



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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NOTICE OF PROPOSED RULEMAKING

Title 14: Natural Resources
Division 7: Department of Resources Recycling and Recovery
Chapter 11: Product Stewardship
Article 2: Architectural Paint Recovery Program
Sections: 18950-18958

PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (Department) proposes to amend California Code of Regulations, Title 14, Division 7, Chapter 11, Article 2.0, commencing with section 18950. The proposed regulation is intended to clarify processes for implementing the new Architectural Paint Recovery Program (Chapter X, Statutes of 2010 [[Huffman, AB 1343](#)]).

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation to the Department. **The written comment period for this rulemaking closes at 4:00 p.m. on September 5, 2011.** The Department will also accept written comments during the public hearing described below. Please submit your written comments to:

Cynthia Dunn
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
FAX: (916) 319-7495
e-mail: paint@calrecycle.ca.gov



PUBLIC HEARING

A public hearing to receive public comments has been scheduled for September 8, 2011. The hearing will be held at the

Joe Serna Jr., Cal EPA Building
Byron Sher Auditorium
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at **1:30 PM on September 8, 2011**, and will conclude after all testimony is given. CalRecycle requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheel chair accessible. If you have any questions, please contact paint@calrecycle.ca.gov.

INFORMATIVE DIGEST

The California Integrated Waste Management Act (Act), Public Resources Code (PRC) §40000 et. seq., gives the Department authority to provide for the protection of public health, safety, and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC §40502 requires the Department to adopt rules and regulations to implement the Act.

The proposed new regulation covers CalRecycle's responsibilities for implementing the new architectural paint stewardship statute ([Chapter X, Statutes of 2010 \[Huffman, AB 1343\]](#)). This rulemaking provides clarity to the existing law and has sections on the following topics: definitions; submittal instructions; criteria for stewardship plan approval; criteria for acceptance of annual reports; establishment of a progressive enforcement approach; record keeping requirements; proprietary, confidential, or trade secret information; and service payments to the Department.

More specifically, the subject regulation covers:

1. Definitions: administrative fee, assessment, brand, collection, operational costs, reporting period, service provider, and significant or material change
2. Standard outline to use for submitting plan and reports that includes the following topics:
 - a. Contact Information
 - b. Scope
 - c. Program Goals and Activities
 - d. Solid Waste Management Hierarchy
 - e. Collection Systems
 - f. Market Development
 - g. Financing Mechanism
 - h. Education and Outreach
 - i. Program Performance Measurement

- j. Stakeholder Consultation
- k. Audits

Staff have met with numerous stakeholders, participated in the national Paint Product Stewardship Initiative, and conducted a public workshop on March 10, 2011 to share and accept comments on the informal draft regulatory text. Approximately 80 people participated in the workshop either in-person or via webinar. Comments from the public were incorporated into the "Proposed Regulation for Architectural Paint Recovery Program".

POLICY STATEMENT OVERVIEW

To implement Assembly Bill 1343 of 2010, the Department has responsibility to approve or disapprove paint stewardship plans submitted by manufacturers or their designated product stewardship organization, review annual reports and adopt a finding of compliance or non-compliance, and provide oversight and enforcement to ensure a level playing field among architectural paint manufacturers. For manufacturers to be in compliance, they must have an approved plan; implement the corresponding stewardship program; pay the department an annual administrative fee for its services related to oversight and enforcement; and submit annual reports. Enforcement is addressed through civil penalties for non-compliance. Additional accountability is provided via a public, transparent process that allows all stakeholders and the public to track progress. Additionally, paint manufacturers and/or stewardship organization(s) shall pay CalRecycle an administrative fee to cover the cost of its oversight and enforcement services.

PLAIN ENGLISH REQUIREMENTS

Department staff prepared the proposed regulation pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed regulation is considered non-technical and is written to be easily understood by those parties that will use them.

AUTHORITY AND REFERENCES

Public Resources Code Sections 40502, 42970 and 42972 through 42978, and Government Code Section 6253 provide authority for this regulation. The purpose of the proposed actions is to implement, interpret, and make specific the law related to paint stewardship. The following is a list of references cited in this proposed regulation: Public Resources Code: 40127, 40180, 40191, 40192, 40201, 41780, 42970, 42971, 42972, 42973, 42974, 42975, 42976, 42977, 42978, and 42981; California Code of Regulations, Title 5, Section 19812; and Government Code sections 11500, and 11506.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

Department staff has determined that the proposed regulation does not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code §§17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

FINDINGS ON NECESSITY OF REPORTS

Department staff found that the requirement for specific reports is necessary for the health, safety, and welfare of the people of the state because it will help to ensure that the law applies equally to covered entities.

EFFECT ON HOUSING COSTS

Department staff made a determination that the proposed regulation will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

Department staff made an initial determination that although the proposed regulation would affect approximately 6,500 businesses in California, it would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the proposed regulation clarifies existing law and imposes no new requirements that would result in adverse cost impacts. The types of businesses affected include architectural paint manufacturers, distributors, and retailers.

EFFECT ON SMALL BUSINESSES

Department staff made an initial determination that, although the proposed regulation could affect approximately 5,000 small businesses (those with under 100 employees), it will not have a significant statewide adverse economic impact, including the ability of California businesses to compete with businesses in other states because the proposed regulation clarifies existing law and imposes no new requirements that would result in adverse cost impacts.

EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA

Department staff determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the state of California; 2) the creation of new businesses or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business with the state.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Department staff has determined that the adoption of the proposed regulation will not have a cost impact on private persons or businesses, because the impacts of the proposed regulation already exist in current law and regulation. The proposed regulation clarifies existing law and imposes no new adverse impacts.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Cynthia Dunn
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
PHONE: (916) 341-6449
FAX: (916) 319-7495
e-mail: paint@calrecycle.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Emily Wang
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025

PHONE: (916) 322-2888
FAX: (916) 319-7628
e-mail: paint@calrecycle.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department will have the entire rulemaking file, and all information that provides the basis for the proposed regulation, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Cynthia Dunn at the address or e-mail address listed above. For more timely access to the proposed text of the regulation, and in the interest of waste prevention, interested parties are encouraged to access the Department's Internet webpage at <http://www.calrecycle.ca.gov/Laws/Rulemaking/Paint/default.htm>. Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may contact the persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text -- with changes clearly indicated -- available to the public for at least 15 days before the Department adopts the regulation as revised. Requests for the modified text should be made to the contact person named above. The Department will transmit any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; and all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. The Department will accept written comments on the modified regulation for 15 days after the date on which they are made available.