Proposed Regulation~~s~~ for Architectural Paint Recovery Program

PROPOSED REGULATION~~S~~

ARCHITECTURAL PAINT RECOVERY PROGRAM

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

§18950. Purpose.

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

Authority cited: Sections 40401 and 40502~~and 48700~~42970, Public Resources Code, Reference: Section 48700~~-48706~~42970, Public Resources Code.

§18951. Definitions.

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

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

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

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

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

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

(e) “Collection” means any method by which a service provider receives postconsumer architectural paint from a consumer.

(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.

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

(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.

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

Authority cited: Sections 40101 and 40502~~and 42970~~~~48700~~, Public Resources Code, Reference: Section ~~42970~~48700~~-48706~~48702, 48703, 48704, and 48705, Public Resources Code.

§18952. Submittals.

(a) A corporate officer, acting on behalf of an architectural paint manufacturer or stewardship organization, shall ~~register with the department according to instructions provided by the department. The registration process shall include, but not be limited to,~~ 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

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

(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 ~~and physical address~~

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

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

~~(E)~~ (C) ~~Physical address, w~~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. 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 ~~should~~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 ~~under the penalty of perjury~~, must ~~also~~ be submitted to the department.

~~(1) 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.~~

~~(2)~~ (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) Scope~~

~~(C)~~(B) Program Goals and Activities

~~(D) Solid Waste Management Hierarchy~~

~~(E)~~ ~~(D)~~(C) Collection Systems

~~(F)~~ ~~(E) Market Development~~

~~(G)~~ ~~(F)~~(D) Financing Mechanism

~~(H)~~ ~~(G)~~(E) Education and Outreach

~~(I) (H) Program Performance Measurement~~

~~(J)~~ ~~(I)~~(F) Stakeholder Consultation

~~(K) (J)(G) Audits~~

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

(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.

~~(3)~~(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.

~~(3)~~ ~~(4)~~(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.

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

~~(2)~~ (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) Scope~~

~~(D)~~(C) Program Outline

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

~~(F) Market Development~~

~~(G)~~(E) Financing Mechanism

~~(H)~~(F) Education and Outreach

~~(I)~~(G) Audits

~~(3)~~ (2) ~~The department may adopt a finding of compliance or non-compliance for an annual report. If the department finds that the annual report is complete, the department's 90-day review period for consideration of a finding of compliance will commence upon the original date of receipt. If the annual report is not complete, the department will notify the submitting manufacturer or stewardship~~

~~organization within 30 days that a complete annual report must be resubmitted within 30 days. An incomplete report will not commence the department's 90-day review period, and would fail to meet the requirements under PRC §48705. A manufacturer or stewardship organization shall resubmit an annual report or provide supplemental documentation requested by the department when an annual report is found to be non-compliant within 60 days of the notice date.~~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.

Authority cited: Sections 40401 and 40502, ~~42970~~~~48700,~~ ~~42972~~~~48703,~~ ~~42973~~~~48704,~~ ~~and 42974~~~~48705, and 48706,~~ Public Resources Code, Reference: Section 40502, ~~42970~~48700, 48702, 48703, 48704, and ~~=~~~~4870~~56~~~~6~~, ~~42972~~~~48703,~~ ~~42973~~~~48704,~~ ~~and 42974~~~~48705, and 48706,~~ Public Resources Code.

§18953. Stewardship Plan Approval Criteria.

(a) Paint stewardship plans must follow the standard outline per §~~1894~~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) 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.~~

~~(3)~~ (2) Program Goals and Activities. Include program goals that are specific to and appropriate for California. ~~and describe~~ ~~Describe how the goals were derived and how they will be measured.~~ 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.

~~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. Describe how the goals will be measured, including a ~~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~~. 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, 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.

~~(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~~

~~(5)~~ ~~(4)~~(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 ~~the~~ service providers that are acting as collection points, which may include ~~including~~ 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 ~~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~~ 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 ~~site~~ pursuant to the paint stewardship program. A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in the~~ir~~ paint stewardship program as a collection point, ~~site~~ as much as is reasonably feasible and is mutually agreeable~~to attempt to establish a mutually agreeable and reasonably feasible agreement with the retailer that addresses all operational costs~~.

~~(6)~~ ~~(5)~~ ~~Market Development. 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.~~

~~(7)~~ ~~(6)~~ (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~~full program costs~~, capital costs, and administrative costs (including those pursuant to §~~19858~~18958 re: service payment to the department).

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

~~(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.~~

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

~~(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 and the methodology for distribution of shared costs.~~

~~(8)~~ ~~(7)~~ (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~~, and how effectiveness of these activities will be measured~~. 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 ~~service provider under~~ the manufacturer or stewardship organization's stewardship program ~~without the consent of the collection point(s)~~. This provision does not apply to referrals to collection points based on publically available information.

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

~~(10)~~ ~~(9)~~(6) 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.~~ In addition to existing local household hazardous waste collection programs per §18953(a)(3)(E), ~~O~~other ~~S~~stakeholders that may be consulted include, but are not limited to, consumers, retailers, architectural paint recyclers, architectural paint contractors, and haulers.

~~(11)~~ ~~(10)~~ (7) ~~Audits. The manufacturer or stewardship organization shall ensure the following relating to the audit required by PRC §48705:~~

~~(A) An Independent Certified Public Accountant (CPA) will be hired to conduct the Financial Audit defined in Title 14, Division 7, Chapter 11 Article 2 of the California Code of Regulations.~~

~~(B) The CPA hired to conduct the audit will not perform non-audit services 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).~~

~~(C) The scope of the financial audit will include the financial statements as they relate to the Paint program and a report 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.~~

~~(A) Financial Information. Describe the process by which the financial activities of the stewardship organization or individual manufacturer that are related to implementation of the stewardship plan are compliant with program requirements and standard accounting practices. Describe how these activities will be subject to an independent financial audit, results of which will be submitted in the manufacturer or stewardship organization's annual report and reviewed by the department.~~

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

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

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

(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.

Authority cited: Sections 40401 and 40502, ~~42970~~48700~~, 42972~~48703, ~~and~~ ~~42973~~48704~~,~~ Public Resources Code, Reference: Section ~~42970~~48700~~,~~ ~~48706,~~ 48702, 48703, 48704, and 48705, ~~42972~~48703~~, and~~ ~~42973~~48704~~,~~ Public Resources Code.

§18954. Annual Report 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 ~~an evaluation of the effectiveness~~ a brief 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. 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) Scope. The program described in the stewardship plan accepts and manage all applicable architectural paint products. Include an updated list of participating manufacturers and their respective contact information per §18952(a)(2).~~

~~(4)~~(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 ~~this state~~California.

(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~~ the state.

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

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

~~(E)~~(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)(~~4~~3)(E) and (F) during the reporting period. ~~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.~~

(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~~, but not be limited to,~~ 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 ~~facility~~ name(s) and corporate address(es) for contracted processors for each ~~disposition method~~.

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

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

~~(F) (D) A description of efforts to increase reuse of postconsumer paint.~~

~~(G) (E) A description of efforts to increase recyclability of postconsumer paint.~~

~~(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.~~

~~(7)~~(5) Financing Mechanism. The annual report shall include ~~a description of~~ the total cost of implementing the architectural paint stewardship program and an evaluation of how the program's ~~financing~~ 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 ~~full cost of the paint stewardship 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 ~~statute per~~ PRC §48705(a)(5), t~~T~~he annual report shall include~~, but not be limited to,~~ the following~~, and include any necessary supporting documents~~:

(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 ~~landfilling~~ proper disposal)

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

~~(I) An evaluation of how the assessment operated~~

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

~~(K) Governance (program oversight) (% of total program cost)~~

~~(8)~~ (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 ~~samples~~ examples of these materials. Identify ~~the~~ any method(s) used to determine the effectiveness of educational and outreach efforts~~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):

(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.

~~(9)~~ (7) Audits. ~~(A) Financial Information.~~ The annual report shall include an independent financial audit~~, related to the implementation of the stewardship plan,~~ of the California Architectural Paint Recovery Program 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. 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 ~~and~~ include:

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

~~1. 2. The department may investigate further. If the department decides to further review the findings of the independent auditor, the review will be conducted based on same information the individual manufacturer or stewardship organization provided to the independent auditor.~~

~~1.~~(A) California Architectural Paint Recovery Program financial statements, as required by GAAP.

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

~~2.~~(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.

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

~~3.~~(C) Findings and recommendations as they relate to the financial aspects of the Architectural Paint Recovery Program.

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

~~4.~~(D) Management Letter, if issued, by the manufacturer or stewardship organization's CPA.

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

1. ~~A description of how the postconsumer architectural paint was managed in accordance with the stewardship plan.~~
2. ~~The total amount of architectural paint sold and collected, and, if applicable, the recovery rate.~~

Authority cited: Sections 40401 and 40502, ~~42970~~48700, ~~42972~~48703, ~~42975~~48704, 48705, and ~~42976~~48706, Public Resources Code,

Reference: Section ~~42970~~48700, 48703, and 48705, ~~48706~~, ~~42972~~48703, ~~42975~~48704, 48705, and ~~42976~~48706, Public Resources Code.

§18955. Civil Penalties.

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

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

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

Authority cited: Sections 40401 and 40502~~, 42970, 42972, 42972.5, 42973, 42974, 42975, and 48704~~ Public Resources Code, Reference: Section ~~42970, 42972, 42972.5, 42973, 42974, 42975, and 42978~~~~48704~~48700, 48702, and ~~48706~~48704, Public Resources Code.

§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	Failure to resubmit a stewardship plan or provide	Level 1

18952(b)(~~2~~3)	supplemental information within 60 days after receiving a notice of disapproval or conditional approval from the department	
~~PRC 48703~~	~~Stewardship plan does not contain required elements~~	~~Level 3~~
PRC 48704(c)	Failure to implement an architectural paint stewardship program described in a department-approved stewardship plan	Level 3
PRC 48704(e)	Failure to pay an annual administration fee to the department	Level 3
PRC 48705(a)	Failure to submit, individually or through a stewardship organization, an annual report to the department	Level 3
PRC 48705(a)	Annual report does not contain required elements	Level 2
14 CCR 18956	Failure to meet record keeping requirements	Level 2

(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 ~~[Section/~~Article~~]~~, penalty severity levels are described as follows:

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

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

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

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

~~(c)~~ (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.

Note: Authority cited: Sections 40401 and 40502 ~~and 42970 and 42978~~ ~~48704~~, Public Resources Code. Reference: Sections 48700, 48702, 48703, 48704 and 48705~~42970~~ ~~48700-48704~~ ~~48706~~ ~~and 42978~~ ~~48705~~, Public Resources Code; and Section 11506, Government Code.

§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.

Note: Authority cited: Sections 40401 and 40502, ~~and 42978~~ 48704, Public Resources Code. Reference: Section 48704 ~~42978~~ ~~48704~~ 48700-48706, Public Resources Code.

§18955.3 Procedure for Imposing Civil Penalties.

(a) Civil penalties may be administratively imposed in accordance with the procedures outlined in the Administrative Procedure Act at Chapter 5 (commencing with §11500) 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) Civil penalties may be imposed pursuant to the Public Resources Code §48704(f) in the discretion of the trier of fact in the civil proceeding.

Note: Authority cited: Sections 40401 and 40502, ~~, 48700~~ ~~and 42970~~48704~~,~~ Public Resources Code. Reference: ~~Section 11500, Government Code; and~~ Section ~~48700~~48704~~-48706~~~~and 42970~~~~48704~~, Public Resources Code; and Section 11500, Government Code.

§18956. Record Keeping Requirements

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

(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:

(1) The manufacturer of the paint.

(2) The date(s) the retailer purchased the paint from the manufacturer.

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

(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.

(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. Retailers will maintain and provide access to records required by this Article for 3 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. ~~The records required by this Article shall be accessible for three years;~~

~~(c) Make all records required by this Article available for inspection or audit by the department, or it's agent and other duly authorized regulatory agencies during normal working hours;~~

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

~~(e)~~(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. ~~including, but not limited to, imposing penalties and the immediate removal~~ 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.

Note: Authority cited: Sections 40401 and 40502 ~~and 42970~~48700, Public Resources Code. Reference: Sections ~~42970, 42972, 42972.5, 42975~~48700, 48702, 48703, 48704, and 48705 ~~48706, 48703, 48705, and 48706~~42976, Public Resources Code.

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

~~The public disclosure of r~~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).

Authority cited: Sections 40401 and 40502 ~~and 48700~~, Public Resources Code; and Section 6253, Government Code. ~~Sections 40502 and 42970~~48700, ~~Public Resources Code.~~ Reference: Sections 48700, 48702, 48704, 48705, 48706, Public Resources Code; and Sections 6250 et seq., Government Code. ~~Section 42970~~48700, ~~Public Resources Code~~.

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

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

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

(c)~~(d)~~ The department shall ~~will~~ issue invoices to each manufacturer or stewardship organization to which this section applies~~ for each stewardship plan~~ by September 30~~May 31~~ each year. Payment is due annually on October 31~~July 1~~. ~~The department's approval of a plan shall be revoked if payment is not received. Stewardship plans revoked for lack of payment may be reinstituted upon payment.~~

Authority cited: Sections 40401 and 40502, ~~42970, 42972, 42977, 48700, 48703, and~~ ~~42977.1~~48704, Public Resources Code, Reference: Section

~~42970, 42972, 42977,~~48700, 48703, and 48704~~-48706~~, ~~48703,~~ ~~and~~ ~~42977.1~~48704~~,~~ Public Resources Code.