

Proposed Regulation for Architectural Paint Recovery Program  
45-day Public Comment Period  
Summary of Comments

Note: This document represents a general summary of comments received during the 45-day public comment period and CalRecycle staff’s approach to addressing those comments. A full list of comments and staff responses will be posted online at a later date.

Line #	Topic and Problem Statement	CalRecycle Staff Proposed Approach	Revisions
1	<p><b>CalRecycle involvement in contracts between stewardship organization and service providers, regarding compensation of local costs §18953(a)(7)</b></p> <p><b>Issue:</b> Some stakeholders asked CalRecycle to specifically ensure that certain costs, such as collection costs, will be covered by a manufacturer or stewardship organization. Other stakeholders asserted that CalRecycle should not be dictating costs or program design and should instead allow manufacturers or stewardship organizations determine the most cost-efficient ways to operate a program.</p>	<p>The proposed regulation requires that all operational costs are covered under a product stewardship plan, and that all contracts between a manufacturer or stewardship organization must have addressed all operational costs in a mutually agreeable and reasonably feasible manner. CalRecycle cannot get involved in contractual agreements between manufacturers/stewardship organizations and service providers. Therefore, no change has been made to the regulation in response to this comment.</p>	<p>None.</p>
2	<p><b>Retail participation §18953(a)(5)(E)</b></p> <p><b>Issue:</b> Some stakeholders proposed that all retailers who wish to participate in a paint stewardship program must be allowed to act as collection sites, while others want retailer participation as collection sites to be contingent upon the ability of the retailer and a manufacturer or stewardship organization to reach a mutually agreeable and reasonably feasible agreement.</p>	<p>Under the proposed regulation, a retailer would be considered a “service provider” and service providers contract directly with a manufacturer or stewardship organization under their program to the extent that they can establish mutually agreeable and reasonably feasible agreements that address all operational costs. Therefore, no change has been made to the regulation in response to this comment.</p>	<p>None.</p>
3	<p><b>Recordkeeping – Manufacturers and Stewardship Organizations §18952(a)(2)</b></p> <p><b>Issue:</b> Some stakeholders expressed a concern that physical addresses and website addresses for each manufacturer</p>	<p>CalRecycle staff agrees that not all of the contact information from individual manufacturers participating in a stewardship organization needs to be provided during the registration period. However, staff may need contact information such as a mailing address for individual manufacturers for notification purposes in the event that a stewardship organization is no longer operational or is not in compliance. Therefore, staff modified the regulation such that a website, if</p>	<p>§18952(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</p>

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	<p>operating under a stewardship organization are not necessary and would pose an overly burdensome requirement. Additionally, they suggest a time period and rationale accompany all information requests.</p>	<p>applicable, and a physical address for each manufacturer need only be provided upon request. In addition, staff propose deleting the requirement for provision of "location and custodian of records" since this is adequately addressed under §18954(a)(9).</p> <p>CalRecycle staff agrees that a time period and rationale should accompany information requests. It is important to specify who determines what is reasonable and timely. Through experience with other regulatory programs, CalRecycle knows that it is the entity that should make the determination and that the time period should vary depending on the situation. For this reason, CalRecycle will not specify an exact time period in the regulation.</p>	<p><del>(D) Location and custodian of records</del>  <del>(E) (C) Physical address, web address, 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 requests of this information.</del></p>
4	<p><b>Education and Outreach §18953(a)(8); §18954(a)(8)</b></p> <p><b>Issues:</b> 1) Some stakeholders suggest that the education and outreach program implemented by manufacturers or stewardship organizations must include a comprehensive, statewide campaign focused on educating the public on appropriate paint management options, and should additionally target those residents without access to the internet. 2) Stakeholders also asked that local government HHW collection programs should not be mentioned in an outreach campaign as the ultimate management options to minimize the flow of paint to HHW collection events.</p>	<p>1) Regarding overall scope of education and outreach, PRC §48703(e) already lays out manufacturer/stewardship organization requirements for education and outreach efforts.</p> <p>2) CalRecycle staff suggests adding a sentence to §18983(a)(7) restricting a manufacturer or stewardship organization from advertising collection points that are not contracted service providers under the manufacturer or stewardship organization's program without the consent of those collection points.</p>	<p>1) No revision proposed regarding overall scope of education and outreach.</p> <p>2) Revise §18953(a)(8) as follows:            "...pursuant to PRC §48703(e). <u>A manufacturer or stewardship organization may not advertise a collection point(s) that is not a contracted service provider under the manufacturer or stewardship organization's stewardship program without the consent of the collection point(s).</u>"</p>
5	<p><b>Enforcement – recordkeeping §18956(a)(1-4)</b></p> <p><b>Issue:</b> Several stakeholders expressed concerns that the recordkeeping requirements for retailers are too onerous and duplicative of information that manufacturers and stewardship organizations will need to maintain.</p>	<p>Staff believes that certain enforcement provisions will require information that is most readily available from retailers. This verification can be done with records already being kept by retailers for other purposes. Staff proposes changing the language to indicate that CalRecycle will require access to certain records, and is not imposing any novel recordkeeping requirements.</p> <p>A retailer is required to maintain a certification letter only if the retailer sells paint from a manufacturer not listed on CalRecycle's Web site but CalRecycle has deemed the manufacturer to be in compliance via a compliance letter.</p>	<p>"(a) Maintain records to support the requirements in this Article. Stewardship organizations and manufacturers must maintain records to support §18953 and §18954. Retailers must <del>maintain</del> <u>provide access to existing records</u> on all architectural paint sold or offered for sale in the state including:..."</p> <p>§18956(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. <u>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 Web site is in compliance and may sell or</u></p>

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			<u>offer for sale paint in the state.</u>
6	<p><b>Enforcement – amount of penalties §18955.1</b></p> <p><b>Issue:</b> Stakeholders expressed the concern that the proposed regulations specify certain levels for certain penalties ranging from Level 1 to Level 3 but there are actually no penalties that are lower than Level 2 as proposed, and this exceeds CalRecycle’s statutory authority and legislative intent.</p>	<p>CalRecycle’s approach is less stringent than statute, because it would set base penalty ranges that are lower than what statute allows. CalRecycle will also use a “progressive enforcement” approach that starts at the lower end of all penalty ranges. The penalty tables only show the maximum allowed fine for each penalty level, and allow CalRecycle enforcement staff the ability to assess a smaller fine.</p> <p>Level 2 and 3 penalties would not exceed \$1000 unless the violations were found to be “intentional, knowing, or negligent,” and CalRecycle staff has revised the regulation to clarify this.</p>	<p>Add §18955.1 (c) <u>A penalty amount may exceed \$1,000 per day only if a person intentionally, knowingly, or negligently violates this Article.</u></p>
7	<p><b>Definition of “Assessment” §18951 (c)</b></p> <p><b>Issue:</b> Some stakeholders suggested revising the definition of assessment to 1) make it clear that the assessment is to cover collection, transportation, processing and disposal cost, and 2) to cover the costs of managing orphaned products.</p>	<p>1) Staff considers the regulatory definitions of “collection” and “operational costs” to be inclusive of the activities mentioned (i.e., including, but not limited to, collection transportation, processing, disposal, and education and outreach costs); therefore a modification of “Assessment” is not required.</p> <p>2) Staff believes that the language in statute is permissive of an individual manufacturer or stewardship organization collecting either their own architectural paint products or all architectural paint products. Any other interpretation would require a statutory change.</p>	<p>None.</p>
8	<p><b>Solid Waste Management Hierarchy §18953(a)(4)</b></p> <p><b>Issue:</b> Some stakeholders feel that CalRecycle must require a description of how proposed measures for managing paint will be in manner consistent with solid waste hierarchy (PRC §40051). This section seemed to cause confusion regarding the definition of “solid waste” and how the regulation would apply to program products that may not be considered “solid waste”.</p>	<p>§18953(a)(4) was included because the management hierarchy set forth in statute [PRC §48702(a)] is consistent with the state’s solid waste management hierarchy (PRC §40051) and not because the department suggests that paint is a solid waste. Due to confusion from multiple stakeholders regarding this section, staff suggest removing §18953(a)(4) and adding the language, “in an environmentally sound fashion” to §18953(a)(3)(c) to make it consistent with PRC §48702(a). This is still consistent with CalRecycle’s solid waste management hierarchy but will remove the confusion about paint and solid waste.</p>	<p>Revise §18953(a)(3)(C) as follows:  “Properly manage postconsumer paint at end-of-life <u>in an environmentally sound fashion</u>, including recovery and recycling of postconsumer paint.”</p> <p><del>§18953(a)(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:</del></p> <ul style="list-style-type: none"> <li><del>(A) Source reduction</del></li> <li><del>(B) Recycling</del></li> <li><del>(C) Environmentally safe transformation and safe land disposal</del></li> </ul>
9	<p><b>Non-Financial Audits §18954(a)(9)</b></p>	<p>PRC §48705 (a) requires manufacturers to submit a report “describing its architectural paint recovery efforts,” and specifies only the <u>minimum</u> of what an</p>	<p>Add to §18954(B): <u>A manufacturer or stewardship organization that does not participate in or report on the activities in this section will not be</u></p>

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	<p><b>Issue:</b> Some stakeholders believe this section goes beyond the authority granted to CalRecycle by statute and assert that this section must be removed.</p>	<p>annual report shall include.</p> <p>A non-financial audit would provide third-party verification of the data and plan activities described in the annual report, and would provide the department with information to ensure that program costs are sufficient to meet, but not exceed, the cost of the architectural paint stewardship program, pursuant to PRC§48703(b)(4).</p> <p>Staff considers this additional information to be optional and will not penalize a manufacturer or stewardship organization that has not conducted a non-financial audit, and has revised the regulation to reflect this.</p>	<p><u>subject to penalties for this section.</u></p>
10	<p><b>Stakeholder Consultation Process: requirement for manufacturers and stewardship organizations §18953(a)(10)</b></p> <p><b>Issue:</b> Some stakeholders expressed a desire for the opportunity to more actively participate in the development and approval of a stewardship plan, while others expressed concerns that a formal stakeholder consultation process with comment periods goes beyond the intent of statute. Stakeholders also expressed a concern that requiring a consultation with stakeholders such as recyclers and consumers goes beyond what is allowed in statute.</p>	<p>CalRecycle staff intends for manufacturers and stewardship organizations to describe in this section of their stewardship plan the actions they may have undertaken to address PRC §48703(c), and does not intend to mandate a specific stakeholder consultation process. Staff has also revised the regulation to clarify that only consultations with existing local household hazardous waste collection programs are required, while other stakeholder consultation is permissive.</p>	<p>§18953(a)(10) A manufacturer or stewardship organization that submits a stewardship plan shall include a process of consultation with existing local household hazardous waste collection programs <del>and other affected stakeholders</del>, and consider the existing infrastructure in the development of the plan. <del>Stakeholders may</del> <u>Other stakeholders that may be consulted</u> include, but are not limited to, consumers, retailers, architectural paint recyclers, architectural paint contractors, and haulers.</p>
11	<p><b>Market Development §18953(a)(6)</b></p> <p><b>Issue:</b> Some stakeholders expressed a desire to include additional market development requirements on manufacturers and stewardship organizations in order to encourage the development of new markets, and to make this section mandatory instead of optional. Other stakeholders feel this section goes beyond statute and should be removed altogether.</p>	<p>PRC §48700 states that one of the purposes of the architectural paint recovery program is to “reduce environmental impacts of disposal”. PRC §48702(a) also requires manufacturers to create a program that will “promote the reuse of postconsumer architectural paint, in an environmentally sound fashion”.</p> <p>As promoting markets for recycled paint is one method of achieving this goal, it seems reasonable for the department to ask for manufacturers or stewardship organizations to report on activities in this arena.</p> <p>This section, §18953(a)(6), allows a manufacturer of stewardship organization to describe these activities to the extent that they plan to engage in them.</p> <p>The inclusion of this section is also consistent with the annual report delivered to</p>	<p>“Describe incentives or methods <u>used by the manufacturer or stewardship organization pursuant to §48702(a) to promote the reuse of postconsumer architectural paint, in an environmentally sound fashion and to increase the recycling of and develop markets for collected materials, as if applicable.</u></p> <p><u>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.”</u></p>

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		the state of Oregon as part of the paint stewardship program in that state; this helps stewardship organizations to ensure program consistency when implementing among multiple states.	
12	<p><b>Discussion of goals and baseline §18953(a)(3)</b></p> <p><b>Issue:</b> Some stakeholders expressed concerns that the description of goals and the inclusion of a baseline in the proposed regulation go beyond what is described in statute and would pose a substantial burden to manufacturers and/or stewardship organizations to provide.</p> <p>Other stakeholders suggested including additional elements in the goals section and setting Form 303 collection data as the baseline in the regulation.</p>	<p>Based on experience with other programs, CalRecycle knows that a thorough and transparent description of goals and how they are derived and measured contribute to a successful program. Staff is revising the regulation to include a description of the factors that went into the formulation of the goals stated in a stewardship plan.</p> <p>Staff is also revising the regulation to clarify that the baseline is based on current HHW information. However, as a broad array of goals may be proposed by a manufacturer or stewardship organization, and could be based on information sources separate from the Form 303, staff is not restricting the baseline solely to Form 303 data.</p>	<p>§18953 (a)(3)            Program Goals and Activities. Include program goals that are specific to and appropriate for California <u>and describe how the goals were derived, recognizing the current recycling infrastructure and capacity, estimating changes in market conditions, and anticipating recycling infrastructure and capacity in California.</u> Discussion on <u>Description of goals</u> 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 <u>architectural paint household hazardous waste management in the state California</u> at the time of plan submission. A <u>description of the methodology used</u> for estimating the amount of leftover paint available for collection in California must be provided by the manufacturer or stewardship organization. Describe how the program goals will be achieved to:</p> <ul style="list-style-type: none"> <li>(A) Reduce the generation of postconsumer paint;</li> <li>(B) Promote the reuse of postconsumer paint; and</li> <li>(C) Properly manage postconsumer paint at end-of-life in <u>an environmentally sound fashion</u>, including recovery and recycling of postconsumer paint.</li> </ul>
13	<p><b>“Convenient” collection §18953(a)(5)(D)</b></p> <p><b>Issue:</b> Some stakeholders assert that CalRecycle cannot require “convenient” collection as it’s not in statute; others would like this term further defined and mandatory.</p>	<p>CalRecycle’s perspective is that that since every consumer will be paying an assessment, then every consumer should have some level of access in geographic regions throughout the state.</p> <p>Further, CalRecycle’s proposed language ensures consistency among all states implementing the paint stewardship program. Oregon’s paint stewardship law specifies that the plan for that state “...Provide for convenient and available statewide collection of post-consumer architectural paint in urban and rural areas of this state.”</p>	<p>“Description of <del>convenient collection for California residents to</del> <u>how each consumer of architectural paint in California will have an opportunity to</u> recycle and properly manage their unwanted architectural paint on a state wide basis, including the proposed number, location, and type of collection sites located in each county.”</p>
14	<p><b>Inclusion of paint containers in a stewardship program §18953(a)(2)</b></p>	<p>PRC §48700 states that the purpose of the program is to ...“reduce the costs and environmental impacts of the disposal of postconsumer paint”. The PRC also lists the items to be included in an annual report as a “minimum”. Further, to respond</p>	<p>None.</p>

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	<p><b>Issue:</b> Some stakeholders believe that paint containers are outside the scope of statute and should not be included in the proposed regulation, while others believe that paint container management is a critical element of the stewardship program and should be a mandatory element of the regulation.</p>	<p>to stakeholder concerns that the California program is consistent with the PaintCare program in other states, staff notes that paint container management is included in PaintCare’s stewardship plan and annual report in Oregon. In addition, during the CEQA review of a stewardship plan, the department may need to evaluate impacts related to paint container management. Therefore, CalRecycle staff suggests it is reasonable to include the requirement to describe paint container management in the stewardship plan and to report on paint container management in the annual report.</p>	
15	<p><b>Generator/Ownership status of leftover paint</b> <b>General Comment</b></p> <p><b>Issue:</b> Stakeholders have asked CalRecycle to clarify in the regulation how generator status is determined, and whether it will be granted to collection points or to a stewardship organization.</p>	<p>The determination of generator status is a task that falls under the authority of the Department of Toxic Substances Control, and not CalRecycle. Therefore, this comment is beyond the scope of this rulemaking and no change has been made to the regulation in response to this comment.</p>	None.