

## Mary Pitto

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**From:** paint@calrecycle.ca.gov  
**Sent:** Wednesday, November 09, 2011 6:07 PM  
**To:** Mary Pitto  
**Subject:** CalRecycle Paint Regulation: 2nd 15-Day Comment Period Postponed

CalRecycle Paint Product Stewardship Listserv

On November 2, 2011 CalRecycle staff held a public meeting to present anticipated changes to be made to the Proposed Architectural Paint Recovery Program Regulation based on comments received during the first 15-day public comment period that ended October 25, 2011.

At that meeting, CalRecycle staff indicated that a second 15-day public comment period would commence on November 9, 2011 and run through noon, November 24, 2011.

CalRecycle has determined that additional time is necessary to review comments received before initiating the second 15-day comment period. The exact date is yet to be determined. CalRecycle will notify stakeholders via this listserv and on CalRecycle's website, below, when those dates have been finalized.

<http://www.calrecycle.ca.gov/Laws/Rulemaking/Paint/default.htm>

\*\*\*\*Background\*\*\*\*

This rulemaking seeks to add clarity and establish necessary administrative procedures covering stewardship plan approval criteria, a process for CalRecycle to accept payment for its services related to oversight and enforcement, the establishment of penalty ranges that reflect a progressive enforcement approach, and criteria for acceptance of annual reports.

A 45-day public comment period for the proposed Architectural Paint Recovery Program Regulation ran from July 22, 2011 through September 5, 2011. The California Department of Resources Recycling and Recovery (CalRecycle) staff held a public hearing on the proposed regulation on September 8, 2011. On October 3, 2011 CalRecycle staff held a public meeting to present potential changes to the proposed regulation based on comments received during the 45-day public comment period and the September 8, 2011 public hearing. After considering comments received during the 45-day comment period and comments made at the public hearing and public meeting, CalRecycle staff revised the proposed Architectural Paint Recovery Program Regulation and initiated a 15-day public comment period that ran from October 10, 2011 through October 25, 2011. These revisions sought to add clarity to the existing language where needed. On November 2, 2011, CalRecycle staff held a public meeting to present potential changes to the proposed regulation based on comments received during the initial 15-day comment period.

As a reminder, all information related to this rulemaking can be found here:

<http://www.calrecycle.ca.gov/Laws/Rulemaking/Paint/default.htm>

General information on the Paint Stewardship Program can be found at:

<http://www.calrecycle.ca.gov/EPR/PolicyLaw/Paint.htm>

Thank you for your assistance.

To subscribe to or unsubscribe from the Paint Product Stewardship Listserv, please go to <http://www.calrecycle.ca.gov/Listservs/>.



**Proposed Regulations for Architectural Paint Recovery Program**

**PROPOSED REGULATIONS**

**ARCHITECTURAL PAINT RECOVERY PROGRAM**

<b>TITLE 14:</b>	<b>NATURAL RESOURCES</b>
<b>DIVISION 7.</b>	<b>DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY</b>
<b>CHAPTER 11.</b>	<b>PRODUCT STEWARDSHIP</b>
<b>ARTICLE 2.</b>	<b>ARCHITECTURAL PAINT RECOVERY PROGRAM</b>

**§18950. Purpose.**

The purpose of this Article is to clarify existing statute and establish administrative procedures to efficiently and effectively implement the department's responsibilities under the law and to provide a uniform competitive business environment to all architectural paint manufacturers pursuant to §48700 of the Public Resources Code (PRC).

Authority cited: Sections 40502 and 48700~~42970~~, Public Resources Code, Reference: Section 48700~~42970~~, Public Resources Code.

**§18951. Definitions.**

(a) Except as otherwise noted, the definitions of this Article supplement and are governed by the definitions set forth in Chapter 5 (commencing with §48700), Part 7, Division 30 of the Public Resources Code:

(1) "Must" or "shall" means a provision is mandatory.

(2) "May" means a provision is permissive.

(b) "Administrative fee" means the fee imposed by the department on the architectural paint manufacturer or stewardship organization in order to cover the costs of administering and enforcing the statute.

(c) "Assessment" means the amount added to the purchase price of architectural paint sold in this state necessary to cover the cost of implementing a manufacturer or stewardship organization's paint stewardship program.

- 1 (d) "Brand" means a name, sign, symbol, slogan, or anything that is used to identify  
2 and distinguish a specific architectural paint product.
- 3 (e) "Collection" means any method by which a service provider receives postconsumer  
4 architectural paint from a consumer.
- 5 (f) "Operational costs" means costs to operate a manufacturer or stewardship  
6 organization's paint stewardship program, including, but not limited to, collection,  
7 transportation, processing, disposal, and education and outreach costs.
- 8 (g) "Reporting period" means a consecutive 12-month period as specified in statute.
- 9 (h) "Service provider" means an entity, including, but not limited to, local household  
10 hazardous waste collection programs and retailers, that contracts with a manufacturer  
11 or stewardship organization to provide services including, but not limited to, collection,  
12 consolidation, transportation, ~~or~~ processing, or proper disposal of postconsumer  
13 architectural paint.
- 14 (i) "Significant or material change" means any modification of the architectural paint  
15 stewardship assessment previously approved by the department.

16

17 Authority cited: Sections 40502 and ~~42970~~48700, Public Resources Code, Reference:  
18 Section ~~42970~~48700, Public Resources Code.

19

20 **§18952. Submittals.**

- 21 (a) A corporate officer, acting on behalf of an architectural paint manufacturer or  
22 stewardship organization, shall register with the department according to instructions  
23 provided by the department. The registration process shall include, but not be limited  
24 to, the following information:
- 25 (1) Contact information of the corporate officer responsible for submitting  
26 stewardship plan and annual report documents to the department and for  
27 overseeing paint stewardship program activities, including, but not limited to:
- 28 (A) Contact Name  
29 (B) Title  
30 (C) Name and Company or Stewardship Organization  
31 (D) Mailing address

- 1 (E) Phone number  
2 (F) E-mail address  
3 (G) Web address, if applicable  
4 ~~(H) Location and custodian of records~~
- 5 (2) List and contact information for each architectural paint manufacturer  
6 participating in the stewardship organization, including, but not limited to:  
7 (A) Name of Company  
8 (B) Mailing address and physical address  
9 ~~(C) Web address, if applicable~~  
10 ~~(D) Location and custodian of records~~  
11 ~~(E)~~ (C) Physical address, web address (if applicable), Contact Name, Title,  
12 Phone Number, and e-mail address of participating architectural paint  
13 manufacturers shall be provided to the department in a reasonable and timely  
14 manner, as determined by the department, upon request. The department  
15 shall include a reason for any request of this information.
- 16 (3) List of brands covered under the stewardship plan.
- 17 (b) The stewardship plan should be submitted electronically according to instructions  
18 provided by the department. A hard copy, signed by a corporate officer of a  
19 manufacturer or stewardship organization under the penalty of perjury, must also be  
20 submitted to the department.
- 21 ~~(1) The stewardship plan must be submitted for re-approval upon any significant or~~  
22 ~~material change, as defined. The department shall review the revised stewardship~~  
23 ~~plan within 90 days of receipt and make a determination whether or not to approve~~  
24 ~~the plan.~~
- 25 (2) (1) The information submitted in a stewardship plan shall address the criteria  
26 for approval in §18953 and be organized according to this standard outline:
- 27 (A) Contact Information  
28 (B) Scope  
29 (C) Program Goals and Activities  
30 ~~(D) Solid Waste Management Hierarchy~~  
31 ~~(E)~~ (D) Collection Systems

- 1           ~~(F)~~ (E) Market Development
- 2           ~~(G)~~ (F) Financing Mechanism
- 3           ~~(H)~~ (G) Education and Outreach
- 4           ~~(I)~~ (H) Program Performance Measurement
- 5           ~~(J)~~ (I) Stakeholder Consultation
- 6           ~~(K)~~ (J) Audits
- 7           (K) Environmental Information

8           (2) The department may approve, disapprove, or conditionally approve a  
9           stewardship plan. If the department finds that the stewardship plan is complete,  
10           the department's 90-day review period for consideration of approval of the  
11           stewardship plan will commence upon the original date of receipt. If the  
12           stewardship plan is not complete, the department will notify the submitting  
13           manufacturer or stewardship organization within 30 days that a complete  
14           stewardship plan must be resubmitted within 30 days. An incomplete plan will not  
15           commence the department's 90-day review period, and would fail to meet the  
16           requirements under PRC §48703. A manufacturer or stewardship organization  
17           shall resubmit a plan or provide supplemental information requested by the  
18           department when a plan is disapproved or conditionally-approved within 60 days of  
19           the notice date.

20           (3) The stewardship plan must be submitted for re-approval upon any significant or  
21           material change, as defined. The department shall review the revised stewardship  
22           plan within 90 days of receipt and make a determination whether or not to approve  
23           the plan.

24           ~~(3)~~ (4) The approved stewardship plan shall be a public record, except that  
25           financial, production, or sales data reported to the department by a manufacturer  
26           or stewardship organization is not a public record under the California Public  
27           Records Act, as described in Chapter 3.5 (commencing with § 6250) of Division 7  
28           of Title 1 of the Government Code and shall not be open to public inspection. The  
29           department may release financial, production, or sales data in summary form only  
30           that cannot be attributable to a specific manufacturer.

1 (c) The annual report shall be submitted by a corporate officer acting on behalf of a  
2 manufacturer or stewardship organization that is operating an architectural paint  
3 stewardship program under a department-approved stewardship plan.

4 (1) The annual report should be submitted electronically to the department  
5 according to directions provided by the department. A hard copy, signed by a  
6 corporate officer of a manufacturer or stewardship organization under the  
7 penalty of perjury, must also be submitted.

8 (2) The information submitted in an annual report shall address the criteria for a  
9 finding of compliance per §18954 and be organized according to this standard  
10 outline:

11 (A) Contact Information

12 (B) Executive Summary

13 (C) Scope

14 (D) Program Outline

15 (E) Description of Goals and Activities Based on the Stewardship Plan

16 (F) Market Development

17 (G) Financing Mechanism

18 (H) Education and Outreach

19 (I) Audits

20 (3) The department may adopt a finding of compliance or non-compliance for an  
21 annual report. If the department finds that the annual report is complete, the  
22 department's 90-day review period for consideration of a finding of compliance  
23 will commence upon the original date of receipt. If the annual report is not  
24 complete, the department will notify the submitting manufacturer or stewardship  
25 organization within 30 days that a complete annual report must be resubmitted  
26 within 30 days. An incomplete report will not commence the department's 90-day  
27 review period, and would fail to meet the requirements under PRC §48705. A  
28 manufacturer or stewardship organization shall resubmit an annual report or  
29 provide supplemental documentation requested by the department when an  
30 annual report is found to be non-compliant within 60 days of the notice date.

1 Authority cited: Sections 40502, ~~4297048700, 4297248703, 4297348704, and~~  
2 ~~4297448705, and 48706~~, Public Resources Code, Reference: Section 40502,  
3 ~~4297048700, 4297248703, 4297348704, and 4297448705, and 48706~~, Public  
4 Resources Code.

5  
6 **§18953. Stewardship Plan Approval Criteria.**

7 (a) Paint stewardship plans must follow the standard outline per ~~§18942~~§18952 and  
8 contain the following:

- 9 (1) Contact information. Identify the manufacturer or designated stewardship  
10 organization responsible for the stewardship plan submittal.
- 11 (2) Scope. Describe how the stewardship program is designed to accept and  
12 manage all applicable architectural paint products, including paint containers.  
13 A manufacturer or stewardship organization shall provide updates to the an  
14 ~~updated~~ list of manufacturers and brands to the department at least every six  
15 months.
- 16 (3) Program Goals and Activities. Include program goals that are specific to and  
17 appropriate for California and describe how the goals were derived. Factors  
18 to consider when determining program goals may include, recognizing the  
19 current and future recycling infrastructure and capacity, estimating and  
20 changes in market conditions, and anticipating recycling infrastructure and  
21 capacity in California. Discussion on Description of goals must include a  
22 baseline, to be provided by the manufacturer or stewardship organization,  
23 from which the goals will be measured and reported in the manufacturer or  
24 stewardship organization's annual reports. The baseline should indicate the  
25 status of household hazardous waste architectural paint management in  
26 California the state at the time of plan submission. A description of the  
27 methodology used for estimating the amount of leftover paint available for  
28 collection in California must be provided by the manufacturer or stewardship  
29 organization. Describe how the program goals will be achieved to:  
30 (A) Reduce the generation of postconsumer paint;  
31 (B) Promote the reuse of postconsumer paint; and



1 (C) Properly manage postconsumer paint at end-of-life in an environmentally  
2 sound fashion, including recovery and recycling of postconsumer paint.

3 ~~(4) Solid Waste Management Hierarchy. Describe proposed measures that will~~  
4 ~~enable the management of postconsumer architectural paint in a manner~~  
5 ~~consistent with the state's solid waste management hierarchy pursuant to~~  
6 ~~PRC §40051:~~

7 ~~(A) Source reduction~~

8 ~~(B) Recycling~~

9 ~~(C) Environmentally safe transformation and safe land disposal~~

10 ~~(5) (4) Collection Systems. Describe the system that will be used to collect and~~  
11 ~~properly manage postconsumer architectural paint. This description must~~  
12 ~~include the following:~~

13 ~~(A) Collection methods used for architectural paint, by type.~~

14 ~~(B) Destination for reuse activities, processing (including recycling) and/or~~  
15 ~~disposal for architectural paint by type.~~

16 ~~(C) Description of best management practices to be followed by the service~~  
17 ~~providers, including any training that the manufacturer or stewardship~~  
18 ~~organization intends to provide to or require of service providers to~~  
19 ~~ensure proper collection and management of postconsumer architectural~~  
20 ~~paint.~~

21 ~~(D) Description of convenient collection for California residents to how each~~  
22 ~~consumer of architectural paint in California will have an opportunity to~~  
23 ~~recycle and properly manage their unwanted architectural paint on a state~~  
24 ~~wide basis, including the proposed number, location, and type of~~  
25 ~~collection sites points located in each county.~~

26 ~~(E) Any retailer may participate, on a voluntary basis, as a paint collection~~  
27 ~~point site pursuant to the paint stewardship program. A manufacturer or~~  
28 ~~stewardship organization must negotiate with any retailer wanting to~~  
29 ~~participate in their paint stewardship program as a collection point site to~~  
30 ~~attempt to establish a mutually agreeable and reasonably feasible~~  
31 ~~agreement with the retailer that addresses all operational costs.~~

1 ~~(6)~~(5) Market Development. Describe incentives or methods used by the  
2 manufacturer or stewardship organization pursuant to PRC §48702(a) to  
3 promote the reuse of postconsumer architectural paint in an environmentally  
4 sound fashion and to increase recycling of and develop markets for collected  
5 materials, as if applicable. A manufacturer or stewardship organization that  
6 does not participate in, or report on, the activities in this section will not be  
7 subject to penalties for this section.

8 ~~(7)~~(6) Financing Mechanism. Include a funding mechanism that provides sufficient  
9 funding to recover, but not exceed, the cost of the architectural paint  
10 stewardship program, including the administrative, operational, and capital  
11 costs of the program. The funding mechanism includes the following:

12 (A) The amount of the assessment per unit of architectural paint sold in the  
13 state.

14 (B) A budget for the program that includes revenue estimates from the  
15 assessment, operational costs~~full program costs~~, and administrative  
16 costs (including those pursuant to ~~§49858~~§18958 re: service payment to  
17 the department).

18 (C) A statement that any surplus funds will be put back into the program to  
19 reduce the costs of the program, including the assessment amount.

20 (D) A statement that the manufacturer or stewardship organization has  
21 established a mutually agreeable and reasonably feasible agreement(s)  
22 with a service provider(s) that addresses all operational costs as relevant  
23 to each particular service provider.

24 (E) Stewardship organization and manufacturers shall allocate revenues and  
25 expenditures applicable to this program in accordance with Generally  
26 Acceptable Accounting Principles.

27 (F) If a manufacturer or stewardship organization conducts activities that are  
28 separate from the implementation and management of the California  
29 paint stewardship program, then the The stewardship plan shall include  
30 documentation on how the collection and expenditure of assessment  
31 funds shall be kept separate from other activities of the manufacturer or

1 stewardship organization and the methodology for distribution of shared  
2 costs.

3 ~~(8)-(7)~~ Education and Outreach. Include a description of education and outreach  
4 efforts to consumers, contractors, and retailers to promote source reduction  
5 and recycling of architectural paint. The description shall include how the  
6 outreach and education methods will be used and distributed, and how  
7 effectiveness of these activities will be measured. Educational information  
8 may include, but is not limited to, signage, written materials, advertising or  
9 other promotional materials pursuant to PRC §48703(e). A manufacturer or  
10 stewardship organization may not advertise a collection point(s) that is not a  
11 contracted service provider under the manufacturer or stewardship  
12 organization's stewardship program without the consent of the collection  
13 point(s).

14 ~~(9)-(8)~~ Program Performance Measurement. Describe how attainment of the goals  
15 will be measured per §18953(a)(3). Program data shall be collected for purposes  
16 of annual report submittal (see §18954. Annual Report Compliance Criteria).  
17 Information to be provided includes, but is not limited to specific information on the  
18 measurement methodology, assumptions, conversion factors, if used, and data  
19 sources.

20 ~~(10)-(9)~~ Stakeholder Consultations. A manufacturer or stewardship organization  
21 that submits a stewardship plan shall include a process of consultation with  
22 existing local household hazardous waste collection programs ~~and other~~  
23 ~~affected stakeholders,~~ and consider the existing infrastructure in the  
24 development of the plan. Other §stakeholders that may be consulted include,  
25 but are not limited to, consumers, retailers, architectural paint recyclers,  
26 architectural paint contractors, and haulers.

27 ~~(11)-(10)~~ Audits. ~~(A) Financial Information.~~ Describe the process by which the  
28 financial activities of the stewardship organization or individual manufacturer  
29 that are related to implementation of the stewardship plan are compliant with  
30 program requirements and standard accounting practices. Describe how  
31 these activities will be subject to an independent financial audit, results of

1 which will be submitted in the manufacturer or stewardship organization's  
2 annual report and reviewed by the department.

3 ~~(B) Non-Financial Information (optional). Describe the process by which the~~  
4 ~~following non-financial activities of the organization or individual~~  
5 ~~manufacturer that are related to implementation of the stewardship plan~~  
6 ~~will be subject to an independent non-financial audit, which will be~~  
7 ~~submitted in the manufacturer or stewardship organization's annual report~~  
8 ~~and reviewed by the department:~~

9 1. ~~A description of how the postconsumer architectural paint was~~  
10 ~~managed in accordance with the stewardship plan.~~

11 2. ~~The total amount of architectural paint sold and collected, and, if~~  
12 ~~applicable, the recovery rate.~~

13 (11) Environmental information. Stewardship plans shall be accompanied with  
14 information needed for CalRecycle to complete an initial study under the  
15 California Environmental Quality Act.

16  
17 Authority cited: Sections 40502, ~~4297048700~~, ~~4297248703~~, and ~~4297348704~~, Public  
18 Resources Code, Reference: Section ~~4297048700~~, ~~4297248703~~, and ~~4297348704~~,  
19 Public Resources Code.

20  
21 **§18954. Annual Report Compliance Criteria.**

22 (a) The annual report must contain the following:

23 (1) Contact information. Identify the manufacturer or stewardship organization  
24 responsible for the annual report submittal.

25 (2) Executive Summary. Provide ~~an evaluation of the effectiveness~~ a description  
26 of the manufacturer or stewardship organization's architectural paint recovery  
27 efforts of the paint stewardship plan during the reporting period pursuant to  
28 PRC §48705(a). ~~This may include and anticipated steps, if needed, to~~  
29 improve performance and a description of. ~~Describe challenges encountered~~  
30 ~~during the reporting period and how they will be addressed.~~

- 1 (3) Scope. The program described in the stewardship plan accepts and manage  
2 all applicable architectural paint products. Include an updated list of  
3 participating manufacturers and their respective contact information per  
4 §18952(a)(2).
- 5 (4) Program Outline. Describe the paint stewardship program, including  
6 information on the following topics:
- 7 (A) A description of the methods used to collect, transport, and process  
8 postconsumer architectural paint, by type, in this state.
- 9 (B) Description of how each consumer of architectural paint in California had  
10 an opportunity convenient collection for California residents to recycle and  
11 properly manage their unwanted architectural postconsumer paint on a  
12 state wide basis, including the number, location, and type of collection  
13 points sites located in each county.
- 14 (C) Description of best management practices followed by service providers,  
15 including any training that the manufacturer or stewardship organization  
16 provided or required of service providers to ensure proper collection and  
17 management of postconsumer paint.
- 18 ~~(D) Description of how each consumer of architectural paint had an~~  
19 ~~opportunity to properly manage their postconsumer paint.~~
- 20 ~~(E) (D)~~ A statement that the manufacturer or stewardship organization  
21 negotiated with any ~~retailer~~ service provider that contacted the  
22 manufacturer or stewardship organization for inclusion in the stewardship  
23 program as a collection point in an attempt to establish a mutually  
24 agreeable and reasonably feasible agreement that addresses all  
25 operational costs.
- 26 (5) Description of goals and activities based on the stewardship plan. State goals  
27 from the approved stewardship plan, the baseline from which goals were  
28 measured, and report on achievement during the reporting period. Describe  
29 any adjustments to goals stated in the approved stewardship plan for the  
30 upcoming reporting period and accompanying rationale for those changes.  
31 The annual report must include, but not be limited to, quantitative information

- 1 and discussion on the following categories pursuant to PRC §48705(a) and  
2 PRC §48703(d):
- 3 (A) The total volume of architectural paint sold, by type, in the state during the  
4 preceding reporting period.
- 5 (B) The total volume of postconsumer architectural paint recovered, by type,  
6 in the state during the preceding reporting period.
- 7 (C) Disposition of postconsumer paint collected, by type and by estimated  
8 volume, including facility name(s) and address(es) for each disposition  
9 method.
- 10 ~~(D) The total cost of implementing the architectural paint stewardship~~  
11 ~~program.~~
- 12 ~~(E) An evaluation of how the architectural paint stewardship program's funding~~  
13 ~~mechanism operated.~~
- 14 ~~(F) (D)~~ A description of efforts to increase reuse of postconsumer paint.
- 15 ~~(G) (E)~~ A description of efforts to increase recyclability of postconsumer paint.
- 16 (6) Market Development. Include a description of possible market development  
17 activities to incentivize the market growth of collected materials, if applicable.  
18 A manufacturer or stewardship organization that does not participate in or  
19 report on the activities in this section will not be subject to penalties for this  
20 section.
- 21 (7) Financing Mechanism. The annual report shall include a description of the  
22 total cost of implementing the architectural paint stewardship program and an  
23 evaluation of the program's financing mechanism, including whether or not the  
24 funding was sufficient to recover, but not exceed, the full cost of the paint  
25 stewardship program. Any proposed change in the amount of the architectural  
26 paint stewardship assessment must be submitted to the department for re-  
27 approval (see §18952. Submittals). The annual report shall include, but not  
28 be limited to, the following, and include any necessary supporting documents:
- 29 (A) Assessment amount per container
- 30 (B) Total program cost
- 31 (C) Capital costs

- 1 (D) Cost(\$)/capita  
2 (E) Cost (\$)/gallon collected  
3 (F) Education/Outreach (% of total program cost)  
4 (G) End-of-life materials management (% of total program cost, with line  
5 items for reuse, recycling, fuel incineration, and landfilling)  
6 (H) Program administration (% of total program cost, including annual  
7 administrative fee for service payments to the department)  
8 (I) An evaluation of how the assessment operated  
9 (J) Surplus funding, if any, and how it will be applied to reduce program costs  
10 (K) Governance (program oversight) (% of total program cost)  
11 (8) Education and Outreach. Describe educational and outreach activities in  
12 context of those identified in the stewardship plan. Provide a description of  
13 educational materials that were provided to retailers, consumers, and  
14 contractors during the reporting period and provide electronic samples.  
15 Identify ~~the~~ any method(s) used to determine the effectiveness of educational  
16 and outreach surveys (e.g., surveys, hits on specific web pages, number of  
17 participants at events, etc.), if applicable. These education and outreach  
18 materials may include, but are not limited to, any of the following per PRC  
19 §48703(b)(4)(e):  
20 (A) Signage that is prominently displayed and easily visible to the consumer.  
21 (B) Written materials and templates of materials for reproduction by retailers  
22 to be provided to contractors and consumers at the time of purchase or  
23 delivery or both.  
24 (C) Promotional materials or activities, or both, that explains the purpose of  
25 paint stewardship and the means by which it is being carried out.  
26 (D) Links to website(s) created and maintained by the stewardship  
27 organization.  
28 (9) Audits. ~~(A) Financial Information.~~ The annual report shall include an  
29 independent financial audit, ~~related to the implementation of the stewardship~~  
30 plan, funded from the paint stewardship assessment. The audit shall be  
31 conducted in accordance with the most current auditing standards generally

1 accepted in the United States of America, and standards set forth in  
2 Government Auditing Standards issued in July 2007 by the Comptroller  
3 General of the United States.

4 ~~2.~~ 1. Financial audits must be prepared by a Certified Public  
5 Accountant.

6 ~~4.~~ 2. The department may investigate further. If the department  
7 decides to further review the findings of the independent auditor, the  
8 review will be conducted based on same information the individual  
9 manufacturer or stewardship organization provided to the independent  
10 auditor.

11 ~~2.~~ Financial audits must be prepared by a Certified Public Accountant.

12 3. The department may request supplemental documentation  
13 ~~information~~ from the individual manufacturer or stewardship  
14 organization during the course of review of a manufacturer- or  
15 stewardship organization-submitted financial audit, if necessary. The  
16 department may inspect the operations, processes, and records of any  
17 entity required to submit a report to the department pursuant to this  
18 division to determine the accuracy of the report and compliance with  
19 the requirements of this division.

20 4. The department will inform the individual manufacturer or the  
21 stewardship organization within 60 days of the results of its review.

22 ~~(A) (B) Non-Financial Information (optional).~~ The annual report may include  
23 an independent audit on the following information:

24 ~~1. A description of how the postconsumer architectural paint was~~  
25 ~~managed in accordance with the stewardship plan.~~

26 ~~2. The total amount of architectural paint sold and collected, and, if~~  
27 ~~applicable, the recovery rate.~~

28  
29 Authority cited: Sections 40502, 4297048700, 4297248703, 4297548704, 48705, and  
30 4297648706, Public Resources Code, Reference: Section 4297048700, 4297248703,  
31 4297548704, 48705, and 4297648706, Public Resources Code.



1

2 **§18955. Civil Penalties.**

3 A civil penalty may be administratively imposed by the department on any person who is  
4 in violation of any provision of this Article. The responsible party or parties shall be  
5 determined by the department based on the totality of the circumstances.

6

7 (a) Any manufacturer offering architectural paint for sale in California or a  
8 manufacturer or stewardship organization submitting a stewardship plan or annual  
9 report to the department is subject to enforcement under this Article. Architectural paint  
10 manufacturers are subject to penalties as a result of the failure of their designated  
11 stewardship organization to comply with this Article on their behalf.

12 (b) Notwithstanding paragraph (a), an architectural paint manufacturer is not subject  
13 to any penalty for failing to comply if that manufacturer can demonstrate that it provided  
14 true and accurate information to the stewardship organization and the stewardship  
15 organization failed to properly report this on behalf of the manufacturer.

16 (c) A stewardship organization is not subject to a penalty for failure to comply as a  
17 result of submitting false or misleading information if it can demonstrate that it received  
18 false or misleading information from an architectural paint manufacturer that was the  
19 direct cause of its failure to comply with this Article.

20 (d) Any manufacturer or retailer that offers architectural paint for sale in the state is  
21 subject to enforcement under this Article.

22

23 Authority cited: Sections 40502, ~~42970, 42972, 42972.5, 42973, 42974, 42975, and~~  
24 ~~48704~~ Public Resources Code, Reference: Section ~~42970, 42972, 42972.5, 42973,~~  
25 ~~42974, 42975, and 42978~~48704, Public Resources Code.

26

27 **§18955.1. Amount of Civil Penalties and Administrative Penalty Schedule.**

28 (a) Civil penalties may be imposed administratively in accordance with the following  
29 penalty tables:

- 1 (1) Base Penalty Table I is to be used for stewardship organizations and  
 2 architectural paint manufacturers.  
 3 (A) Identify what violations have occurred.  
 4 (B) Identify the severity of the violations.  
 5 (C) Establish the possible range of the base penalty per violation based on the  
 6 severity levels described in paragraph (b).  
 7

Base Penalty Table I: For Stewardship Organizations and Architectural Paint Manufacturers		
Violation	Description of Violation	Severity
PRC 48702(b)(1)	Selling or offering for sale in this state, to any person in this state, architectural paint that is not covered under a department-approved stewardship plan or listed as a compliant product on the department's website.	Level 3
PRC 48702(a) and 48703(a)	Failure to submit, individually or through a stewardship organization, an architectural paint stewardship plan to the department	Level 3
<u>14 CCR 18952(b)(2)</u>	<u>Failure to resubmit a stewardship plan or provide supplemental information within 60 days after receiving a notice of disapproval or conditional approval from the department</u>	<u>Level 1</u>
PRC 48703	Stewardship plan does not contain required elements	Level 3
PRC 48704(c)	Failure to implement an architectural paint stewardship program described in a department-approved stewardship plan	Level 3
PRC 48704(e)	Failure to pay an annual administration fee to the department	Level 3
PRC 48705(a)	Failure to submit, individually or through a stewardship organization, an annual report to the department	Level 3
PRC 48705(a)	Annual report does not contain required elements	Level 2

14 CCR 18956	Failure to meet record keeping requirements	Level 2
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- (2) Base Penalty Table II is to be used for retailers.
  - (A) Identify what violations have occurred.
  - (B) Identify the severity of the violations.
  - (C) Establish the possible range of the base penalty per violation based on the severity levels described in paragraph (b).

Base Penalty Table II: For Retailers		
Violation	Description of Violation	Severity
PRC 48702(b)(1)	Selling or offering for sale in this state, to any person in this state, architectural paint that is not covered under a department-approved stewardship plan or listed as a compliant product on the department's website.	Level 3
14 CCR 18956	Failure to meet record keeping requirements.	Level 2

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(b) For the purpose of implementing this ~~[Section/Article]~~, penalty severity levels are described as follows:

- (1) For a violation classified as Level 1, the amount of the base penalty may be up to \$1,000 per day.
- (2) For a violation classified as Level 2, the amount of the base penalty may be up to \$5,000 per day.
- (3) For a violation classified as Level 3, the amount of the base penalty may be up to \$10,000 per day.

(c) A penalty amount may exceed \$1,000 per day only if a person intentionally, knowingly, or negligently violates this Article.

~~(e)-(d)~~ The department will set the final penalty amount after considering the criteria set forth in §18955.2. The department may increase the final penalty beyond the penalty

1 range established pursuant to paragraphs (a) and (b), if it determines, after considering  
2 the criteria set forth in §18955.2, that such an increase is warranted and appropriate.

3  
4 Note: Authority cited: Sections 40502 and ~~42970~~ and ~~42978~~48704, Public  
5 Resources Code. Reference: Sections ~~42970~~48704 and ~~42978~~48705, Public  
6 Resources Code; and Section 11506, Government Code.

7  
8 **§18955.2. Criteria to Impose a Civil Penalty.**

9 In assessing or reviewing the amount of civil penalty imposed for a violation of this  
10 chapter, the department or the court shall consider all the following:

- 11 (a) The nature, circumstances, extent, and gravity of the violation(s).  
12 (b) The number and severity of the violation(s).  
13 (c) Evidence that the violation was intentional, knowing or negligent.  
14 (d) The size of the violator.  
15 (e) History of violation(s) of the same or similar nature.  
16 (f) The willfulness of the violator's misconduct.  
17 (g) Whether the violator took good faith measures to comply with this chapter and  
18 the period of time over which these measures were taken.  
19 (h) Evidence of any financial gain resulting from the violation(s).  
20 (i) The economic effect of the penalty on the violator.  
21 (j) The deterrent effect that the imposition of the penalty would have on both the  
22 violator and the regulated community.  
23 (k) Any other factor that justice may require.

24  
25 Note: Authority cited: Sections 40502 and ~~42978~~48704, Public Resources Code.  
26 Reference: Section ~~42978~~48704, Public Resources Code.

27  
28 **§18955.3 Procedure for Imposing Civil Penalties.**

29 (a) Civil penalties may be administratively imposed in accordance with the procedures  
30 outlined in the Administrative Procedure Act at Chapter 5 (commencing with §11500) of

1 Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government  
2 Code §11505(c).

3 (b) The accusation or complaint and all accompanying documents may be served on  
4 the respondent by the following means:

5 (1) Personal service.

6 (2) Substitute service by using the same service procedures as described in  
7 §415.20 of the Code of Civil Procedure.

8 (3) Certified Mail: For respondents who have submitted a stewardship plan,  
9 certified mail or registered mail if the letter containing the accusation or  
10 complaint and accompanying material is mailed, addressed to the respondent  
11 at the latest facility or mailing address(es) provided in the stewardship plan on  
12 file with the department. Any address provided in the stewardship plan may  
13 be used for service of process. Proof of service of the accusation or complaint  
14 shall be the certified mail receipts or registered mail receipts proving the  
15 accusation or complaint and accompanying materials were sent to respondent  
16 by certified mail or registered mail. For respondents who have not submitted  
17 or are not required to submit a stewardship plan to the department, certified  
18 mail or registered mail pursuant to the procedures indicated in the  
19 Administrative Procedure Act at §11505(c) of the Government Code applies.

20 (c) Civil penalties may be imposed pursuant to the Public Resources Code §48704(f)  
21 in the discretion of the trier of fact in the civil proceeding.

22  
23 Note: Authority cited: Sections 40502, 48700 and ~~42970~~48704, Public Resources  
24 Code. Reference: Section 11500, Government Code; and Section 48700 and  
25 ~~42970~~48704, Public Resources Code.

26  
27 **§18956. Record Keeping Requirements**

28 Each stewardship organization, manufacturer, or retailer required to comply with  
29 Chapter 5 (commencing with §48700, Part 7, Division 30 of the Public Resources Code)  
30 shall:

1 (a) Maintain records to support the requirements in this Article. Stewardship  
2 organizations and manufacturers must maintain records to support §18953 and §18954.  
3 Retailers must ~~maintain~~ provide access to existing records on all architectural paint sold  
4 or offered for sale in the state including:

- 5 (1) The manufacturer of the paint.  
6 (2) The date(s) the retailer purchased the paint from the manufacturer.  
7 (3) The date(s) the retailer sold the paint.  
8 (4) Certification letter(s) from the department, if provided by a manufacturer, to  
9 demonstrate that paint from the manufacturer is or was subject to a  
10 department-approved stewardship plan. A retailer must provide access to a  
11 certification letter only if it is being used as proof of compliance, pursuant to  
12 PRC §48702(c)(2), that a manufacturer not listed on the department's internet  
13 website is in compliance and may sell or offer for sale paint in California.

14 (b) Provide the department with immediate reasonable and timely access, as  
15 determined by the department, to its facilities, operations, and any relevant records  
16 necessary to determine compliance with this Article, upon request. The records  
17 required by this Article shall be accessible for three years;

18 (c) Make all records required by this Article available for inspection or audit by the  
19 department, or its agent and other duly authorized regulatory agencies during normal  
20 working hours;

21 (d) Submit copies of specified records to the department upon request or at a  
22 frequency approved by the department.

23 (e) The department may take disciplinary action against any stewardship organization  
24 or manufacturer who fails to provide the department with access pursuant to this  
25 subdivision including, but not limited to, imposing penalties and the immediate removal  
26 from the department's list of manufacturers that are in compliance with Chapter 5  
27 (commencing with §48700), Part 7, Division 30 of the Public Resource Code.

28

29 Note: Authority cited: Sections 40502 and ~~42970~~48700, Public Resources Code.

30 Reference: Sections ~~42970, 42972, 42972.5, 42975~~48700, 48703, 48705, and

31 4870642976, Public Resources Code.

1 **§18957. Proprietary, Confidential, or Trade Secret Information.**

2 The public disclosure of records supplied to the department pursuant to this Article that  
3 are, at the time of submission, claimed to be proprietary, confidential, or trade secret  
4 shall be subject to the disclosure provisions in Title 14, California Code of Regulations,  
5 Division 7, Chapter 1, Article 4 (commencing with §17041), and in PRC §48704(b).

6 Authority cited: Section 6253, Government Code. Sections 40502 and ~~42970~~48700,  
7 Public Resources Code. Reference: Sections 6250 et seq., Government Code. Section  
8 ~~42970~~48700, Public Resources Code.

9 **§18958. Service Payments to Department of Resources Recycling and Recovery.**

10 (a) The department, using information provided in annual reports, its actual program  
11 costs for previous years, plans submitted in prior years, information from other sources,  
12 and assessing program needs; shall estimate the costs to be incurred by the  
13 department in connection with the administration and enforcement of the requirements  
14 of this chapter for the next fiscal year.

15 (b) The department director, or his/her delegated authority, shall approve the  
16 administrative fee charged for each stewardship plan for the full administration and  
17 enforcement costs by April 30 each year starting 2012.

18 (c) Any department fee shall be prorated, if there is more than one stewardship plan,  
19 by the number of plans submitted.

20 (d) The department will issue invoices for each stewardship plan by May 31 each year.  
21 Payment is due annually on July 1. The department's approval of a plan shall be  
22 revoked if payment is not received. Stewardship plans revoked for lack of payment may  
23 be reinstated upon payment.

24

25 Authority cited: Sections 40502, ~~42970, 42972, 42977, 48700, 48703,~~ and  
26 ~~42977.148704~~, Public Resources Code, Reference: Section ~~42970, 42972,~~  
27 ~~42977, 48700, 48703,~~ and ~~42977.148704~~, Public Resources Code.

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**CalRecycle Responses to 15-day Comments, Proposed Regulation on Architectural Paint Recovery Program  
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*Note: Comments submitted during the 15-day public comment period (October 10, 2011 – October 25, 2011) that are not shown in this matrix were considered by CalRecycle staff and either determined not pertinent to the modifications which were the subject of the 15-day comment period or were considered already adequately addressed in the 45-day response to comments. Some comments not directly related to the 15-day modifications were, however, determined by CalRecycle staff to warrant additional response and so were included in this 15-day response to comments matrix.*

**MFR/SO = Manufacturer or Stewardship Organization**

Section/ Area Comment #1	Comment Number	Commenter Affiliation	First name	Last name	Summary of Comment	CalRecycle Response	Revisions Needed
General Comment #1	--	--	--	--	CalRecycle received numerous comments asserting that the department lacks the authority to include requirements not expressly contained in AB 1343.	CalRecycle maintains it has been given authority by the legislature to make regulations whenever there is substantial evidence that regulations are needed to implement, interpret, make specific, or to govern CalRecycle's procedure when there is ambiguity regarding any requirement under the program. To effectuate the purpose of the statute. Therefore, this rulemaking seeks to add clarity and establish the necessary administrative procedures to fulfill CalRecycle's responsibilities under AB 1343.	--
General Comment #2	--	--	--	--	CalRecycle received numerous comments asserting that the language in the proposed regulation should duplicate the language in statute.	Cal. Gov. Code § 11349 et. seq. discourages the indiscriminate incorporation of statutory language in a regulation. The department has elected only to repeat statutory definitions in the regulation where it believes repetition is reasonably necessary to promote clarity.	--
General Comment #3	--	--	--	--	CalRecycle received numerous comments asserting that reporting requirements for program activities go beyond what is allowed in statute.	CalRecycle asserts that it has authority to require information on all program activities paid for by the architectural paint stewardship assessment as part of its duties under statute. PRC §48703(b)(4) tasks the department with approving the assessment and ensuring that it is sufficient to recover, but not exceed, the cost of the architectural paint stewardship program and that any surplus funds are put back into the program to reduce the costs of the program, including the assessment amount.	--
\$18951(f)	W27-01	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	The definition of "operational costs" in subsection (f) is inconsistent with statute and lacks clarity. The distinction is on the basis of who incurs the expense, CalRecycle on one hand, or a paint manufacturer or a stewardship organization on the other. The definition "operational costs" fails to make this distinction and leaves open an interpretation of the regulation that "operational costs" could include expenses incurred by CalRecycle. As such, it lacks clarity.  Recommendation:  "Operational Costs" means costs necessary to cover the cost of implementing a manufacturer or stewardship organization's paint stewardship program, including, but not limited to collection, transportation, processing, disposal, and education and outreach operations."	In response to comment W02-01 following the 45-day comment period, CalRecycle staff stated:  The intent of offering a definition of "operational costs" in the proposed regulation is to identify the kinds of costs that may be incurred during the operation of a program as outlined in a stewardship plan. These costs may be borne by many different stakeholders, and would be the subject of negotiation between the parties, therefore CalRecycle does not concur with restricting costs to those incurred directly by a manufacturer or stewardship organization.  Upon further review, CalRecycle staff determined that clarifying operational costs as those of a MFR/SO would not, in fact, negate the operational or other costs borne by other stakeholders, and by revising the definition would clarify that these are a MFR/SO's operational costs in carrying out their stewardship program. Any costs borne by other stakeholders, such as prospective service providers, would need to be negotiated with the MFR/SO.	\$18951(f)
\$18951(h)	W27-02	American	Gene	Livingston	The definition of "service provider" serves no legitimate purpose because	The purpose of defining "service providers" is to identify and acknowledge those entities that	None

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Section/ Area	Comment Number	Commenter/ Affiliation	Last name	First name	Summary of Comment	CalRecycle Response	Revisions Needed
		Coatings Assoc. (ACA) & PaintCare			the term is used in sections of the regulation that are inconsistent with the statute. The definition of "service provider" should be struck from the regulations.	may participate in a paint stewardship program, and which therefore helps to clarify how those service providers will be compensated (e.g., through mutually agreeable and reasonably feasible agreements established between the MFR/SO and the service provider, as negotiated.)  CalRecycle staff does not concur that the sections of the regulation in which the term "service provider" is used, or any other section of the proposed regulation, are inconsistent with statute. Therefore, no changes are recommended based on this comment.	
§18952(b) (2)	W27-03	American Coatings Assoc. (ACA) & PaintCare	Livingston	Gene	CalRecycle has no authority to approve, let alone, disapprove or conditionally approve a plan based on its own findings. A plan that meets the requirements set forth in section 48703 must be approved.	PRC §48704(a) grants CalRecycle the authority to approve or disapprove a stewardship plan. Regulations are put in place to clarify statute. In this way, CalRecycle establishes fair, consistent criteria for making the determination. The conditional approval provision is consistent with other programs where CalRecycle has similar responsibilities implementing statute. The department recognizes that there may be instances where it is in the best interest of stakeholders such as a MFR/SO, consumers, and local jurisdictions to proceed with implementation of a program while certain portions of a plan are being brought into compliance with statute.	None
§18952(b) (3)	W27-04	American Coatings Assoc. (ACA) & PaintCare	Livingston	Gene	Nothing in statute authorizes resubmission of a plan. The structure of the statute is that information subsequent to the plan is provided to CalRecycle in annual reports.	PRC §48704(c) states that a manufacturer or stewardship is to implement a plan as approved. Once a plan is approved, the only reason that a plan would need to be re-submitted would be if there is a "significant or material change". To maintain consistency with PRC §48703(b)(4), which states that the architectural paint stewardship assessment shall be approved by the department as part of the plan, CalRecycle has defined "significant or material change" to be any modification to the assessment previously approved.  CalRecycle maintains that any "significant or material change" to a previously approved plan merits another review and approval process as part of the department's role as the oversight and enforcement authority for the architectural paint recovery program.	None
§18952(c) (3)	W27-05	American Coatings Assoc. (ACA) & PaintCare	Livingston	Gene	CalRecycle has exceeded its authority under the statute by giving itself the ability to adopt a finding of compliance or non-compliance for an annual report and requiring resubmission of an annual report and/or supplemental information upon a finding of non-compliance. A finding of compliance or non-compliance must be made pursuant to section 48705 and not based on CalRecycle findings.	PRC §48705(a) and (b) grants CalRecycle the authority to adopt a finding of compliance or non-compliance based on a complete reporting of its architectural paint recovery efforts. In the case that the department adopts a finding of non-compliance, a process for a MFR/SO to obtain compliance with this chapter must be described so that the requirements are applied consistently to all MFRs/SOs, thereby ensuring a level playing field for all MFRs/SOs. The alternative to this process would be that, instead of having time to resubmit a plan that presumably would be found in compliance, the MFR/SO would be subject to immediate penalties, and, if found to be intentional, knowing, or negligent, would be penalized up to \$10,000 per day of non-compliance.	None
§18953(a) (3)	W27-06	American Coatings	Livingston	Gene	CalRecycle has gone well beyond the statute in dictating what must be set out in the stewardship plan ostensibly as part of the goals. While the	CalRecycle staff does not concur. As previously stated in response to a similar 45-day comment by the commenter:	None

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Section/ Area	Comment Number	Commenter Affiliation	First name	Last name	Summary of Comment	CalRecycle Response	Revisions Needed
§18953(a) (5)	W27-07	Assoc. (ACA) & PaintCare			statute requires goals, the regulation requires a description of how the goals were derived.	CalRecycle knows, based on experience with other programs, that a thorough and transparent description of goals and how they are derived and measured contributes to a successful program.  Revisions were made to offer suggestions in this regard while still providing a minimum description of the goals that a MFR/SO establishes pursuant to PRC §48703 (d), so that CalRecycle and other stakeholders have a basic understanding of those goals.	
§18953(a) (5)	W27-07	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	The regulations provide that a manufacturer or stewardship organization that does not participate in market development is not subject to penalties "for this section." The clear implication of that statement is that a paint manufacturer or stewardship organization that fails to participate, that is, fails to include in the stewardship plan other provisions of regulatory section 18953, is subject to penalties. If that is CalRecycle's intent, it has no such authority.	CalRecycle staff added this provision based on comments and recommendations provided by ACA during the 45-day public comment period.  ACA acknowledged in its comment letter dated September 5, 2011, that certain provisions are mandatory. Therefore, these other mandatory provisions could be subject to penalties, and the department asserts that it has such authority.  See also response to General Comment #3.	None
§18953(a) (5)	W35-01	Californians Against Waste	Mark	Murray	According to Public Resources Code (PRC) 40180, "recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstructing materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. "Recycling" does not include transformation, as defined in Section 40201.  CalRecycle is correct in requiring market development in the regulations because market development is, by definition, part of recycling. Recycling is a required element in the goals as stated in PRC 48703(d).	No response is needed since no revision was suggested to the provision regarding market development information.	None
§18953(a) (6)(D)	W33-01	Los Angeles Co. Solid Waste Mgmt Cmte/Integr ated Waste Mgmt Task Force	Margaret	Clark	Consistent with CalRecycle's EPR Framework, an effective stewardship program must be designed to <i>provide financial relief to local governments and require minimal local government involvement.</i>  As seen through the comments submitted by local jurisdictions, there is an overwhelming concern that the Regulations allow a loophole that would place local jurisdictions at a disadvantage during contract negotiations with manufacturers or a stewardship organization. Language in the Regulations state that operational costs may be covered through manufacturers or a stewardship organization who will attempt to negotiate to establish a "mutually agreeable and reasonably feasible agreement" to address those costs. This language of "mutually agreeable	This comment is similar to comments submitted during the 45-day period. CalRecycle maintains the position it expressed earlier.  See also responses to comments W14-10 and W14-02.	None

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Section/ Area	Comment Number	Commenter Affiliation	First Name	Last Name	Summary of Comment	CalRecycle Response	Revisions Needed
					and reasonably feasible agreement" used throughout the Regulations, in reality, allows manufacturers or a stewardship organization not to fully address the cost burden of local jurisdictions.  Suggested Revision: Revise Section 18953 6(D) and other applicable sections to reflect the cost issue. If a local jurisdiction chooses to participate in the program, its operation costs including administration at minimum must be covered. For that reason, we would also like Section 18951 (f) to be revised as follows: "Operation costs" means costs to operate a paint stewardship program, including but not limited to, administration, collection, transportation, processing, disposal, and education and outreach costs.		
§18953(a) (7)	W27-08	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	The implication of this provision is that a paint manufacturer or stewardship organization could be penalized for advertising a collection point that is not a service provider.	This provision may be subject to a penalty. It is CalRecycle's intention to ensure that, consistent with provisions elsewhere in the regulation, mutually agreeable and reasonably feasible agreements are utilized in order for a stakeholder such as a local jurisdiction and its infrastructure to be utilized as part of a MFR/SO's program.	None
§18953(a) (10)	W27-09	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle sets out an optional provision and states that a manufacturer or stewardship organization that fails to report on "non-financial activities" is not subject to penalties for this section. Again, the implication is that failing to include every other criteria mandated by these regulations in a plan is subject to penalties.	This comment is not valid because §18953(a)(10)(B) was previously stricken from the proposed regulation.	None
§18954(a) (2)	W35-02	Californians Against Waste	Mark	Murray	CalRecycle is correct in including paint containers in the stewardship program - the statute is clear on this issue that the funding mechanism is to provide a stewardship assessment on each container, not just the paint in the container. Manufacturers cannot sell paint without the container so it is logical that they cannot take back paint without taking back the containers as well.  PRC 48703 (a)(2) The funding mechanism shall provide for an architectural paint stewardship assessment for each container of architectural paint sold by manufacturers in this state and the assessment shall be remitted to the stewardship organization, if applicable.	No response is needed since no revision was suggested to the provision regarding paint containers.	None
§18954(a) (9)	W27-10	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	The statute, section 48705(a)(6), requires an independent financial audit. Subsection (a)(9) dictates how the audit is to be conducted, who is to conduct it, and most egregiously of all, provides that CalRecycle may investigate further to review the findings of the auditors, and to request further information. The Legislature was satisfied with an independent audit, relying on that sole safeguard to provide it with the assurance it	The independent financial audit will present an opinion of the organization's financial reporting. This information will not provide an analysis on the compliance of the organization with the requirements of the program. Additionally, audits often have findings that require corrective action. The oversight of these corrective actions resides with the department. The audit becomes an important component of the oversight of the program but may lead to	None

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Section/ Area	Comment Number	Commenter Affiliation	First name	Last name	Summary of Comment	CalRecycle Response	Revisions Needed
\$18955.1 Table I	W27-11	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	<p>needed that the paint industry is operating consistently with its intent. Nothing in the statute suggests that the Legislature intended to set up CalRecycle as an auditor of the auditor, to review materials other than the audit report.</p> <p>CalRecycle's enforcement mechanism is through approving the first plan and determining compliance thereafter through the annual reports. Therefore, the failure to submit a stewardship plan or one containing all of the elements required by Public Resources Code section 48703, results in those manufacturers being prohibited from selling paint and retailers from selling paint produced by those manufacturers. That is the enforcement mechanism, not the imposition of civil penalties. Civil penalties are to be imposed for selling paint produced by manufacturers not in compliance. The same analysis is applicable to the failure to pay the administrative fee, the failure to submit an annual report, and the failure to include in the annual report the elements required by PRC section 18705(a).</p> <p>Recommendation: Strike from Table I all of the violations except the first, offering or selling paint produced by a manufacturer not in compliance with this chapter, as provided in PRC 18702(b).</p>	<p>compliance or other questions that the department reserves the right to pursue. See also response to General Comment #3.</p> <p>PRC 548703(d) and (f), states that CalRecycle has the authority to enforce the entire chapter, and sets penalty amounts in statute. Therefore, CalRecycle staff do not concur with the commenter that the only enforcement mechanism for a MFR/SO or retailer is through the sales ban alone.</p>	None
\$18955.1 Table II	W27-12	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	<p>Same analysis as for Table I, above.</p> <p>Recommendation: Strike from Table II the second violation.</p>	<p>PRC 548704(c) and (f) state that the department shall enforce this chapter and that a civil penalty may be administratively imposed by the department on any person who violates this chapter in an amount of up to one thousand dollars (\$1,000) per violation per day.</p> <p>Therefore, CalRecycle staff do not concur with the commenter that the only enforcement mechanism for a MFR/SO or retailer is through the sales ban alone.</p>	None
\$18956	W27-13	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	<p>CalRecycle has no authority to require recordkeeping beyond the materials provided to it in the stewardship plan and annual reports. It has no authority to require that the manufacturers and retailers make records available at any time, and certainly not immediately, or to impose penalties for failure to provide records.</p> <p>Recommendation: Strike all of section 18956.</p>	<p>PRC 548703(d) and (f) states that CalRecycle has the authority to enforce the entire chapter, and sets penalty amounts in statute. It is implicit in enforcement that the manufacturer or stewardship organization substantiates the activities in the annual report, and that requires certain documentation. These records would already be required under other state laws.</p> <p>The authority to audit carries with it the reasonable access to records necessary for the conduct of the audit. Federal OMB Circular A-122, Attachment A, General Principles, A Basic Considerations, 2 Factors affecting the allowability of costs.,., states reasonable costs "G. Be adequately documented."</p> <p>The "immediate" provision was removed for the 15-day comment period version of the proposed regulation in response to the comment submitted by ACA during the 45-day comment period.</p>	None

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Sorted by Regulation Section Number**

Section/ Area	Comment Number	Commenter Affiliation	First name	Last name	Summary of Comment	CalRecycle Response	Revisions Needed
\$18957	W27-14	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	Regulatory sections 14 CCR sections 17044 and 17045 require a person submitting data claimed to be a trade secret or confidential or proprietary information to indicate that at the time of submission. The PRC section 48704(b) makes clear that financial, production, or sales data is not a public record. Comparing the PRC provision with the existing regulation raises the question of whether a manufacturer or stewardship organization submitting a stewardship plan containing financial, production, or sales data is obligated to identify that data as proprietary and confidential at the time of submission. Moreover, 14 CCR, section 17046, setting out the procedure that CalRecycle follows in determining whether information is to be disclosed or not, also raises the question of whether this is the process to be followed if a request is made by a member of the public for financial, production, or sales data included in a stewardship plan?  Recommendation: CalRecycle needs to clarify how its existing regulation applies to a request for financial, production, or sales data included in a stewardship plan, if the existing regulation is to apply at all.	Also see response to comment <u>W02-42</u> .  Also see response to General Comment #3.  The provisions in Title 14 of the California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with Section 17041) were adopted by the Division to implement the requirements in the California Public Records Act in Chapter 3.5 of Division 7 of Title 1 of the Government Code. In fact, the first line of the Regulations cited in Section 17041 specifies that "This article shall apply to all requests to the Board pursuant to the California Public Records Act (Government Code sections 6250 et seq.) for the disclosure of public records or for maintaining the confidentiality of data received by the Board."  California Code of Regulations, Division 7, Chapter 1, Article 4, with or without this provision, applies to all Public Records Act requests made to the Department. The reference in this regulation is made to places stakeholders on notice regarding Department practices and guidelines regarding protected information; this section is not intended to conflict with, expand or decrease the privacy rights extended to a manufacturer or stewardship organization.	None
\$18958	W27-15	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle may not delegate to itself the authority to set an administrative fee without complying with the APA. This regulation, to the extent it contemplates the imposition of a fee without future compliance with the APA, lacks clarity. Moreover, necessity must be demonstrated in the rulemaking record, not just for a fee, but for the specific fee. The absence of a specific fee in this regulation raises a clarity issue, and as a consequence, nothing in the rulemaking record sets out the facts supporting the need for a specific fee amount. A specific fee imposed by CalRecycle, without complying with the APA, would be invalid as an underground regulation. CalRecycle should either strike all of section 18958, or propose a specific fee. If it proposes a specific fee, it needs to demonstrate the need for the specific amount in the record of the rulemaking proceeding.	PRC §48704(e)(2) requires the department to impose fees in an amount that is sufficient to cover the department's full costs of administering and enforcing this chapter, including any program development costs or regulatory costs incurred by the department prior to the submittal of the stewardship plans.  CalRecycle is unable to provide a final invoice for these costs at this time, but has generated some cost estimates based on projected staff time needed for this program. Staff estimates the administrative fee for the period covering November 2010-June 30, 2012, to be \$200,000. The fee for the first fiscal year of the program (2012-2013) is estimated at \$400,000, and the fee for the next fiscal year (2013-2014), and all subsequent years is estimated at \$375,000 per year, assuming the program is implemented smoothly.  Oregon's annual architectural paint recovery program costs were stated as \$3.3 million in the annual report submitted by PaintCare, covering a population roughly one-tenth the size of California's. After scaling these costs for California's larger population, staff estimates that the ongoing annual administrative fee will represent approximately 1.1% of the architectural paint recovery program's total costs.	None