



Revisions to Proposed Regulation for Architectural Paint Recovery Program

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October 3, 2011 Public Meeting

§18950. Purpose of Regulation

- Clarify existing statute
- Establish administrative procedures
- Provide uniform competitive business environments

Overview of Regulatory Process

1. Scoping Sessions
2. Initial draft
3. Informal workshop
4. File proposed regulations and CEQA docs
5. Public comment
6. Public hearing
7. Revisions and public comment (Oct 10-noon Oct 25)
8. Adoption at public meeting (Nov - tentative)
9. File final rulemaking with OAL
10. OAL approves/disapproves (Jan/Feb 2012)

Outline of Proposed Regulation

- Purpose
- Definitions
- Submittals
- Criteria for Plan Approval
- Annual Report
- Compliance Criteria
- Civil Penalties
- Record Retention
- Proprietary, Confidential, or Trade Secret Information
- Service Payments to Dept. of Resources Recycling and Recovery

Red = change made in section

Global Revisions

Revisions to applicable code sections were updated throughout the document

§18951. Definitions.

(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, ~~or~~ processing, or proper disposal of postconsumer architectural paint.

§18952. Submittals.

(a)(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

~~(H) Location and custodian of records~~

§18952. Submittals.

(a)(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 address and physical address~~

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

~~(D) Location and custodian of records~~

~~(E) (C)~~ Physical address, web address (if applicable), Contact

Name, Title, Phone Number, and e-mail address of

participating architectural paint manufacturers shall be

provided to the department in a reasonable and timely

manner, as determined by the department, upon request.

The department shall include a reason for any request of this

information.

§18953. Stewardship Plan Approval Criteria.

(a)(2) Scope. Describe how the stewardship program is designed to accept and manage all applicable architectural paint products, including paint containers. A manufacturer or stewardship organization shall provide updates to the ~~an updated~~ list of manufacturers and brands to the department at least every six months.

§18953. Stewardship Plan Approval Criteria.

(a)(3) Program Goals and Activities. Include program goals that are specific to and appropriate for California and describe how the goals were derived. Factors to consider when determining program goals may include, ~~recognizing the current and future recycling infrastructure and capacity,~~ ~~estimating and changes in market conditions,~~ ~~and anticipating recycling infrastructure and capacity in California.~~ *(see next slide for remainder of revisions)*

§18953. Stewardship Plan Approval Criteria.

~~Discussion on~~ 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 architectural paint management in California ~~the state~~ at the time of plan submission. A description of the methodology used for estimating the amount of leftover paint available for collection in California must be provided by the manufacturer or stewardship organization.

(see next slide for remainder of revisions)

§18953. Stewardship Plan Approval Criteria.

Describe how the program goals will be achieved to:

- (A) Reduce the generation of postconsumer paint;
- (B) Promote the reuse of postconsumer paint; and
- (C) Properly manage postconsumer paint at end-of-life in an environmentally sound fashion, including recovery and recycling of postconsumer paint.

§18953. Stewardship Plan Approval Criteria.

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

~~(A) Source reduction~~

~~(B) Recycling~~

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

§18953. Stewardship Plan Approval Criteria.

(a)~~(5)~~(4)(D) Description of ~~convenient collection for California residents to~~ 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 ~~sites~~ points located in each county.

§18953. Stewardship Plan Approval Criteria.

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

§18953. Stewardship Plan Approval Criteria.

(a)~~(7)~~(6)(B) A budget for the program that includes revenue estimates from the assessment, operational costs ~~full program costs~~, and administrative costs (including those pursuant to ~~§19858~~§18958 re: service payment to the department).

§18953. Stewardship Plan Approval Criteria.

(a)~~(7)~~(6)(D) A statement that the manufacturer or stewardship organization has established a mutually agreeable and reasonably feasible agreement(s) with a service provider(s) that addresses all operational costs as relevant to each particular service provider .

§18953. Stewardship Plan Approval Criteria.

(a)(7)(6)(F) If a manufacturer or stewardship organization conducts activities that are separate from the implementation and management of the California paint stewardship program, then the ~~The~~ stewardship plan 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.

§18953. Stewardship Plan Approval Criteria.

(a)~~(8)~~(7). Education and Outreach. ... A manufacturer or stewardship organization may not advertise collection points that are not contracted service providers under the manufacturer or stewardship organization's stewardship program without the consent of the collection point(s).

§18953. Stewardship Plan Approval Criteria.

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

§18953. Stewardship Plan Approval Criteria.

(a)(11)(10) Audits. (B) Non-Financial Information (optional). A manufacturer or stewardship organization that does not participate in or report on the activities in this section will not be subject to penalties for this section. ...

§18954. Annual Report Compliance Criteria

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

§18954. Annual Report Compliance Criteria

(a)(4)(B) Description of how each consumer of architectural paint in California had an opportunity ~~convenient~~ collection for California residents to recycle and properly manage their unwanted architectural postconsumer paint on a state wide basis, including the number, location, and type of collection points ~~sites~~ located in each county.

§18954. Annual Report Compliance Criteria

~~(a)(4)(D) Description of how each consumer of architectural paint had an opportunity to properly manage their postconsumer paint.~~

§18954. Annual Report Compliance Criteria

~~(E)~~ (D) A statement that the manufacturer or stewardship organization negotiated with any ~~retailer~~ service provider that contacted the manufacturer or stewardship organization for inclusion in the stewardship program as a collection point in an attempt to establish a mutually agreeable and reasonably feasible agreement that addresses all operational costs.

§18954. Annual Report Compliance Criteria

~~(a)(5)(D) The total cost of implementing the architectural paint stewardship program.~~

~~(a)(5)(E) An evaluation of how the architectural paint stewardship program's funding mechanism operated.~~

§18954. Annual Report Compliance Criteria

(a)(6) Market Development. Include a description of possible market development activities to incentivize the market growth of collected materials, if applicable. A manufacturer or stewardship organization that does not participate in or report on the activities in this section will not be subject to penalties for this section.

§18954. Annual Report Compliance Criteria

(a)(8) Education and Outreach.

...Identify ~~the~~ any method(s) used to determine the effectiveness of educational and outreach surveys (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(b)(4)(e):

§18954. Annual Report Compliance Criteria

(a)(9) Audits. (A) Financial Information. The annual report shall include an independent financial audit, related to the implementation of the stewardship plan, funded from the paint stewardship assessment. The audit shall be conducted in accordance with the most current auditing standards generally accepted in the United States of America, and standards set forth in Government Auditing Standards issued ~~in July 2007~~ by the Comptroller General of the United States.

§18954. Annual Report Compliance Criteria

~~(A)~~ (B) Non-Financial Information (optional). A manufacturer or stewardship organization that does not participate in or report on the activities in this section will not be subject to penalties for this section. The annual report may include an independent audit on the following information:

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

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

§18956. Record Keeping Requirements

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

§18956. Record Keeping Requirements

(a)(4) Certification letter(s) from the department, if provided by a manufacturer, to demonstrate that paint from the manufacturer is or was subject to a department-approved stewardship plan. 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), that a manufacturer not listed on the department's internet website is in compliance and may sell or offer for sale paint in California.

§18956. Record Keeping Requirements

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

§18957. Proprietary, Confidential, or Trade Secret Information

The public disclosure of 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 subject to the disclosure provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with §17041), and in PRC §48704(b).

Next Steps

- 15-day public comment period is scheduled for October 10-25, 2011.
- Check status of rulemaking anytime at: <http://www.calrecycle.ca.gov/Laws/Rulemaking/Paint/>

Questions?