PROPOSED REGULATION TEXT

AB 1526 and SB 1143 Updates to Architectural Paint Recovery Program
Architectural Paint Recovery Program

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CALIFORNIA CODE OF REGULATIONS

Note: Amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. The symbol "* * * **" means that intervening text not proposed for amendment is not shown.

TITLE 14. Natural Resources

DIVISION 7. Department of Resources Recycling and Recovery

CHAPTER 11. Product Stewardship

AMEND

ARTICLE 2. Architectural Paint Recovery Program

Adopt sections 18952.1 and 18955.4

Amend sections 18950, 18951, 18952, 18953, 18954, 18955, 18955.3, 18956, 18957 and ~~through~~ 18958, California Code of Regulations, ~~title~~ Title 14.

Repeal sections 18955.1 and 18955.2

~~Architectural~~ Paint Product Recovery Program

Section 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 product manufacturers and other regulated entities pursuant to Chapter 5, commencing with ~~§~~section 48700, Part 7, Division 30 of the Public Resources Code ~~(PRC)~~.

Authority cited: Sections 40401 ~~and~~, 40502, 48701.1, and 48707, Public Resources Code.
Reference: Section 48700, Public Resources Code.

Section 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 ~~§~~section 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~~ a manufacturer or stewardship organization in order to cover the costs of administering and enforcing the statute.

(c) “Approved collection site” means a site that a manufacturer or stewardship organization elects to utilize as a collection site in its stewardship program, and that is in compliance with section 48703.3(c) of the Public Resources Code. An approved collection site includes a permanent collection site pursuant to section 48701(i) of the Public Resources Code, a temporary collection site pursuant to section 48701(n) of the Public Resources Code, and a pending permanent collection site pursuant to section 18951(q).

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

(e) “Authorized representative” means a person(s) who has authority to legally bind a manufacturer or stewardship organization to the contents of a submitted document, and who submits a document pursuant to section 48705.1(b) of the Public Resources Code.

(f)~~(d)~~ "Brand" means a name, sign, symbol, slogan, or anything that is used to identify and distinguish a specific ~~architectural~~ paint product.

~~(g) "Reporting period" means a consecutive 12-month period as specified in statute.~~

(g) "Coating solid" means any nonvolatile ingredient of an aerosol coating product, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code.

(h)~~(e)~~ "Collection" means any method by which a service provider receives postconsumer ~~architectural~~ paint from a consumer at no cost to the consumer.

~~(i) "Significant or material change" means any modification of the architectural paint stewardship assessment previously approved by the department.~~

(i) "Graffiti remover" means a product designed and labeled on the product's packaging or on the manufacturer's website to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish, from a variety of noncloth or nonfabric substrates, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code.

(j) "Ground traffic or marking application" means an aerosol coating product designed and labeled on the product's packaging or on the manufacturer's website exclusively to be used as a handheld or in specialized equipment and applied to dirt, gravel, grass, concrete, asphalt, warehouse floors, or parking lots, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code. Aerosol coating products used for ground traffic or marking applications must be in a container equipped with a valve and spray head designed to direct the spray toward the surface when the can is held in an inverted vertical position.

(k) "Importer" means a party qualifying as an "importer of record" for purposes of section 1484(a)(2)(B) of Title 19 of the United States Code, with regard to the import of finished paint products sold in the state that were manufactured or assembled by a company outside the United States.

(l) "Interior and exterior architectural coatings" or "architectural coating" means pigmented coating materials designed to provide protection of interior and exterior architectural structures and their accessories made of materials that include, but are not limited to, concrete, masonry, metal, plastic, drywall and wood. Architectural coatings may be water-based or oil-based and are intended to paint, prime, seal, stain, shellac, lacquer, varnish, or urethan surfaces of the architectural structure and accessories resulting in the coating, repelling, waterproofing and/or sealing to prevent degradation. Architectural coatings are distinct from aerosol coating products, adhesives, and coatings which are either labeled with or promoted by the manufacturer or importer as products for industrial use or original equipment manufacturer use.

(m) “Manufacturer” means, with regard to a paint product that is sold, offered for sale, or distributed in the state, any of the following:

(1) The person who manufactures the paint product and who sells, offers for sale, or distributes the paint product in or into the state under that person’s own name or brand.

(2) If no person meets the definition in paragraph (1), manufacturer means the owner or licensee of a trademark or brand under which the paint product is sold or distributed in or into the state, whether or not the trademark is registered.

(3) If no person meets the definition in paragraphs (1) and (2), manufacturer means the person who distributes the paint product in or into the state for sale or distribution.

(4) If no person meets the definition in paragraphs (1), (2), and (3), manufacturer means the person who imports the paint product in or into the state for sale or distribution.

(5) If no person meets the definition in paragraphs (1), (2), (3), and (4), the manufacturer of that paint product is the person who sells the paint product to a consumer in the state.

(n)~~(f)~~ “Operational costs” means costs to operate a manufacturer or stewardship organization's ~~paint~~ stewardship program, including, but not limited to, collection, transportation, processing, disposal, and education and outreach costs.

(o) “Paint remover” means any product designed and labeled on the product’s packaging or on the manufacturer’s website to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code.

(p) “Paint thinner” means any product that is designed or labeled on the product’s packaging or on the manufacturer’s website to reduce the viscosity of coating compositions or components, or a product that prominently displays terms such as “Paint Thinner,” “Lacquer Thinner,” “Thinner,” or “Reducer” on the label, packaging, or on the manufacturer’s website, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code.

(q) “Pending permanent collection site” means a site that meets the requirements of 48701(i) of the Public Resources Code and section 18951(r), except for section 18951(r)(3)(B).

(r) “Permanent location” means, with regard to a permanent collection site, a Permanent Household Hazardous Waste Collection Facility as defined by section 25218.1(h) of the Health and Safety Code, a recycle-only household hazardous waste collection facility as defined by section 25218.8(b) of the Health and Safety Code, or a site that meets the following criteria:

(1) A fixed, physical site located in the state.

(2) Open to the public and operated during regular hours. “Regular hours” means the days and hours during which the site accepts postconsumer paint.

(3) Open at least once per week.

(4) Operational for a minimum of 47 weeks per calendar year.

(s) “Pigment” means a coating solid of either natural or synthetic insoluble material added to a paint product to provide color, opacity, or corrosion inhibition, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code.

(t) “Propellant” means a liquefied or compressed gas that is used in whole or in part to expel a liquid or any other material from the same self-pressurized container or from a separate container, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code.

(u) “Resin” means a coating solid that comprises film-forming ingredients. Examples of resin ingredients include, but are not limited to, acrylic, alkyd, enamel, epoxy, lacquer, polyurethane, polyvinyl chloride, shellac, silicone, and polystyrene, as applies to aerosol coating products defined in section 48701(a) of the Public Resources Code.

(v)~~(h)~~ “Service provider” means an entity~~, including, but not limited to, local household hazardous waste collection programs and retailers,~~ that contracts with a manufacturer or stewardship organization to provide services including, but not limited to, collection, consolidation, transportation, reuse, processing, or proper disposal of postconsumer ~~architectural~~ paint.

(w) “Stewardship organization” in sections 48701(m), 48702(c), 48703.1(d), 48703.3(e), 48703.4(d), 48703.4(e), 48704.1(a), 48705(a)(11), 48705.1(a), and 48705.1(b) of the Public Resources Code also refers to individual manufacturers with approved stewardship plans.

(x) “Stewardship program” means a California program operated by a manufacturer or stewardship organization with an approved stewardship plan pursuant to this Article and Chapter 5, commencing with section 48700, Part 7, Division 30 of the Public Resources Code.

(y) “Wholesaler” means a person who offers paint products for sale in this state in a sale that is not a retail sale, as defined in section 6007 of the Revenue and Taxation Code, and in which the paint product is intended to be resold.

Authority cited: Sections 40401 ~~and~~, 40502, 48701.1, and 48707, Public Resources Code.

Reference: Sections 48700, 48701, 48701.1, 48702, 48703, 48703.1, 48703.3, 48703.4, 48704, 48704.1, ~~and~~ 48705, and 48705.1, Public Resources Code.

Section 18952. Document Submittals: Stewardship Plans, Annual Reports, and Lists.

~~(a) A corporate officer, acting on behalf of an architectural paint manufacturer or stewardship organization, shall submit as part of the stewardship plan the following information:~~

~~(1) Contact information of the corporate officer responsible for submitting stewardship plan and annual report documents to the department and for overseeing paint stewardship program activities, including, but not limited to:~~

~~(A) Contact Name~~

~~(B) Title~~

~~(C) Name and Company or Stewardship Organization~~

~~(D) Mailing address~~

~~(E) Phone number~~

~~(F) E-mail address~~

~~(G) Web address, if applicable~~

~~(2) List and contact information for each architectural paint manufacturer participating in the stewardship organization, including, but not limited to:~~

~~(A) Name of Company~~

~~(B) Mailing or corporate address~~

~~(C) Web address (if applicable), Contact Name, Title, Phone Number, and e-mail address of participating architectural paint manufacturers shall be provided to the department upon request. The department shall include a reason for any request of this information. The requested information shall be submitted within 30 days of the request unless extended as determined by the department.~~

~~(3) List of brands covered under the stewardship plan.~~

~~(b) The stewardship plan may be submitted electronically according to instructions provided by the department. A hard copy, signed by a corporate officer of a manufacturer or stewardship organization, must be submitted to the department.~~

~~(1) The information submitted in a stewardship plan shall address the criteria for approval in § 18953 and be organized according to this standard outline:~~

~~(A) Contact Information~~

~~(B) Program Goals and Activities~~

~~(C) Collection Systems~~

~~(D) Financing Mechanism~~

~~(E) Education and Outreach~~

~~(F) Stakeholder Consultation~~

~~(2) The department shall determine if the plan is complete and notify the submitting manufacturer or stewardship organization within 30 days. If the department finds that the stewardship plan is complete, the department's 90-day review period for consideration of approval of the stewardship plan, set forth in Public Resources Code section 48704, will commence upon the original date of receipt. If the stewardship plan is incomplete, the department shall identify what additional information must be submitted to make it complete and the plan shall be resubmitted within 30 days. If the department determines upon resubmittal that the plan is complete, the department's 90-day review period for consideration of approval of the stewardship plan will commence upon the original date of receipt of the resubmittal.~~

~~(3) The department may approve, disapprove, or conditionally approve a stewardship plan.~~

~~(A) The plan must be approved if it provides for the establishment of a paint stewardship program that meets the requirements of Public Resources Code section 48703.~~

~~(B) If the department conditionally approves a plan, the department shall identify the deficiencies in the plan and the manufacturer or stewardship organization shall comply with the conditions of approval within 60 days of the notice date. If the conditions are met, the department shall approve the plan.~~

~~(C) If the department disapproves a plan, the department shall identify the deficiencies in the plan and the manufacturer or stewardship organization shall resubmit a plan or provide supplemental information requested by within 60 days of the notice date.~~

~~(D) If the department conditionally approves a plan and the conditions are not met, the department shall disapprove the plan.~~

~~(4) The stewardship plan must be submitted for re-approval upon any significant or material change, as defined. The department shall review the revised stewardship plan within 90 days of receipt and make a determination whether or not to approve the plan.~~

~~(5) The approved stewardship plan shall be a public record, except that financial, production, or sales data reported to the department by a manufacturer or stewardship organization is not a public record under the California Public Records Act, as described in Chapter 3.5 (commencing with § 6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection. The department may release financial, production, or sales data in summary form only that cannot be attributable to a specific manufacturer.~~

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

~~A hard copy, signed by a corporate officer of a manufacturer or stewardship organization must be submitted.~~

~~(1) The information submitted in an annual report shall address the criteria for a finding of compliance per § 18954 and be organized according to this standard outline:~~

~~(A) Contact Information~~

~~(B) Executive Summary~~

~~(C) Program Outline~~

~~(D) Description of Goals and Activities Based on the Stewardship Plan~~

~~(E) Financing Mechanism~~

~~(F) Education and Outreach~~

~~(G) Audits~~

~~(2) The department shall determine if the report is complete and notify the submitting manufacturer or stewardship organization within 30 days. If the department finds that the annual report is complete, the department's 90-day review period for the annual report, set forth in Public Resources Code § 48705, will commence upon the original date of receipt. If the annual report is incomplete, the department shall identify what additional information must be submitted to make it complete and the report shall be resubmitted within 30 days. If the department determines upon resubmittal that the report is complete, the department's 90-day review period of the report will commence upon the original date of receipt of the resubmittal.~~

~~(3) The department may adopt a finding of compliance, non-compliance, or conditional approval for an annual report.~~

~~(A) If the department adopts a finding of compliance, the manufacturer or stewardship organization may continue to sell or offer paint for sale in the state.~~

~~(B) If the department conditionally approves a report, the department shall identify the deficiencies in the report and the manufacturer or stewardship organization shall comply with the conditions of approval within 60 days of the notice date. If the conditions are met, the department shall adopt a finding of compliance.~~

~~(C) If the department adopts a finding of non-compliance, the department shall identify the deficiencies in the report and the manufacturer or stewardship organization shall resubmit a report or provide supplemental information requested by within 60 days of the notice date.~~

~~(D) If the department conditionally approves a report and the conditions are not met, the department shall adopt a finding of non-compliance.~~

(a) A stewardship plan, plan amendment, amended stewardship plan, annual report, or any document associated with the preceding that is submitted to the department by a manufacturer or stewardship organization, shall meet the following requirements:

(1) The document shall be submitted by an authorized representative of the manufacturer or stewardship organization pursuant to section 48705.1(b) of the Public Resources Code. The document shall include contact information for the authorized representative, including, but not limited to:

(A) Contact name

(B) Title

(C) Name of company or stewardship organization

(D) Mailing address

(E) Phone number

(F) Email address

(G) Internet website address

(2) The document shall be submitted electronically using the department's designated electronic submittal process available on the department's website. The date of electronic submittal will be considered the date of receipt by the department.

(A) At the time of submittal, the manufacturer or stewardship organization shall immediately post the document submitted to the department on its internet website that is identified in its stewardship plan.

(i) The manufacturer or stewardship organization shall maintain approved stewardship plans on its internet website until a new plan is approved, the approved plan expires, or the approved plan is revoked.

(ii) The manufacturer or stewardship organization shall maintain its most recent annual reports on its internet website for a minimum of three years.

(3) The document shall be in Portable Document Format and consistent with the standards set forth in section 7405 of the Government Code and the Web Content Accessibility Guidelines (WCAG) 2.2 published in 2024 by the World Wide Web Consortium at http://www.w3.org/TR/WCAG22/. The entirety of the Web Content Accessibility Guidelines (WCAG) 2.2 published in 2024 are incorporated by reference.

(A) A manufacturer or stewardship organization's failure to comply with the Web Content Accessibility Guidelines in section 18952(a)(3) shall not be a basis for disapproval or a finding of noncompliance but is grounds for the imposition of civil penalties pursuant to section 18955.

(4) Submittals that include content the manufacturer or stewardship organization asserts are confidential in nature shall include a copy of the submittal with proposed redactions and a cover letter explaining the justification of confidentiality. The cover letter shall identify the specific submittal section(s) asserted to be confidential by page, line, and description. If the manufacturer or stewardship organization does not provide a copy of the submittal with proposed redactions and a cover letter, the department shall consider all information provided in the submittal to be public. Records supplied to the department pursuant to this Article that are, at the time of submission, claimed to be proprietary, confidential, or a trade secret shall be subject to the provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4, commencing with section 17041.

(b) Lists submitted pursuant to section 48702(c) of the Public Resources Code or any document associated with the preceding that is submitted to the department by a manufacturer or stewardship organization shall meet the following requirements:

(1) The document shall be submitted by an authorized representative of the manufacturer or stewardship organization pursuant to section 48705.1(b) of the Public Resources Code.

(2) The document shall be submitted electronically using the department's designated electronic submittal process available on the department's website. The date of electronic submittal will be considered the date of receipt by the department.

(3) The list of paint product manufacturers participating in the stewardship plan shall include contact information for each paint product manufacturer, including, but not limited to:

(A) Name of company, including doing business as (DBA) name, if applicable

(B) Physical address and mailing address for the paint product manufacturer(s). If these addresses are not a United States domestic address, also provide a United States address, if available.

(C) Email address

(D)Telephone number

(E) Internet website address

(F) Business principle contact name and title for the participating paint product manufacturer

(4) The list of paint products and paint brands included in the stewardship plan shall include all associated Global Trade Item Numbers (GTIN), if these codes appear on the paint product. The listings shall be disaggregated for each paint product, paint brand, and GTIN, so as to identify the manufacturer or retailer and associate each with the following paint products, as identified in section 48701(h)(1) of the Public Resources Code: architectural coatings, aerosol coating products, nonindustrial coatings, and coating-related products. If another unique product identification system is used that is not listed in this section, the department is to be contacted prior to the submission of the product identification information or data so the department can coordinate to receive the alternative product identification information or data.

(5) Upon receiving changes to the information in the lists pursuant to sections 48702(c) and 48702(d) of the Public Resources Code and section 18952(b), a manufacturer or stewardship organization with an approved stewardship plan shall submit updated lists to the department by the last calendar day of the month following the dates of the change(s). Otherwise, a manufacturer or stewardship organization with an approved stewardship plan shall submit updated lists to the department no less frequently than once every six months.

Authority cited: Sections 40401, ~~and~~ 40502, 48701.1, 48702, 48703, 48705, and 48707, Public Resources Code.
Reference: Sections ~~40502,~~ 48700, 48702, 48703, 48703.5, 48704, ~~and~~48705, and 48705.1, Public Resources Code; and section 7405, Government Code.

Section 18952.1. Document Reviews: Stewardship Plans and Annual Reports.

(a) The department shall approve, disapprove, or conditionally approve a stewardship plan, plan amendment, or amended stewardship plan pursuant to section 48703(b)(1) of the Public Resources Code.

(1) A stewardship plan shall be approved if it provides for the establishment of a stewardship program that meets the requirements of sections 48703 through 48703.4 of the Public Resources Code and section 18953.

(2) If the department conditionally approves a stewardship plan, the department shall identify the deficiencies in the stewardship plan and electronically provide written notice to the manufacturer or stewardship organization within 60 days of conditional approval. The manufacturer or stewardship organization shall revise its stewardship plan to comply with the conditions of approval within 30 days of the date the department electronically transmits the written notice to the manufacturer or stewardship organization and resubmit its stewardship plan to the department. Upon resubmittal, the department shall review the stewardship plan pursuant to section 18952.1(a).

(A) If the department determines the conditions are met, the department shall approve the stewardship plan.

(B) If the department determines the conditions are not met, the department shall disapprove the stewardship plan.

(3) An amended stewardship plan submitted pursuant to section 48703.5 of the Public Resources Code shall meet the requirements of sections 48703 through 48703.4 of the Public Resources Code and section 18953.

(4) A manufacturer or stewardship organization shall submit for approval a stewardship plan or plan amendment upon any modification of the paint stewardship assessment previously approved by the department, a change to the manufacturer or stewardship organization's reserve policy, or a change to the performance goals set by the manufacturer or stewardship organization in the existing approved stewardship plan. The department shall review the stewardship plan or plan amendment within 120 days of receipt and make a determination whether to approve, disapprove, or conditionally approve the stewardship plan. The modification shall not be implemented prior to the department's approval.

(b) The department shall adopt a finding of compliance, substantial compliance, or noncompliance for an annual report pursuant to section 48705(b) of the Public Resources Code.

(1) An annual report shall be found compliant if it meets the requirements of section 48705 of the Public Resources Code and section 18954.

(2) If the annual report lacks required information or contains errors that can be corrected through resubmittal of the annual report, that constitutes grounds for the department to adopt a finding of substantial compliance. A finding of substantial compliance constitutes grounds for the department to include conditions that must be met by the manufacturer or stewardship organization within 60 days of the date the department electronically transmits the written notice to the manufacturer or stewardship organization. The manufacturer or stewardship organization shall revise its annual report to comply with the conditions within 60 days of the date the department electronically transmits the written notice to the manufacturer or stewardship organization and resubmit its annual report to the department. Upon resubmittal, the department shall review the annual report pursuant to section 18952.1(b).

(A) If the department determines the conditions are met, the department shall adopt a finding of compliance for the annual report.

(B) If the department determines the conditions are not met, that constitutes grounds for the department to adopt a finding of noncompliance for the annual report.

(3) If the department adopts a finding of noncompliance, the department shall identify the deficiencies in the annual report and electronically transmit written notice of the deficiencies to the manufacturer or stewardship organization. Such a finding constitutes grounds for the department to take action pursuant to section 48706.1 of the Public Resources Code to administratively impose civil penalties as described under section 18955. A finding of noncompliance also constitutes grounds for the department to require the manufacturer or stewardship organization to resubmit its annual report or provide supplemental information requested within 60 days of the date the department electronically transmits the written notice to the manufacturer or stewardship organization. Upon resubmittal, the department shall review the annual report pursuant to section 18952.1(b).

Authority cited: Sections 40401, 40502, 48701.1, and 48707, Public Resources Code. Reference: Sections 48703, 48703.1, 48703.2, 48703.3, 48703.4, 48703.5, 48705, and 48706.1, Public Resources Code.

Section 18953. Stewardship Plans~~ Approval Criteria~~.

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

~~(1) Contact information. Identify the manufacturer or designated stewardship organization responsible for the stewardship plan submittal. A manufacturer or stewardship organization shall provide updates to the list of manufacturers and brands participating in its program within 30 days of any changes to that list.~~

~~(2) Program Goals and Activities. Include program goals that are specific to and appropriate for California. Factors to consider when determining program goals may include the current and future recycling infrastructure and capacity and changes in market conditions in California. Description of goals must include a baseline, to be provided by the manufacturer or stewardship organization, from which the goals will be measured and reported in the manufacturer or stewardship organization's annual reports. The baseline should indicate the status of household hazardous waste management in California at the time of plan submission. Describe how the goals will be measured, including a description of the methodology used for estimating the amount of leftover paint available for collection in California. Describe how the program will:~~

~~(A) Reduce the generation of postconsumer paint;~~

~~(B) Promote the reuse of postconsumer paint;~~

~~(C) Properly manage postconsumer paint at end-of-life in an environmentally sound fashion, including recovery, recycling, and proper disposal of postconsumer paint; and~~

~~(D) Manage paint containers and undertake market development activities, if a manufacturer or stewardship organization chooses to engage in these activities.~~

~~(3) Collection Systems. Describe the system that will be used to collect and properly manage postconsumer architectural paint to demonstrate how there will be sufficient funding for the program and how it will be implemented in an environmentally sound fashion. This description must include the following:~~

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

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

~~(C) Description of best management practices to be followed by service providers that are acting as collection points, which may include any training that the manufacturer or stewardship organization intends to provide to or require of service providers to ensure proper collection and management of postconsumer architectural paint.~~

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

~~(E) Address the coordination of the architectural paint stewardship program with existing local household hazardous waste collection programs. A manufacturer or stewardship organization must negotiate with existing local household hazardous waste collection~~

~~programs wanting to participate in the paint stewardship program as a collection point as much as is reasonably feasible and is mutually agreeable.~~

~~(F) Address the coordination of the architectural paint stewardship program with potential retail collection points. Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program. A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in the paint stewardship program as a collection point, as much as is reasonably feasible and is mutually agreeable.~~

~~(4) Financing Mechanism. Include a funding mechanism that provides sufficient funding to recover, but not exceed, the cost of the architectural paint stewardship program, including the administrative (including financial audits per PRC § 48705(a)(6)), operational, and capital costs of the program. The funding mechanism includes the following:~~

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

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

~~(C) Stewardship organization and manufacturers shall allocate revenues and expenditures applicable to this program in accordance with Generally Accepted Accounting Principles (GAAP).~~

~~(5) Education and Outreach. Include a description of education and outreach efforts to consumers, contractors, and retailers to promote source reduction and recycling of architectural paint. The description shall include how the outreach and education methods will be used and distributed. Educational information may include, but is not limited to, signage, written materials, advertising, or other promotional materials pursuant to PRC § 48703(e). A manufacturer or stewardship organization may not advertise a collection point(s) as being part of a manufacturer or stewardship organization's program that is not a contracted collection point for the manufacturer or stewardship organization's stewardship program. This provision does not apply to referrals to collection points based on publically available information.~~

~~(6) Stakeholder Consultations. In addition to existing local household hazardous waste collection programs per § 18953(a)(3)(E), other stakeholders that may be consulted include, but are not limited to, consumers, retailers, architectural paint recyclers, architectural paint contractors, and haulers.~~

~~(b) The manufacturer or stewardship organization submitting the stewardship plan shall provide, upon request, additional information to assist the department as may be~~

~~necessary for the approval of the plan in compliance with the California Environmental Quality Act.~~

(a) Stewardship plans must contain the following for the manufacturer or stewardship organization's own California stewardship program:

(1) Contact information of the manufacturer or stewardship organization responsible for the stewardship plan submittal, including contact information of the authorized representative responsible for submitting the stewardship plan pursuant to section 18952(a)(1).

(2) A list of manufacturers participating in the stewardship plan pursuant to section 18952(b) and the listing of paint products and paint brands.

(3) A description of how the manufacturer or stewardship organization will provide a free drop off and convenient collection system throughout the state by the implementation date, ensuring:

(A) Access to approved collection sites or events for consumers in every county.

(i) Include the proposed number of approved collection sites, by county.

(ii) Identify each approved collection site as a permanent collection site pursuant to section 48701(i) of the Public Resources Code, a temporary collection site pursuant to section 48701(n) of the Public Resources Code, or a pending permanent collection site pursuant to section 18951(p).

(iii) Identify the type of approved collection site such as a retailer, local household hazardous waste collection program, or other approved collection site.

(B) At least one permanent collection site, or a combination of permanent collection sites, in each county that collectively accept all postconsumer paint products.

(4) A description of best management practices to be followed by service providers that are acting as approved collection sites. Examples of such practices include, but are not limited to, any training that the manufacturer or stewardship organization intends to provide, or require service providers to provide, to ensure proper collection and management of postconsumer paint.

(5) A description of how the manufacturer or stewardship organization will coordinate with retailers and existing household hazardous waste collection programs as potential approved collection sites pursuant to sections 48703.3(d) and 48703.3(b) of the Public Resources Code.

(6) A description of how postconsumer paint will be collected, transported, and properly managed, including:

(A) Collection and transportation activities for approved collection sites and other collection methods, such as a collection event, large volume collection program, or consumer mail-back, used for postconsumer paint. Describe how postconsumer paint will be categorized for collection and transportation activities, if applicable.

(B) Locations of processing activities, including reuse and recycling, and disposal for postconsumer paint. Describe how postconsumer paint will be categorized for processing activities, if applicable.

(7) Performance goals, and a description of each performance goal, that are consistent with section 48703.2 of the Public Resources Code. Performance goals shall:

(A) Include annual goals that cover a minimum of five years.

(i) Include the metrics and the methodologies used to establish each performance goal and that will be used to report annually pursuant to section 18954.

(ii) Include a baseline for each performance goal provided by the manufacturer or stewardship organization, from which the performance goals will be measured and reported annually pursuant to section. Baselines shall indicate the status of household hazardous waste management in the state at the time of stewardship plan submission.

(iii) Describe any assumptions and data sources used in establishing the performance goals, if applicable.

(B) Describe how the manufacturer or stewardship organization has taken into consideration the current and future recycling infrastructure and capacity and changes in market conditions in California.

(C) Describe how the manufacturer or stewardship organization will determine or quantify that they have met the annual goal by the end of the calendar year.

(D) Describe how the performance goals will address the following components. A single performance goal may address multiple components.

(i) Reduce the generation of postconsumer paint;

(ii) Promote the reuse of postconsumer paint;

(iii) Properly manage postconsumer paint at end-of-life, including collection, recovery, recycling, and proper disposal of postconsumer paint;

(iv) Provide a free drop off and convenient collection system, based on population, for postconsumer paint products pursuant to section 18953(a)(3).

(v) Manage postconsumer paint containers, consistent with the state's solid waste management hierarchy included in section 40051 of the Public Resources Code.

(vi) Undertake market development activities, if a manufacturer or stewardship organization chooses to engage in these activities.

(8) A description of the funding mechanism consistent with sections 48703.1 and 48704.1 of the Public Resources Code that provides sufficient funding to recover, but not exceed, the cost of the stewardship program, including the administrative, operational, and capital costs of the stewardship program. The funding mechanism includes the following and shall allocate revenues and expenditures applicable to the stewardship program in a prudent and responsible manner:

(A) The amount of the assessment per container of paint product sold in the state.

(B) A budget for the stewardship program that includes a description of and estimates for:

(i) Revenue from the assessment.

(ii) Total stewardship program cost.

(iii) Administrative costs, including those pursuant to sections 48703.1 and 48704 of the Public Resources Code and section 18958.

(iv) Operational costs, including:

(I) Collection costs

(II) Transportation costs

(III) Processing costs

(IV) Education and outreach costs

(V) Any other operational costs the manufacturer or stewardship organization intends to incur.

(v) Capital costs.

(vi) Independent financial audits pursuant to section 48705(a)(9) of the Public Resources Code.

(C) A description of the manufacturer or stewardship organization's reserve policy, including how it is consistent with the requirements of section 48704.1(c) of the Public Resources Code.

(9) A description of education and outreach efforts to consumers, contractors, and retailers to promote source reduction, reuse, and recycling of paint products, including how the education and outreach materials will be used and distributed. Examples of educational information include, but are not limited to, signage, written materials, advertising, or other promotional materials pursuant to section 48703.4 of the Public Resources Code. A manufacturer or stewardship organization shall not advertise a collection site(s) that is not an approved collection site for the manufacturer or stewardship organization's stewardship program. This provision does not apply to referrals to collection sites based on publicly available information.

(A) Describe how educational materials will provide up-to-date public information to identify approved collection sites pursuant to section 18953(a)(3) and the paint products accepted at each approved collection site on an ongoing basis.

(B) Describe how the education and outreach materials provided pursuant to section 48703.4 of the Public Resources Code will include consistent branding that clearly identifies the manufacturer or stewardship organization responsible for implementing the stewardship program. Branding includes, but is not limited to, a name, logo, design, tagline, or other element that uniquely identifies the manufacturer or stewardship organization responsible for implementing the stewardship program. The branding for a stewardship organization shall represent the stewardship organization pursuant to section 48701(l) of the Public Resources Code, not an individual company.

(10) A description of consultations with interested parties, including with existing local household hazardous waste collection programs pursuant to section 48703.2 of the Public Resources Code. Examples of other interested parties that could be consulted include, but are not limited to, consumers, retailers, postconsumer paint recyclers, paint contractors, and haulers.

(11) The implementation date pursuant to section 48701.1(b) of the Public Resources Code.

(12) A signed statement by an authorized representative of the manufacturer or stewardship organization to certify that, at the time of submission to the department, the stewardship plan, including all aspects of the plan related to the collection, transportation, and disposal of postconsumer paint, is in compliance with all applicable local, state, and federal laws and regulations, including, but not limited to, sections 25201.16, 25217.2, and 25217.2.1 of the Health and Safety Code.

(b) No later than five years after the date of approval of the manufacturer or stewardship organization’s first stewardship plan that covers all postconsumer paint products, the manufacturer or stewardship organization shall amend its stewardship plan to include no fewer than five activities it will undertake in a county where the requirements of section 18953(a)(3)(B) are not met, if applicable. The manufacturer or stewardship organization shall continue these activities until such time as it establishes a permanent collection site or pending permanent collection site. Stewardship plans must include activities pursuant to this requirement thereafter. The department shall use this information, as reported in an annual report, to evaluate and determine the appropriate enforcement action pursuant to section 48706.1 of the Public Resources Code.

(1) Each activity shall be a specific, measurable action or process undertaken by the manufacturer or stewardship organization and include at least one quantifiable metric by which progress for the activity can be measured. Activities shall be described in a manner that clearly links the action or process to its associated metric. Examples of such activities with associated metrics include, but are not limited to:

(A) Directly establishing and operating permanent collection sites including the process by which the number of new permanent collection sites will be determined and the number of new permanent collection sites established;

(B) Partnering with other programs to utilize existing infrastructure and the number of agreements established;

(C) Conducting outreach to local governments, solid waste facilities, household hazardous waste programs, retailers, or other potential collection partners and the number of outreach contacts made;

(D) Engaging in site development activities or communication, such as consulting with local officials or property owners regarding potential permanent collection site locations and the number of leads generated from that engagement;

(E) Hosting public meetings or workshops to support new permanent collection site development and the number of public meetings or workshops held;

(F) Maintaining and annually updating a list of potential permanent collection sites, including documented outreach efforts and the number of outreach attempts per collection site.

(2) Activities shall be described in sufficient detail to allow the department, upon review of an annual report, to determine whether the activity is in progress or completed by the end of the preceding calendar year.

Authority cited: Sections 40401 ~~and~~, 40502, 48701.1, and 48707, Public Resources Code.
Reference: Sections 40051, 48700, 48702, 48703, 48703.1, 48703.2, 48703.3, 48703.4, 48703.5, 48704, 48704.1, and 48705, Public Resources Code; and Sections 25201.16, 25217.2, and 25217.2.1, Health and Safety Code.

Section 18954. Annual Reports ~~Compliance Criteria~~.

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

~~(1) Contact information. Identify the manufacturer or stewardship organization responsible for the annual report submittal. Stewardship organizations shall include an updated list of participating manufacturers and any updates to their respective contact information per § 18952(a)(2).~~

~~(2) Executive Summary. The purpose of the Executive Summary is to provide a broad understanding of the manufacturer or stewardship organization's program as a whole and to put into context the data and information that will follow. Provide a brief description of the manufacturer or stewardship organization's architectural paint recovery efforts during the reporting period pursuant to PRC § 48705(a). This may include anticipated steps, if needed, to improve performance and a description of challenges encountered during the reporting period and how they will be addressed. This may also include a description of paint container management and market development activities if the manufacturer or stewardship organization has chosen to engage in those activities.~~

~~(3) Program Outline. Describe the paint stewardship program, including information on the following topics:~~

~~(A) A description of the methods used to collect, transport, and process postconsumer architectural paint, by type, in California.~~

~~(B) Description of how each consumer of architectural paint in California had an opportunity to recycle and properly manage their postconsumer paint on a state wide basis, including the number, location, and type of collection points located in the state.~~

~~(C) Description of best management practices followed by service providers that are acting as collection points, which may include any training that the manufacturer or stewardship organization provided or required of service providers to ensure proper collection and management of postconsumer paint.~~

~~(D) A statement that the manufacturer or stewardship organization coordinated with existing household hazardous waste collection programs and retailers as potential collection points per § 18953(a)(3)(E) and (F) during the reporting period.~~

~~(4) Description of goals and activities based on the stewardship plan. State goals from the approved stewardship plan, the baseline from which goals were measured, and report on achievement during the reporting period. Describe any adjustments to goals stated in the approved stewardship plan that may be made for the upcoming reporting period and accompanying rationale for those changes. The annual report must include quantitative information and discussion on the following categories pursuant to PRC § 48705(a) and PRC § 48703(d):~~

~~(A) The total volume of architectural paint sold, by type, in the state during the preceding reporting period.~~

~~(B) The total volume of postconsumer architectural paint recovered, by type, in the state during the preceding reporting period.~~

~~(C) Disposition of postconsumer paint collected, by type and by estimated volume, including name(s) and corporate address(es) for contracted processors for each~~

~~(5) Financing Mechanism. The annual report shall include the total cost of implementing the architectural paint stewardship program and an evaluation of how the program's funding mechanism operated, including whether or not the funding was sufficient to recover, but not exceed, the administrative, operational, and capital costs of the manufacturer or stewardship organization's program. Include a statement that any surplus funds are put back into the program to reduce the costs of the program, including the assessment amount. Any proposed change in the amount of the architectural paint stewardship assessment must be submitted to the department for re-approval (see § 18952. Submittals). If a manufacturer or stewardship organization conducts activities that are separate from the implementation and management of the California paint stewardship program, then the annual report shall include documentation on how the collection and expenditure of assessment funds shall be kept separate from other activities of the manufacturer or stewardship organization and the methodology for distribution of shared costs. Consistent with PRC § 48705(a)(5), the annual report shall include the following:~~

~~(A) Assessment amount per container~~

~~(B) Total program cost~~

~~(C) Capital costs~~

~~(D) Cost($)/capita~~

~~(E) Cost ($)/gallon collected~~

~~(F) Education/Outreach (% of total program cost)~~

~~(G) End-of-life materials management (% of total program cost, with line items for reuse, transportation, recycling, fuel incineration, and proper disposal)~~

~~(H) Program administration (% of total program cost, including annual administrative fee for service payments to the department)~~

~~(I) Surplus funding, if any, and how it will be applied to reduce program costs~~

~~(6) Education and Outreach. Describe educational and outreach activities in context of those identified in the stewardship plan. Provide a description of educational materials that were provided to retailers, consumers, and contractors during the reporting period and provide electronic examples of these materials. Identify any method(s) used to determine the effectiveness of educational and outreach efforts (e.g., surveys, hits on specific web pages, number of participants at events, etc.), if applicable. These education and outreach materials may include, but are not limited to, any of the following per PRC § 48703(e):~~

~~(A) Signage that is prominently displayed and easily visible to the consumer.~~

~~(B) Written materials and templates of materials for reproduction by retailers to be provided to contractors and consumers at the time of purchase or delivery or both.~~

~~(C) Promotional materials or activities, or both, that explains the purpose of paint stewardship and the means by which it is being carried out.~~

~~(D) Links to website(s) created and maintained by the stewardship organization.~~

~~(7) Audits. The annual report shall include an independent financial audit of the California Architectural Paint Recovery Program funded from the paint stewardship assessment. The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, and standards set forth in Government Auditing Standards issued by the Comptroller General of the United States. The financial audit submitted to the department shall be prepared by an Independent Certified Public Accountant (CPA). The CPA shall not perform non-audit services for the manufacturer or stewardship organization that would impair independence as defined in the Government Auditing Standards issued by the Comptroller General of the United States (e.g., accounting services, development of internal controls, management decisions). The independent financial audit shall include:~~

~~(A) California Architectural Paint Recovery Program financial statements, as required by GAAP.~~

~~(B) An opinion on the manufacturer or stewardship organization's compliance with the financial aspects of PRC § 48700 and Title 14, Division 7, Chapter 11, Article 2 of the California Code of Regulations.~~

~~(C) Findings and recommendations as they relate to the financial aspects of the Architectural Paint Recovery Program.~~

~~(D) Management Letter, if issued, by the manufacturer or stewardship organization's CPA.~~

(a) The annual report must contain the following for the preceding calendar year for the manufacturer or stewardship organization's own California stewardship program:

(1) Contact information of the manufacturer or stewardship organization responsible for the annual report submittal, including contact information of the authorized representative responsible for submitting the stewardship plan pursuant to section 18952(a)(1).

(2) An updated list of participating manufacturers.

(3) An executive summary of the manufacturer or stewardship organization's paint product recovery efforts during the preceding calendar year pursuant to section 48705(a) of the Public Resources Code. The executive summary shall include, but is not limited to:

(A) Program highlights, outcomes and challenges, and achievement of the performance goals pursuant to section 18953(a)(7).

(B) Anticipated steps to improve performance, if needed.

(C) A description of challenges encountered and how they will be addressed.

(D) A description of postconsumer paint market development activities if the manufacturer or stewardship organization has chosen to engage in those activities.

(4) A description of how the manufacturer or stewardship organization provided a free drop off and convenient collection system throughout the state pursuant to section 18953(a)(3). This description must include:

(A) Information about approved collection sites, including:

(i) The number of approved collection sites.

(ii) The name and location of each approved collection site, including the street address and county.

(iii) The type of approved collection site, including if the approved collection site is a permanent collection site pursuant to section 48701(i) of the Public Resources Code, a temporary collection site pursuant to section 48701(n) of the Public Resources Code, or a pending permanent collection site pursuant to section 18951(p). For any approved collection sites reported as a pending permanent collection site, the manufacturer or stewardship organization shall provide records to the department substantiating the approved collection site's status as a pending permanent collection site upon the department's request pursuant to section 48705.1(a)(2) of the Public Resources Code.

(iv) Identify each approved collection site as a retailer, local household hazardous waste collection program, or other type of approved collection site.

(v) The days and hours of operation for each approved collection site.

(vi) The paint products collected at each approved collection site.

(B) A statement that the requirement pursuant to section 18953(a)(3)(B) was met or not met.

(C) If the manufacturer or stewardship organization did not meet the requirement pursuant to section 18953(a)(3)(B), the manufacturer or stewardship organization shall:

(i) Include the county or a list of counties where the requirement was not met, and the date(s) on which the requirement was not met.

(ii) Describe how the manufacturer or stewardship organization ensured that all postconsumer paint products were collected in those counties.

(iii) Describe the efforts made to meet the requirements of section 18953(a)(3)(B) in those counties, including a description and status of each activity and associated metrics included in the stewardship plan pursuant to section 18953(c), as applicable. This description does not preclude the department from taking enforcement action, including imposing civil penalties, for failure to meet the requirement of section 18953(a)(3)(B).

(D) The percentage of California residents that reside within 15 miles of an approved collection site. The categories of postconsumer paint shall be the same as those described in section 18954(a)(7)(A).

(5) A description of best management practices followed by service providers that are acting as approved collection sites. Examples of best management practices include any training that the manufacturer or stewardship organization provided, or required service providers to provide, to ensure proper collection and management of postconsumer paint.

(6) A description of how the manufacturer or stewardship organization coordinated with retailers and existing household hazardous waste collection programs as potential approved collection sites pursuant to section 18953(a)(5).

(7) A description of how postconsumer paint was collected, transported, and properly managed, including the methods used to collect, transport, and process postconsumer paint. Include the collection and transportation methods for approved collection sites and other collection methods, such as a collection event, large volume collection program, or consumer mail-back, used for postconsumer paint. Describe how

postconsumer paint was categorized for collection, transportation, and processing, respectively, if applicable.

(8) The annual report must include quantitative information and description of the following categories pursuant to sections 48705(a) and 48703.2 of the Public Resources Code:

(A) The total volume of paint products sold. Describe how paint was categorized for the total volume of paint products sold, if applicable. Describe any conversion factors used to determine the total volume of paint products sold.

(B) The total volume of postconsumer paint recovered in each county and statewide. Describe how postconsumer paint was categorized for the total volume of postconsumer paint recovered, if applicable. For postconsumer paint for which volume is not the standard unit of measurement, report the metric and describe any conversion factors used.

(i) For reports submitted after 2029 or the approval of a stewardship plan or plan amendment that includes nonindustrial coatings, coating-related products, and aerosol coating products, also report the total volume of leftover propellant captured from aerosol coating products, if any propellant was captured during processing.

(C) The disposition of postconsumer paint collected and the estimated volume sent to each processing method, including name(s) and corporate address(es) for contracted processors for each. Describe how postconsumer paint was categorized for the disposition, if applicable. Describe any conversion factors used to determine the volume sent to each processing method.

(D) The number of containers collected and the estimated number sent to each disposition method, including, but not limited to, recycling, landfill, and incineration. Describe how postconsumer paint was categorized for containers, if applicable. Describe any conversion factors used to determine the number of containers.

(9) A description of performance goals and activities based on the stewardship plan. The description of performance goals shall include:

(A) Performance goals from the approved stewardship plan and the baselines from which performance goals were measured.

(B) Whether performance goals were met or not met. Describe any assumptions and data sources used in reporting performance goals pursuant to section 18953(a)(7). If the performance goals were not met, describe efforts made to achieve compliance.

(10) The total cost of implementing the stewardship program and an evaluation of how the stewardship program's funding mechanism operated, including whether or not the

funding was sufficient to recover, but not exceed, the administrative, operational, and capital costs of the stewardship program pursuant to section 48704.1(c) of the Public Resources Code. The annual report shall include documentation on how the collection and expenditure of assessment funds were kept separate from other activities of the manufacturer or stewardship organization and the methodology for distribution of shared costs. Consistent with sections 48705(a)(7) and 48705(a)(8) of the Public Resources Code, the annual report shall include the following:

(A) Assessment amount per container

(B) Total stewardship program cost

(C) Administrative costs with a separate line item for the annual administrative fee for service payments to the department.

(D) Operational costs, including:

(i) Collection costs

(ii) Transportation costs

(iii) Processing costs

(iv) Education and outreach costs

(v) Other operational costs

(E) Capital costs

(F) A description of whether or not the stewardship program's funding mechanism met the reserve policy pursuant to section 18953(a)(8)(C), including any surplus funding. Describe how any surplus funds are put back into the stewardship program to reduce the costs of the stewardship program, including the assessment amount. Any proposed change in the amount of the assessment must be submitted to the department for approval pursuant to section 18952. If an independent financial audit concludes that a manufacturer or stewardship organization's reserve amount was inconsistent with the manufacturer or stewardship organization's reserve policy, the manufacturer or stewardship organization shall conduct an evaluation of the stewardship program's expenses and revenue within 90 days of submittal of the annual report to determine if changes are needed to the stewardship program's funding mechanism. Upon completion, the evaluation shall be submitted to the department consistent with section 18952.

(11) An independent financial audit of the California Paint Product Recovery Program funded from the assessment. The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, and standards set forth in

Government Auditing Standards issued by the Comptroller General of the United States. The financial audit submitted to the department shall be prepared by an Independent Certified Public Accountant (CPA). The CPA shall not perform non-audit services for the manufacturer or stewardship organization that would impair independence as defined in the Government Auditing Standards issued by the Comptroller General of the United States, such as accounting services, development of internal controls, or management decisions. The independent financial audit shall include:

(A) California Paint Product Recovery Program financial statements. Individual manufacturers with an approved stewardship plan shall provide independent financial audit information only as it pertains to the California Paint Product Recovery Program, separate from the manufacturer's other operations.

(B) An opinion on the manufacturer or stewardship organization's compliance with the financial aspects of section 48700 of the Public Resources Code and Title 14, Division 7, Chapter 11, Article 2 of the California Code of Regulations.

(C) Findings and recommendations as they relate to the financial aspects of the California Paint Product Recovery Program.

(D) A Management Letter issued by the manufacturer or stewardship organization's CPA.

(12) A description of education and outreach activities consistent with the manufacturer or stewardship organization’s approved stewardship plan pursuant to section 48703.4 of the Public Resources Code and section 18953(a)(9). Provide a description of educational and other outreach materials that were provided to retailers, consumers, and contractors and provide electronic examples of these materials. Identify any method(s) used to determine the effectiveness of education and outreach efforts. Examples of methods used to determine the effectiveness of education and outreach efforts include, but are not limited to, surveys, hits on specific web pages, and number of participants at events.

(b) For annual reports submitted before January 1, 2029, or the approval of a stewardship plan or plan amendment that includes nonindustrial coatings, coating-related products, and aerosol coating products, whichever is later, the annual report shall include information on latex architectural coatings and oil-based architectural coatings. For annual reports submitted after January 1, 2029, or the approval of a stewardship plan or plan amendment that includes nonindustrial coatings, coating-related products, and aerosol coating products, whichever is later, the annual report shall include information on latex architectural coatings, oil-based architectural coatings, nonindustrial coatings, coating-related products, and aerosol coating products.

Authority cited: Sections 40401~~ and~~, 40502, 48701.1, and 48707, Public Resources Code.
Reference: Sections 48700, 48701.1, 48703, 48703.1, 48703.2, 48703.3, 48703.4, 48703.5, and 48705, Public Resources Code.

Section 18955. Civil Penalties.

~~A civil penalty may be administratively imposed by the department on any person who is in~~ Any violation of any provision of this Article or Chapter 5, commencing with section 48700, Part 7, Division 30 of the Public Resources Code constitutes grounds for the department to administratively impose a civil penalty. The responsible party or parties shall be determined by the department and civil penalties shall be based on the totality of the circumstances.

(a) Any manufacturer offering ~~architectural~~ paint products for sale in California or a manufacturer or stewardship organization submitting a stewardship plan, stewardship plan amendment, or annual report to the department is subject to enforcement under this Article or section 48700 et seq. of the Public Resources Code. Manufacturers and stewardship organizations that fail to implement their approved plan are subject to enforcement under this Article or section 48700 et seq. of the Public Resources Code. ~~Architectural paint~~ Manufacturers are subject to penalties as a result of the failure of their designated stewardship organization to comply with this Article or section 48700 et seq. of the Public Resources Code on their behalf.

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

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

(b)~~(d)~~ Any ~~manufacturer~~ distributor, importer, wholesaler, or retailer that offers ~~architectural~~ paint products for sale in the state is subject to enforcement under this Article or section 48700 et seq. of the Public Resources Code.

Authority cited: Sections 40401, ~~and~~ 40502, 48701.1, 48703.1, and 48707, Public Resources Code.
Reference: Sections 48700, 48702, ~~and~~ 48704, and 48706.1, Public Resources Code.

~~Section 18955.1. Amount of Civil Penalties and Administrative Penalty Schedule.~~

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

~~(1) Base Penalty Table I is to be used for stewardship organizations and architectural paint manufacturers.~~

~~(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 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~~
~~14 CCR 18952(b)(3)~~	~~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~~	~~Level 1~~
~~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~~

~~(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~~

~~(b) For the purpose of implementing this 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.~~

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

~~(e) If the department sets an aggregated penalty amount for multiple violations, the aggregated penalty amount shall not exceed $1,000 per day per manufacturer, stewardship organization, or retailer. If a person intentionally, knowingly, or negligently violates this Article, the aggregated penalty amount shall not exceed $10,000 per day per manufacturer, stewardship organization, or retailer.~~

~~Authority cited: Sections 40401, and 40502, Public Resources Code. Reference: Sections 48700, 48702, 48703, 48704 and 48705, Public Resources Code; and Section 11506, Government Code.~~

~~Section 18955.2. Criteria to Impose a Civil Penalty.~~

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

~~(a) The nature, circumstances, extent, and gravity of the violation(s).~~

~~(b) The number and severity of the violation(s).~~

~~(c) Evidence that the violation was intentional, knowing, or negligent.~~

~~(d) The size of the violator.~~

~~(e) History of violation(s) of the same or similar nature.~~

~~(f) The willfulness of the violator's misconduct.~~

~~(g) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.~~

~~(h) Evidence of any financial gain resulting from the violation(s).~~

~~(i) The economic effect of the penalty on the violator.~~

~~(j) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.~~

~~(k) Any other factor that justice may require.~~

~~Authority cited: Sections 40401, and 40502, Public Resources Code.~~
~~Reference: Section 48704, Public Resources Code.~~

Section 18955.3. Procedure for Imposing Civil Penalties.

(a) Civil penalties ~~may~~ shall be administratively imposed in accordance with the Department's hearing regulations (Title 14, California Code of Regulations, sections 17063.1 – 17063.32). ~~procedures outlined in the Administrative Procedure Act starting at Chapter 4.5, (commencing with § 11500) section 11445.10 of Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government Code § 11505(c).~~

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

~~(1) Personal service.~~

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

~~(3) Certified Mail: For respondents who have submitted a stewardship plan, certified mail or registered mail if the letter containing the accusation or complaint and accompanying material is mailed, addressed to the respondent at the latest facility or~~

~~mailing address(es) provided in the stewardship plan on file with the department. Any address provided in the stewardship plan may be used for service of process. Proof of service of the accusation or complaint shall be the certified mail receipts or registered mail receipts proving the accusation or complaint and accompanying materials were sent to respondent by certified mail or registered mail. For respondents who have not submitted or are not required to submit a stewardship plan to the department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at § 11505(c) of the Government Code applies.~~

~~(c)~~(b) Civil penalties may be imposed pursuant to section 48706.1 of the Public Resources Code ~~§48704(f) in the discretion of the trier of fact in the civil proceeding~~.

Authority cited: Sections 40401 ~~and~~, 40502, 48701.1, and 48707, Public Resources Code.

Reference: Sections 48704, and 48706.1, Public Resources Code; and Section ~~11500~~11445.10, Government Code.

Section 18955.4. Procedure for Stewardship Plan Revocation, Resubmittal, or Additional Compliance Reporting.

(a) If the department finds that a stewardship organization, manufacturer, distributor, importer, wholesaler, or retailer has failed to meet a requirement of this Article or Chapter 5, commencing with section 48700, Part 7 of Division 30 of the Public Resources Code, that constitutes grounds for the department to, take one or more of the following disciplinary actions:

(1) Revoke a previously approved stewardship plan,

(2) Require resubmittal of the stewardship plan,

(3) Require additional reporting to demonstrate compliance with the requirement(s), of this Article or Chapter 5, commencing with section 48700, Part 7 of Division 30 of the Public Resources Code, which were required pursuant to Section 18955, or.

(4) Require corrective action and additional records demonstrating the corrective action has been taken.

(b) The department shall commence an action to impose any disciplinary actions in subdivision (a) in accordance with the Department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1– 17063.32)

(c) A respondent may submit to the department a request for hearing in accordance with California Code of Regulations, Title 14, Section 17063.4.

(d) The hearing shall be conducted in accordance with the department's hearing regulations (Title 14, California Code of Regulations, Section 17063.1-17063.32).

Authority cited: Sections 40401, 40502, 48701.1, and 48707, Public Resources Code. Reference: Sections 48703, 48703.1, 48703.2, 48703.3, 48703.4, and 48703.5, Public Resources Code; Section 415.20, Code of Civil Procedure; and Section 11445.10, Government Code.

Section 18956. Record Keeping Requirements.

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

(a) Maintain records to support the requirements in this Article. Manufacturers and s~~S~~tewardship organizations ~~and manufacturers~~ must maintain records to support ~~§~~section 18954. Distributors, importers, ~~R~~retailers, and wholesalers must provide access to existing records on all ~~architectural~~ paint products sold or offered for sale in the state including:

(1) The manufacturer of the paint product.

(2) The date(s) ~~the retailer purchased~~ the paint product was obtained or purchased from the manufacturer, distributor, importer, or wholesaler.

(3) The date(s) the retailer sold the paint products.

(4) Certification letter(s) from the department, if provided by a manufacturer, to demonstrate that the paint product from the manufacturer is or was subject to a department-approved stewardship plan at the time the paint products were obtained or purchased. A retailer must provide access to a certification letter only if it is being used as proof of compliance, pursuant to ~~PRC § 48702(c)(2)~~section 48706(a) of the Public Resources Code, that a manufacturer not listed on the department's internet website is in compliance and ~~may~~ has met the Paint Product Recovery Program requirements to sell or offer for sale paint products in or into California.

(b) Provide the department with reasonable and timely access, which includes consent to enter the facility and operations during normal business hours and to obtain ~~as determined by the department, to its facilities, operations, and any~~ relevant records necessary to determine compliance with this Article and with Chapter 5, commencing with section 48700, Part 7, Division 30 of the Public Resources Code, upon request. Retailers, distributors, importers, and wholesalers will maintain and provide access to records required by this Article for ~~3~~ three years. Manufacturers and stewardship organizations will maintain and provide access to records required by this Article for three years after submission of the annual report which relies upon those records.

(c) Manufacturers and stewardship organizations shall provide the department with access, within 14 days, to any data, studies, reports, or other records that were funded through the stewardship assessment, upon written request pursuant to section 48705.1(a)(2) of the Public Resources Code.

(d) Upon written request, a stewardship organization shall provide the following supportive documents that verify the stewardship organization's current exemption from taxation under section 501(c)(3) of the federal Internal Revenue Code of 1986:

(1) Ruling or determination letter issued by the Internal Revenue Service to the stewardship organization establishing that it meets the requirements of section 501(c)(3) of the federal Internal Revenue Code of 1986 under which it is claiming an exemption.

(2) Articles of incorporation or organization most recently filed with the California Secretary of State, or the equivalent formation documents filed in the stewardship organization's state of formation and the bylaws of the organization.

(3) A list of members of the 501(c)(3) organization, including an indication that the member is any of the following:

(i) A manufacturer,

(ii) An exempt organization or the disregarded entity of an exempt organization,

(iii) A service provider,

(iv) A subsidiary of a service provider.

(v) A list naming the entities that are the stewardship organization's related organizations, as that term is understood pursuant to Schedule R of the Internal Revenue Service Form 990, its instructions, and Instructions for Form 990 Return of Organization Exempt From Income Tax, including entities that are associated or affiliated with the stewardship organization, have control over the stewardship organization, or are controlled by the stewardship organization.

(vi) Confirmation that the stewardship organization is not controlled by service providers that are neither exempt organizations under section 501(c) of the federal Internal Revenue Service Code nor disregarded entities of an exempt organization pursuant to section 18976.3(a)(2), including the names of any directors who no longer serve as directors, any changes in the affiliation of the remaining directors, and the names and affiliations of any new directors.

(e) A stewardship organization shall not be considered to be established by its manufacturers when that stewardship organization is controlled by businesses that are also service providers to the stewardship organization but are neither exempt organizations pursuant to section 501(c) of the federal Internal Revenue Code nor disregarded entities of an exempt organization. Upon written request, the stewardship organization shall attest that it is not controlled in this fashion and provide evidence to support that affirmation. Control of the stewardship organization by a service provider whose parent is neither an exempt organization nor an exempt organization's disregarded entity, shall be considered control of the stewardship organization by the respective service provider. Control of an entity by its service providers includes any of the following circumstances:

(1) Service providers that are neither exempt organizations nor disregarded entities of exempt organizations cumulatively comprise one-third or more of the corporate membership of the stewardship organization.

(2) Service providers that are neither exempt organizations nor disregarded entities of exempt organizations cumulatively appointed one-third or more of the directors of the stewardship organization.

(3) One-third or more of the directors of the stewardship organization are employed by service providers that are neither exempt organizations nor disregarded entities of exempt organizations.

~~(c) The department may take disciplinary action against any stewardship organization or manufacturer who fails to provide the department with access pursuant to this subdivision. If any stewardship organization or manufacturer fails to comply after the imposition of a civil penalty, the department may immediately remove the manufacturer(s) from the department's list of manufacturers that are in compliance with Chapter 5 (commencing with § 48700), Part 7, Division 30 of the Public Resource Code.~~

Authority cited: Sections 40401~~ and~~, 40502, 48701.1, and 48707, Public Resources Code.
Reference: Sections 48700, 48702, 48703, 48704~~ and~~, 48705, and 48706, Public Resources Code.

Section 18957. Proprietary, Confidential, or Trade Secret Information.

Records supplied to the department pursuant to this Article that are, at the time of submission, claimed to be proprietary, confidential, or trade secret ~~shall be~~ are subject to the provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4, ~~(~~commencing with ~~§~~section 17041~~)~~, and in ~~PRC § 48704(b)~~section 48703(c) of the Public Resources Code. In addition to these requirements, a manufacturer or stewardship organization shall comply with the submittal requirements concerning Proprietary, Confidential, or Trade Secret information under section 18952(a)(4).

Authority cited: Sections 40401~~ and~~, 40502, 48701.1, and 48707, Public Resources Code; and Section ~~6253~~7927.705, Government Code.

Reference: Sections 48700, 48702, 48703, 48704, 48705, and 48706, Public Resources Code; and Sections ~~6250~~7920.000 et seq., Government Code.

Section 18958. Service Payments to Department of Resources Recycling and Recovery.

~~(a) The department director, or his/her delegated authority, shall approve the annual administrative fee described in Public Resources Code Section 48704, subdivision (e) for the full administration and enforcement costs at a public meeting that will occur no later than September 30, commencing in 2012. The fee shall reflect the department's actual costs to administer and enforce this chapter for the period from July 1 of the prior year through June 30 of the current year. The department's costs shall include the cost of staff, overhead expenses applicable to staff, contract services, and any other expenses incurred in administering or enforcing the program and in developing this regulation and the program. For payments due in 2012, the fee shall also reflect the department's actual costs incurred in developing this regulation and the program for the period from October 1, 2010 through June 30, 2011. The department will provide unofficial staff estimates upon request prior to the public meeting notification to assist a manufacturer or stewardship organization with program budgetary planning, however, actual costs will not be known until that public meeting.~~

~~(b) The department fee shall be prorated, if there is more than one stewardship plan, by the number of approved or conditionally-approved plans.~~

~~(c) The department shall issue invoices to each manufacturer or stewardship organization to which this section applies by September 30 each year. Payment is due annually on October 31.~~

(a) The department's costs shall include the actual and reasonable regulatory costs, including the full personnel costs related to the administration, implementation, and enforcement of this Article and Chapter 5, commencing with section 48700, Part 7, Division 30 of the Public Resources Code. Costs shall include labor, fringe benefits, travel, equipment, supplies, and contracts, as well as costs calculated using section 9213.1 of the State Administrative Manual, including for general administration, budgeting, accounting, business services, training, and legal. The fee shall also reflect the department's actual regulatory development costs and other startup costs incurred before the submittal of a stewardship plan and approval of a stewardship plan.

(b) If there is more than one manufacturer or stewardship organization with an approved stewardship plan, the department shall invoice each manufacturer or stewardship organization for costs associated with the department’s oversight of each individual program. General costs include, but are not limited to, staff time for program administration, database or website maintenance and development, training and professional development, and other costs that support the department that are not specific to an individual manufacturer or stewardship organization with an approved plan. General costs shall be split evenly among each manufacturer or stewardship organization with an approved plan.

(c) The department shall issue invoices to each manufacturer or stewardship organization to which this section applies, and the invoices shall be paid according to section 48704(b) of the Public Resources Code.

Authority cited: Sections 40401, 40502, and 48704, Public Resources Code.
Reference: Sections 48700, 48703, 48703.1, and 48704, Public Resources Code.