~~(C) How the collection system will be cost effective, convenient, and adequate to serve the needs of all covered entities in both urban and rural areas, with consideration given to curbside, mail back, and other collection methods.~~

~~(D)~~

(C) How collected unwanted products will be transported to processing facilities.

(3) ~~Educational~~ *Include educational* and outreach efforts, including, but not limited to, all of the following:

(A) A public service announcement promoting the proper management for class 1 lamps, which shall include providing a copy of the public service announcement to the department and posting the public service announcement on the stewardship organization or producer's Internet Web site.

(B) The establishment of a public Internet Web site, which shall include the posting of templates of all educational materials on the Internet Web site that is in a form and format that can be easily downloaded, and providing a link to the Internet Web site to the department.

(C) Methods to engage other stakeholders, such as waste, demolition, and lighting retailers and contractors, and appropriate state agencies and local governments to secure support and participation to encourage the proper management of class 1 lamps throughout the state.

(D) Strategies to work with utilities participating in energy conservation programs involving the replacement of old lighting technologies for new class 1 lamps and to encourage their participation in the collection and proper management of class 1 ~~lamps. These strategies may include the inclusion of an educational insert in customers' utility bills.~~ *lamps.*

(E) Strategies to encourage support and participation by retailers and other outlets to educate consumers on the proper management of class 1 lamps.

(4) ~~A~~ *Include a* processing and disposal system, which shall meet all of the following requirements:

(A) All class 1 lamps collected by the system shall be recycled.

(B) The mercury and mercury-bearing residuals from recycling of class 1 lamps collected by the system shall be disposed of at a mercury repository, issued a permit pursuant to this chapter, or managed at a hazardous waste facility operating in accordance with this chapter.

(C) The plan shall include the locations, permit status, and record of any penalties, violations, or regulatory orders received in the previous five years by processing and disposal facilities proposed to be used by the program, including all downstream processing and disposal facilities handling hazardous waste generated under the program and those involved in the final disposition of the hazardous waste.

(D) The processing and disposal system shall collect, free of charge, unwanted class 1 lamps from covered entities for reuse, recycling, processing, and final disposition.

(E) The processor of the class 1 lamps subject to the plan shall submit an annual report to the department in a format provided by the department that includes the number and type of class 1 lamps received.

(F) The processor of the class 1 lamps subject to the plan shall agree to allow the department, or its designee, to inspect, audit, or review audits of processing and disposal facilities used to fulfill the requirements of a product stewardship program.

(G) Federal or state prison labor shall not be used for processing class 1 lamps subject to the plan.

(5) ~~A~~ *Include a* description of the financing system to cover the entire product stewardship program, including how costs will be apportioned among, and assessed upon, producers participating in the program. The plan shall require the producer, group of

producers, or stewardship organization to pay all administrative and operational costs associated with the program.

~~(6) Plans to maximize reuse or recycling of packaging or shipping materials that may be collected.~~

~~(7) Plans for eliminating or reducing the environmental impacts of the covered lamp throughout the product's life cycle.~~

~~(8) Plans to achieve the requirement of recycling all class 1 lamps that are sold on and after January 1, 2020, by the producer or by the group of producers who have entered into the agreement with the stewardship organization to submit the plan.~~

(6) Include plans for minimizing the environmental impacts of the covered lamp throughout the product's life cycle.

(7) Include a list of collection sites and other collection services to be used by the program, sorted by city and county.

(8) Reasonably demonstrate how the product stewardship program will contribute toward achieving the goal of recycling all unwanted class 1 lamps, including the collection and recycling of the program's fair share of orphan lamps on or before January 1, 2020.

(9) Comply with the regulations for managing universal waste contained in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, as applicable.

25210.16. (a) Within 60 days after receiving a proposed product stewardship plan pursuant to Section 25210.15, the department shall determine whether the plan complies with this article.

(b) If the department approves the plan, the department shall notify the applicant of its approval.

(c) If the department rejects a plan, the department shall notify the applicant of its decision and its reasons for rejecting the plan. An applicant whose plan has been rejected by the department shall submit a revised plan to the department within 60 days after receiving notice of the rejection to maintain compliance with this article.

(d) On or before January 1, 2012, a producer shall either individually or jointly with other producers, implement the product stewardship program plan approved by the department, or, if the producer enters into an agreement with a stewardship organization to submit the plan, on the producer's behalf, the product stewardship program shall, on or before January 1, 2012, implement the plan approved by the department pursuant to this section.

25210.17. (a) At least once every four years, the plan operator shall update the product stewardship plan approved by the department pursuant to Section 25205.16 and shall submit the updated plan to the department for review.

(b) The department shall determine the status of an updated plan within 60 days of its submittal. If the department rejects an updated plan, the department shall notify the plan operator, who shall resubmit the plan within 60 days of that notification. If the plan is not resubmitted within that time period, the plan operator and the producer subject to the plan shall be deemed in violation of this article.

(c) A proposed change to a product stewardship plan shall be submitted to the department for approval, except for the following:

(1) Additions or changes to collection locations for unwanted products.

(2) Additions of producers to a product stewardship program.

(d) The plan operator shall inform the department of changes specified in subdivision (c) no ~~more~~ *less* than 15 days before the changes occur.

25210.18. (a) On or before April 1, 2013, and on or before each April 1 annually thereafter, the plan operator shall prepare and submit to the department a report for the immediately preceding reporting period describing all of the following:

(1) Information, including full contact information, regarding all of the following:

(A) The organization submitting the report.

(B) A list of all participating producers and their brands and trademarks, if applicable.

(2) The recovery rates of the class 1 lamps subject to the plan, including ~~both~~ *all* of the following:

(A) The amount, by weight, of unwanted class 1 lamps collected from covered entities in each county in the state, including documented collection and recycling or disposal of that material.

~~(B) Progress toward achieving the requirement of recycling 100 percent of the class 1 lamps sold by the producer or group of producers on and after January 1, 2020, as stated in paragraph (8) of subdivision (d) of Section 25210.15, and what actions the plan~~

~~operator will take during the next reported period to ensure attainment of that requirement, including how it will increase and improve effective and measurable outreach and education efforts.~~

~~(3) The collection system, including collection locations and services provided for all cities in the state with populations greater than 10,000 and in all counties in the state.~~

~~(4) The processing and disposal system, including all of the following:~~

~~(A) A list of processing and disposal facilities used and locations, the weight of unwanted products processed at each processing facility and disposed at each disposal facility, and a description of the methods used at each processing facility.~~

~~(B) A list of subcontractors and full contact information that process or dispose of the unwanted products under the plan, including the subcontractors providing for the final disposition of any hazardous waste, and subcontractor facility locations.~~

~~(C) Final disposition of residuals.~~

~~(D) Any penalties, violations, or regulatory orders received during the reporting period by each processing facility or disposal facility that was used to implement the plan.~~

~~(E) Whether policies and procedures in the product stewardship plan for collecting, transporting, processing, and final disposition of unwanted products were followed during the reporting period, and a description of any noncompliance.~~

~~(5) The financing system, including a description of how the system met the requirements of the plan specified in paragraph (5) of subdivision (d) of Section 25210.15.~~

~~(6) The education and outreach activities implemented during the reporting period, including an analysis of the effectiveness of the education and outreach activities.~~

~~(7) How the product stewardship program complied with any other elements in the plan.~~

~~(8) Costs associated with the recovery of unwanted product and total and per pound costs.~~

~~(9) Any other information that the department may require.~~

~~(b) All reports submitted to the department shall be made available to the public on the department's Internet Web site and at the department's headquarters.~~

~~(c) Based on the reports submitted pursuant to this section, the department shall calculate the average mercury burden of all class~~

~~1 lamps and the average cost associated with that recovery and shall provide that information annually to the commission.~~

(B) A list of collection locations for unwanted products, sorted by city and county.

(C) Progress toward achieving the goal of recycling all unwanted class 1 lamps sold by the producer or group of producers, and the program's fair share of orphan lamps pursuant to paragraph (8) of subdivision (c) of Section 25210.15, and what actions the plan operator will take during the next reporting period, including how it will improve effective and measurable outreach and education efforts.

(3) The processing and disposal system, including both of the following:

(A) A list of processing and disposal facilities used and locations, the weight of unwanted products processed at each processing facility and disposed at each disposal facility, and a description of the methods used at each processing facility.

(B) Any penalties, violations, or regulatory orders received during the reporting period by each processing facility or disposal facility that was used to implement the plan.

(4) Costs associated with the recovery of unwanted product and total and per pound costs.

(b) All reports submitted to the department shall be made available to the public on the department's Internet Web site and at the department's headquarters.

25210.19. (a) A producer, a group of producers, or a stewardship organization that submits a plan to the department shall enter into an agreement with the department to pay the department for the costs incurred by the department associated with the review of the product stewardship plan, including the implementation and enforcement of the plan.

(b) The department shall deposit the amounts paid pursuant to this section into the Lighting Product Stewardship Subaccount, which is hereby established in the Hazardous Waste Control Account and which may be expended by the department, upon appropriation by the Legislature, for the costs specified in subdivision (a).

25210.20. (a) On or before ~~January 1, 2014~~ *January 30, 2012*, and on or before January 1 annually thereafter, a producer of a class 2 lamp shall pay to the commission the fee established by the commission pursuant to this section.

~~(1) The commission shall determine the amount of the fee based on the mercury burden of class 2 lamps sold by the producer in the state, relative to the average mercury burden of compact fluorescent lamps and the average cost per compact fluorescent lamp paid by the producers of class 1 lamps for the product stewardship program and reported to the department, as required under this article.~~

~~(2) On or before June 30, 2012, based on the determination made pursuant to paragraph (1), the commission shall adopt regulations that determine the amount of the fee to be submitted to the commission by each producer of class 2 lamps. The regulations shall require the commission to set the amount of the payment at a level necessary to provide sufficient funds to implement this section, including administrative costs.~~

(1) On or before June 30, 2011, and on or before June 1 annually thereafter, a producer of a class 2 lamp shall provide to the commission a written report with the number and efficiency, in lumens per watt, of each model of class 2 lamps sold in the state during the previous calendar year.

(2) On or before December 1, 2011, the commission shall adopt regulations for determining the total environmental impact of a class 2 lamp according to the relative efficiency of each type of class 2 lamp and for setting the amount of the fee based on the total environmental impact of that type of class 2 lamp according to the relative efficiency of that class 2 lamp. The regulations shall require the commission to set the amount of the payment at a level necessary to provide sufficient funds to implement this section, including administrative costs.

(3) Based on the information submitted pursuant to paragraph (1) and pursuant to the regulations adopted pursuant to paragraph (2), the commission shall assess the total environmental impact of each class 2 lamp, based on its relative efficiency.

(4) The commission shall assess the fee upon each producer of a class 2 based on the total sales of class 2 lamps by that producer in the state.

(b) The commission shall deposit all fee revenues collected pursuant to this section in the Energy Efficiency Research Fund, which is hereby created in the State Treasury.

(c) The funds in the Energy Efficiency Research Fund may be expended by the commission, upon appropriation by the Legislature, to provide grants, based on an annual competitive solicitation, for all the following purposes:

(1) Research to improve the lighting efficiency of class 2 lamps.

~~(2) Research to reduce toxic impacts from lighting technologies used by class 2 lamps.~~

(2) Research to reduce environmental impacts from lighting technologies used by class 2 lamps.

(3) Projects to reduce, remediate, and mitigate the impact of class 2 lamps on public health *and the environment*.

(d) The commission shall provide information on compliance with this section as necessary to the department for the purpose of enforcement of this article.

25210.21. (a) On or before January 1, 2012, the department shall issue a report concerning the status of the collective product stewardship programs and post the report on the department's Internet Web site.

(b) On or before October 1, 2013, and on or before October 1 ~~annually thereafter, the department shall do both of the following:~~

~~(1) Invite~~ *annually thereafter, the department shall invite* comments from local governments, communities, and citizens to report their satisfaction with services provided by product stewardship programs. The department shall use this information to determine if the plan operator is meeting the plan's requirements and in reviewing the proposed updates or changes to product stewardship plans.

~~(2) Invite comments from retailers, consumer groups, electric utilities, and other interested parties regarding the impact of this article on the availability and purchase of energy efficient lighting within the state. If the department determines that evidence shows the requirements of this article have resulted in negative impacts on the availability or purchase of energy efficient lighting in the state, notwithstanding Section 10231.5 of the Government Code, the department shall report this information by January 1 of each year to the appropriate committees of the Legislature, including recommendations for changes to this article.~~

25210.22. (a) Except as provided in subdivision (f), on and after January 1, 2012, a producer, wholesaler, or retailer shall not sell or offer for sale a class 1 lamp to a person in this state unless the producer of that class 1 lamp is participating in a product stewardship program under a plan approved by the department.

(b) Except as provided in subdivision (f), on and after ~~January 1, 2014~~ *February 1, 2012*, a producer, wholesaler, or retailer shall not sell or offer for sale a class 2 lamp to a person in this state unless the producer of that class 2 lamp has paid the fee required by Section 25250.20.

(c) The department shall provide, on its Internet Web site, lists of all of the following:

(1) All producers of class 1 lamps participating in an approved product stewardship program.

(2) All producers of class 2 lamps that have paid the fee imposed pursuant to Section 25201.20.

(3) All producers identified by the department as noncompliant with this article and the regulations adopted to implement this article.

~~(d) On July 1, 2012, and on January 1 and July 1 annually~~

(d) On May 1, 2012, and on the following January 1 and May 1 annually thereafter, the department shall post on its Internet Web site producers of covered lamps that are not in compliance with this article.

(e) A wholesaler or a retailer that distributes covered lamps shall monitor the department's Internet Web site to determine if a producer's lamps are in compliance with this article.

(f) (1) A person primarily engaged in the business of reuse and resale of a used product is not subject to this article with regard to the sale of a used working covered product, for use in the same manner and purpose for which it was originally purchased.

(2) A covered product that is owned by a retailer on January 1, 2012, is not subject to this section and the retailer may exhaust that existing stock through sales to the public.

25210.23. (a) The department shall send a written notification to a retailer known to be selling a product in the state from a producer or wholesaler who is not in compliance with this article.

(b) A retailer that removes from sale any covered lamp within 90 days of discovery that it is not in compliance with this article shall not be in violation of this section.

25210.24. ~~(a)~~ If, after holding a public hearing, the department finds that a producer has failed to make a good faith effort to comply with this article, including, but not limited to, failing to submit or implement a plan pursuant to Section 25210.15, the department shall issue a compliance order with a schedule for achieving compliance.

~~(b) Prior to enforcing any penalty pursuant to this article, the department shall issue a compliance order to the producer or retailer selling the covered lamp, allowing 30 days from the date of the compliance order to cease sales of the covered lamps.~~

25210.25. This article does not limit, supersede, duplicate, or otherwise conflict with the authority of the department ~~under Section 25257.1 to fully implement Article 14 (commencing with Section 25251) , including the authority of the department to include mercury-containing lamps in its mercury-containing lamps registry.~~ *to fully implement Article 14 (commencing with Section 25251), including the authority of the department to include products in a product registry that the department adopts pursuant to that article. Notwithstanding subdivision (c) of Section 25257.1, a covered lamp shall not be considered as a product category already regulated or subject to pending regulation for purposes of Article 14 (commencing with Section 25251).*

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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