

**CalRecycle Responses to Second 15-day Comments, Proposed Regulation on Architectural Paint Recovery Program  
Sorted by Regulation Section Number**

**MFR/SO = Manufacturer or Stewardship Organization**

**Comment numbers starting with “S” denote speaker comments from the January 17, 2012 CalRecycle public meeting.**

Section/ Area	Comment Number	Commenter Affiliation	First Name	Last Name	Summary of Comment	CalRecycle Response	Revisions Needed
§18953 (a)(3)(F)	W38-01	San Luis Obispo Co. IWMA	Bill	Worrell	<p>Proposed §18953(a)(3)(F) reads:</p> <p><del>“(F) <u>Address the coordination of the architectural paint stewardship program with potential retail collection points.</u> Any retailer may participate, on a voluntary basis, as a paint collection <u>point site</u> pursuant to the paint program. A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in their paint stewardship program as a collection <u>point, site as much as is reasonably feasible and mutually agreeable to attempt to establish a mutually agreeable and reasonably feasible agreement with the retailer that addresses all operational costs.</u>”</del></p> <p>The addition of the phrase “reasonably feasible and mutually agreeable” is fundamentally inconsistent with §48703(f) of statute which reads:</p> <p>“(f) Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program.”</p> <p>Suggests the following revision:</p> <p><del>“(F) <u>Address the coordination of the architectural paint stewardship program with potential retail collection points.</u> Any retailer may participate, on a voluntary basis, as a paint collection <u>point site</u> pursuant to the paint program <b>on the same basis as any other retailer participating in the paint stewardship program.</b> A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in their paint stewardship program as a collection <u>point, site as much as is reasonably feasible and mutually agreeable to attempt to establish a mutually agreeable and reasonably feasible agreement with the retailer that addresses all operational costs.</u>”</del></p>	<p>PRC§48703(f), as revised by AB 408, states that “Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program, if the retailer’s paint collection location meets all of the conditions in Sections 25217.2 and 25217.2.1 of the Health and Safety Code.”</p> <p>The proposed regulation clarifies that retailer participation is voluntary and applies the same “reasonably feasible and mutually agreeable” standard for participation that is used for existing local household hazardous waste collection programs in PRC§48703(c) (see also response to comment W22-01). This is to provide consistency to the process of establishing collection points throughout the state.</p> <p>This also ensures that the opportunity to participate in the program as a collection point is provided to all who are interested, without dictating the specific terms of the participation.</p> <p>Creating a standard such as “the same basis as any other retailer participating in the paint stewardship program” is ambiguous, and does not clarify how these comparisons would be drawn and therefore how CalRecycle would make such determinations.</p> <p>Also see response to comment W41-15.</p>	None
§18953 (a)(3)(F)	W38-02	San Luis Obispo Co. IWMA	Bill	Worrell	<p>Inclusion of the phrase “as much as is reasonably feasible and is mutually agreeable” is fundamentally inconsistent with the statutory provision contained in Section 48703(f) of the Public Resources Code.</p> <p>Another general principle of statutory interpretation is that when a legislative body includes particular language in one section of a statute but omits it in another, it is generally presumed that it acted intentionally and purposely in the disparate inclusion or exclusion.”</p>	<p>See response to comment W38-01.</p> <p>CalRecycle staff does not concur with the commenter’s statutory interpretation, and has determined that in order to clarify the statutory language in 48703(f), it is most reasonable to allow all parties to come to a reasonably feasible and mutually agreeable arrangement, whereby a manufacturer or stewardship organization establishes its plan for retailer participation and the retailer either then volunteers or chooses not to volunteer in that aspect</p>	None

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						of the manufacturer or stewardship organization's plan.	
§18953 (a)(3)(F)	W38-03	San Luis Obispo Co. IWMA	Bill	Worrell	Under the proposed regulation, PaintCare will have the ability to limit the number of retail collection points by simply not agreeing to allow a retail site to serve as a collection point. An excluded store that wanted to provide their customers with the opportunity to drop off paint would be at a further disadvantage in that under AB 408 only PaintCare collection sites are allowed to collect oil based paint. Thus an excluded retail store could only accept latex paint.	Staff considered the comment and requirements from AB 408 which amend PRC Section 48703(f) to state "Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program, if the retailer's paint collection location meets all of the conditions in Sections 25217.2 and 25217.2.1 of the Health and Safety Code." The provision allowing for "voluntary participation" is ambiguous in what it would or wouldn't specifically require. Therefore, the regulations provide for any retailer wanting to participate in their paint stewardship program as a collection point, as much as is reasonably feasible and is mutually agreeable. While it is true that failure of a retailer to come to mutually agreeable terms with a manufacturer or stewardship organization (MFR/SO) would limit their collection to latex paint only unless they elect to obtain additional permits (assuming they couldn't become part of a different MFR/SO), the statute does not provide CalRecycle with the authority to dictate the terms and conditions of participation to prevent this from happening.  Also see response to comment W38-01.	None
General	W39-01	PPG Architectural Coating	Mary Ellen	Shivetts	Supports comments submitted by the American Coatings Association (ACA) and PaintCare.	This is a general comment to the proposed regulation such that no specific subject could be identified for which to provide a response.	None
General	W39-02	PPG Architectural Coating	Mary Ellen	Shivetts	The Proposed Regulations go well beyond the scope of CalRecycle's statutory authority and the revisions made through the first two rounds of comments do not correct this.	See responses to General Comments #1 and #3 (initial 15-day comment period).	None
General	W39-03	PPG Architectural Coating	Mary Ellen	Shivetts	Two fundamental issues remain: 1) the additional mandatory requirements for the Annual Report, and 2) the lack of any notice and comment procedures for the administrative fees charged by the department.	See responses to comments W41-17 and W41-31.	None
General	W40-01	Dunn- Edwards Corporation	Robert	Wendoll	Supports comments submitted by the American Coatings Association (ACA) and PaintCare.	This is a general comment to the proposed regulation such that no specific subject could be identified for which to provide a response.	None
General	W40-02	Dunn- Edwards Corporation	Robert	Wendoll	The Proposed Regulations go well beyond the scope of CalRecycle's statutory authority and the revisions made through the first two rounds of comments do not correct this.	See responses to General Comments #1 and #3 (initial 15-day comment period).	None
General	W40-03	Dunn- Edwards Corporation	Robert	Wendoll	Two fundamental issues remain: 1) the additional mandatory requirements for the Annual Report, and 2) the lack of any notice and comment procedures for the administrative fees charged by the department.	See responses to comments W41-17 and W41-31.	None
§18951	W41-01	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	ACA and PaintCare's objections to the definitions of "operational costs" and "significant or material change" have been addressed in the revised regulations.	No response is needed since the comment does not suggest further modifications.	None
§18951	W41-02	American Coatings Assoc. (ACA)	Gene	Livingston	The definition of "service provider" is unnecessary because the context in which it is used in the regulations have been proposed without authority and are inconsistent with the statute being implemented:	No response is needed since this comment is not related to the modifications which were the subject of the 15-day comment period.	None

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		& PaintCare			CalRecycle lacks the authority to expand on the required content of a stewardship plan or annual report; cannot require a stewardship plan or annual report to include a description of best management practices and training provided to “service providers.”		
§18952	W41-03	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	ACA and PaintCare’s objections to the inclusion of a registration process and the phrase “under penalty of perjury” have been addressed.	No response is needed since the comment does not suggest further modifications.	None
§18952	W41-04	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	Nothing in §48703 authorizes CalRecycle to establish additional criteria for approving plans. The language is mandatory, “The department shall approve.” The only condition for the approval is consistency with §48703.  Nothing in §48703 authorizes the requirement that it include (B) “activities,” and particularly as “activities” is defined in section 18953. The same is also true for (C) “collection systems,” (E) “market development,” (H) “program performance measures,” (F) “stakeholder consultation,” and (G) “audits.”  Nothing in CalRecycle’s ISOR provides an explanation for why the extraneous parts of subsection (b)(1) are necessary.	See responses to General Comments #1 and #3, and comment W27-03 (initial 15-day comment period).  Based on experience with many other planning processes, CalRecycle has found it necessary to require such organization in plans so that it can readily find information and assess its adequacy relevant to the appropriate regulatory requirements. This is also needed because additional stewardship plans could be submitted by other manufacturers and/or stewardship organizations.	None
§18952	W41-05	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	ACA and PaintCare raised clarity concerns about the phrase in the first sentence of subsection (b) of section 18952 that stewardship plans should be submitted electronically “according to instructions provided by the department.” The scope of those instructions are ambiguous. CalRecycle will address the scope of what is meant by those instructions in its Final Statement of Reasons. As long as the FSOR does not include as instructions informational requirements, it should be sufficient to address the clarity issue.	The phrase “according to instructions provided by the department” is only intended to mean that instructions for submittal will be provided by the department; no additional informational requirements will be added based on this language.  Although not related to the modifications which were the subject of the 15-day comment period, staff intends to clarify in the Final Statement of Reasons that the instructions are meant to be a process-related element and not one that would require additional informational requirements.	None
§18952	W41-06	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle has added detailed provisions for the process that will follow in determining whether a stewardship plan is complete and its process for approving, conditionally approving, or disapproving a stewardship plan. Those provisions appear to be consistent with the authority that the Legislature granted to CalRecycle to approve stewardship plans.	No response is needed since the comment does not suggest further modifications.	None
§18952	W41-07	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle has eliminated the requirement that annual reports be submitted “under the penalty of perjury”, removing ACA and PaintCare’s previous objection.	No response is needed since the comment does not suggest further modifications.	None
§18952	W41-08	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	Section 18952, subsection (a), section 18952 (Submittals) and section 18954 (Annual Report Acceptance Criteria) also create confusion in that they depart significantly from the statutory provisions relating to the content of annual reports.	See responses to comments W02-08 (45-day comment period) and W41-17.	None

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					The following annual report requirements are extraneous to PRC §48705(a) and compound the violations of the law contained in the preceding subsection 18952(b) relating to the content of a plan:  (B) "executive summary" (C) "program outline", and (D) "description of goals and activities based on the stewardship plan"		
§18952(c)	W41-09	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle attempts to explain the necessity for subsection 18952(c) on the grounds of standard reporting. Yet, ironically, it does not track the elements for the report as set out in the statute...no attempt is made in the ISOR to explain why it is necessary for the regulations to ignore the structure of the statute and include elements extraneous to the statute.	All of the statutory requirements for annual reporting per PRC §48705 are included in the proposed regulation (see text in <b>bold</b> , below). They are located in §18954. Annual Report Compliance Criteria, however, not §18952. Submittals, to which ACA and PaintCare are directing their comment.  48705. (a) On or before July 1, 2013, and each year thereafter, a manufacturer of architectural paint sold in this state shall, individually or through a representative stewardship organization, submit a report to the department describing its architectural paint recovery efforts. At a minimum, the report shall include all of the following: (1) The total volume of architectural paint sold in this state during the preceding calendar year. <b>[§18954(a)(4)(A)]</b> (2) The total volume of postconsumer architectural paint recovered in this state during the preceding calendar year. <b>[§18954(a)(4)(B)]</b> (3) A description of methods used to collect, transport, and process postconsumer architectural paint in this state. <b>[§18954(a)(3)(A)]</b> (4) The total cost of implementing the architectural paint stewardship program. <b>[§18954(a)(5)]</b> (5) An evaluation of how the architectural paint stewardship program's funding mechanism operated. <b>[§18954(a)(5)]</b> (6) An independent financial audit funded from the paint stewardship assessment. <b>[§18954(a)(7)]</b> (7) Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years. <b>[§18954(a)(6)]</b>	None
§18952(c) (2)	W41-10	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	The provisions outlining the process for determining whether an annual report is in compliance, noncompliance, or conditional compliance appear to be consistent with the legislative authority granted to CalRecycle to approve annual reports.	See W27-05 (1 <sup>st</sup> 15 Day Comment Period). Commentor appears to be withdrawing his prior objection to this section. No response is needed since the comment does not suggest further modifications.	None
§18952(c)	W41-11	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	This subsection also contains the requirement that the annual report should be submitted electronically to the department according to directions provided by the department. The ACA and PaintCare understand that this ambiguous provision will be clarified in the FSOR.	See response to comment W41-05.	None
§18953	W41-12	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle has addressed ACA and PaintCare's concerns in this section with regard to description of a statewide program (and not county by county) and with regard to the prohibition of a manufacturer or stewardship organization from advertising a collection point that is not under contract, adding that the	No response is needed since the comment does not suggest further modifications.	None

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					latter does not apply to referrals to collection points based on publicly available information.		
§18953	W41-13	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	<p>The statute calls for goals to reduce the generation of post-consumer paint, to promote re-use, and for end-of-life management, including recovery and recycling. Nothing in the statute calls for “how” the program will achieve the goals.</p> <p>Nothing in statute refers to containers or market development, whether in the context of goals or any other context. While the latter regulation regarding containers and market development has been made discretionary, its inclusion as a requirement raises a question about how CalRecycle will respond to a stewardship plan that excludes container management and market development. All of those requirements go beyond the statute.</p>	<p>While this comment is not related to the modifications which were the subject of this 15-day comment period, it should be noted that the proposed regulation requires a description of how the statutory goals will be derived and measured, they do not dictate how the goals will be achieved.</p> <p>The regulation has described both market development and container management and requires that a manufacturer or stewardship organization report on them only to the extent that they have conducted either of those activities. To the extent that a manufacturer or stewardship organization does participate in these discretionary activities, CalRecycle needs to know what activities took place to determine if the costs associated with these activities were accounted for in the approved assessment; See General Comment #3.</p> <p>Also see response to comment W02-12 (45-day comment period).</p>	None
§18953(a) (3)	W41-14	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	<p>This section exceeds the scope of the statute in requiring a description of the system that will be used to collect architectural paint, <b>by type</b>, the destination of architectural paint, <b>by type</b>, a description of best management practices to be followed by “service providers,” including training that is to be provided by paint manufacturers or a stewardship organization to service providers, a description of how consumers of architectural paint will have an opportunity to recycle unwanted paint.</p> <p>Nothing in PRC section 48700 and following contains any inference that a stewardship plan is to address architectural paint “by type.” This requirement exceeds the scope of CalRecycle’s authority and is inconsistent with statute.</p>	<p>The historic and statutory notes of the 2010 Legislation, Section 1 of Stats. 2010, c. 420 (A.B. 1343), Subdivision (b) identifies oil and latex paint types. (These two types are not intended to be an exclusive list of “types” that the Manufacturer or Stewardship organization may identify.) Statute requires that CalRecycle approve an assessment that is “sufficient to recover, but not exceed, the cost of the architectural paint stewardship program.” Given that different paint types may have different costs associated with their management, knowledge of the volume of each type of paint collected will help CalRecycle in evaluating the program’s financing mechanism. See General Comment #3.</p> <p>Also see responses to comments W41-21 and W02-25 (45-day comment period).</p>	None

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§18953(a) (3)	W41-15	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	§18953(3)(E) and (F) require the stewardship plan to address coordination with possible collection points. These are the only provisions in paragraph (3) that are authorized by the statute. The balance of paragraphs (3)(E) and (F), dictating the method of coordination by requiring negotiations, exceeds CalRecycle’s authority to approve a plan that describes how it is coordinating with local household hazardous waste collection programs. The legislation contemplates the plan describing the coordination; it does not contemplate CalRecycle dictating how coordination should occur.	The language contained in the entirety of §18953(a)(3)(E) and (F) was originally provided by the commenter during discussions outside of the formal comment periods, to which the department concurred and included as a result of this suggestion.  CalRecycle staff asserts that §18953(a)(3)(E) and (F) are consistent with statute. Statute provides that retailers may participate on a voluntary basis. This section clarifies that retailers have the right to request participation, and therefore that the manufacturer or stewardship organization must respond, but it does not dictate the nature or outcome of the negotiation. Additionally, the department has interpreted that for the manufacturer or stewardship organization to meet the requirements of 48703(c) “as much as this is reasonably feasible,” the manufacturer or stewardship organization must communicate with existing local household hazardous waste collection programs and discuss possible terms for coordination. The department is not intending to mandate an agreement, as this might not be “mutually agreeable.”	None
§18953(a) (7)	W41-16	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	PRC section 48703 contains no obligation for a stewardship plan to include any information about audits. Audits are appropriate after a program is up and running and have little relevance to the descriptions of a plan to initiate a stewardship program. While PRC section 48705, pertaining to annual reports, requires the inclusion of an audit, nothing is contained in PRC section 48703 describing the content of a stewardship plan. The revisions CalRecycle made do not address ACA and PaintCare’s objection that the requirement to include information about audits in the stewardship plan is legally invalid.	CalRecycle staff concurs that the description of financial audits is more appropriately placed in the annual report section rather than the stewardship plan criteria, as financial audits are not expected to be performed prior to plan submission but must accompany annual report submissions, and has changed the regulation to reflect this.	Deleted §18953(a)(7) and incorporated into §18954(a)(7)
§18954	W41-17	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	While the statute requires a paint manufacturer or a stewardship organization to “at a minimum” include certain information in annual reports, that does not give CalRecycle carte blanche to impose whatever additional elements it may desire. Certainly, CalRecycle may not require that the annual report contain information that it cannot require to be included in the stewardship plan.  The phrase “at a minimum” is construed the same as “including.”	See responses to General Comments #1 and 3 (initial 15-day comment period).	None
§18954(a) (2)	W41-18	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	Nothing in the statute, section 48705, relates to the content of an executive summary.	While not related to the modifications which were the subject of the 15-day comment period, staff asserts that an Executive Summary that provides a broad understanding of the program as a whole and put into context the data and information provided by the MFR/SO in the annual report would assist the department in understanding and approving the annual reports. Staff proposes adding clarifying, non-substantive language to this effect.	§18954(a)(2)
§18954(a) (3)(A)	W41-19	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	ACA and PaintCare object to the inclusion of the phrase “by type” citing lack of CalRecycle authority to do so.	See response to comment W41-14.	None
§18954(a) (3)(A)	W41-20	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	PRC §48705 is not subject to the extraneous, detailed information required by §18954(a)(3)(B):  “Description of how each consumer of architectural paint in California had	This comment is not related to the modifications which were the subject of the 15-day comment period.	None

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					an opportunity to recycle and properly manage their postconsumer paint on a state wide basis, including the number, location, and type of collection points located in the state.”		
§18954(a)(3)(C)	W41-21	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle lacks the authority to require that annual reports include a description of best management practices followed by service providers, including any training provided to or required of them.	CalRecycle staff does not concur that the department lacks the authority to require a description of best practices followed by service providers. In addition to the responses cited below, this subsection is consistent with PRC §48702(a) “...and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion...”  However, staff agrees that it would be helpful to add clarifying language that, as training is not mandatory, that a description of any training is something that <u>may be included</u> and it is not mandatory.  See also responses to General Comments #1 & 3 (45-day comment period).	§18953(a)(3)(C) and §18954(a)(3)(C)
§18954(a)(3)(D)	W41-22	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	Nothing in PRC section 48705 requires the annual report to duplicate the information required in the plan (that a manufacturer or stewardship organization coordinate with existing local household hazardous waste collection programs).	This comment is not related to the modifications which were the subject of the 15-day comment period.	None
§18954(a)(3)(D)	W41-23	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	Nothing in PRC sections 48703 or 48705 require any coordination with retailers. The only provision in the statute pertaining to retailers is that they may participate as a collection point if they desire. CalRecycle may not impose coordination with retailers by requiring it to be included in the stewardship plan or in the annual report.	See response to comment W38-01.  In addition, in order to comply with PRC §48703(f), some level of coordination would need to occur if a retailer volunteers to participate; therefore, the language in the proposed regulation requires a description of this activity.	None
§18954(a)(4)	W41-24	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	PRC section 48705(d) provides that the goals <b>may</b> be revised by the manufacturer or stewardship organization based on information collected for the annual report. This provision is permissive. CalRecycle acts without authority and inconsistently with the statute when it attempts to convert it to a mandate.	CalRecycle staff proposes clarifying its original intent, which is consistent with statute, that the description in §18954(a)(4) is for any adjustments to goals stated in the approved stewardship plan that may be made, not that must be made.	§18954(a)(4)
§18954(a)(4)(C)	W41-25	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	While the statute requires the annual report to include the total volume of paint sold and recovered, it does not, as CalRecycle seeks, require the breakout of that information “by type.” Paragraph (4)(C), subsection (a), imposes a reporting requirement unrelated to the list of informational elements set out in the statute, section 48705. The statute requires a report on results, total volume of paint sold and recovered; nothing in it relates to disposition.	See response to comment W41-14.	None
§18954(a)(5)(C)-(H)	W41-26	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	Paragraphs (5)(C)-(H), subsection (a), call for a breakdown of the total costs, capital costs, costs per capita, costs per gallon of paint collected, education/outreach costs, end-of-life materials management costs broken out by reuse, transportation, recycling, incineration, disposal, and program administration costs. The statute only requires total costs, clearly stating the Legislature’s intent to keep the reporting simple. The detailed breakout is inconsistent with the statute.	See responses to comments W02-08 (45-day comment period) and W41-17.  In addition, this comment is not related to the modifications which were the subject of the 15-day comment period.	None
§18954(a)(6)	W41-27	American Coatings Assoc. (ACA)	Gene	Livingston	PRC section 48705 requires examples of educational materials provided to consumers. CalRecycle has pushed the regulation well beyond the statute. It requires a description, not just examples. It requires materials	This comment is not related to the modifications which were the subject of the 15-day comment period.	None

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		& PaintCare			provided to retailers, consumers, and contractors, not just consumers. It requires an identification of methods used to evaluate the effectiveness of surveys, promotional activities, and links to websites, not just examples of materials provided to consumers.		
§18954	W41-28	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle’s attempt to demonstrate necessity for section 18954 is insufficient. CalRecycle, at times, simply sets out in its ISOR a statement of what the regulatory provision requires, or that the requirement is needed to inform the department. In other parts of the ISOR, CalRecycle acknowledges that it is imposing requirements that go beyond the statute. For example, with respect to subsections (a)(3)(A)-(E), the ISOR states that the information is necessary to ensure that a stewardship program is providing statewide coverage. For subsection (a)(2), CalRecycle states that it requires goals to be measured from a baseline. CalRecycle also states in the ISOR for this subsection, that it is “necessary because the purpose of the paint stewardship program is realized by achieving the goals laid out in a stewardship plan.” That statement comes close to being a tautology and provides no real explanation.	CalRecycle disagrees; CalRecycle has not acknowledged that it has “gone beyond the statute.”  Regarding §18954(a)(3)(A)-(E), this section basically asks a manufacturer or stewardship organization to report on basic criteria “describing its architectural paint recovery efforts” as required by PRC Section 48705. §18954(a)(3)(A) asks for a general description of their program infrastructure.  Section 18954(a)(3)(B) asks a manufacturer or stewardship organization to describe the methods used for collection as required under PRC 48705(a)(3), with specific attention given to describing how payors of an assessment reach the program run by the manufacturer or stewardship organization.  Section 18954(a)(3)(C) asks a manufacturer or stewardship organization to describe actions which might have been taken, but does not mandate anything more than reporting. Reporting on the methodology used to collect, transport, and process paint is required under PRC 48705(a)(3) and is not limited to the activities of the manufacturer or stewardship organization. The information requested under Section 18954(a)(3)(C) is needed to determine how the program is run in an “environmentally sound fashion” as required per PRC 48702(a) and ensured that “proper” end of life management was ensured as required per PRC 48703(d).  Section 18954(a)(3)(D) was removed.  Section 18954(a)(3)(E) was renumbered. Also, see response to comment W41-15.	§18954(a)(3)(D)
§18955.1	W41-29	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle’s enforcement mechanism is through approving the first plan and determining compliance thereafter through the annual reports. Therefore, the failure to submit a stewardship plan or one containing all of the elements required by Public Resources Code section 48703, results in those manufacturers being prohibited from selling paint and retailers from selling paint produced by those manufacturers. That is the enforcement mechanism, not the imposition of civil penalties. Civil penalties are to be imposed for selling paint produced by manufacturers not in compliance. The same analysis is applicable to the failure to implement a stewardship plan, the failure to pay the administrative fee, the failure to submit an annual report, and the failure to include in the annual report the elements required by PRC section 48705(a).  Hence, all of the violations in Table 1 shall be struck except the first, offering or selling paint produced by a manufacturer not in compliance with this chapter, as provided in PRC section 48702(b).	See response to comment W27-11 (initial 15-day comment period).  In addition, this comment is not related to the modifications which were the subject of the 15-day comment period.	None

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§18955.1	W41-30	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	With respect to Table 2, the same analysis and result apply as in W41-28.	See response to comment W27-12 (initial 15-day comment period).  In addition, this comment is not related to the modifications which were the subject of the 15-day comment period.	None
§18958	W41-31	American Coatings Assoc. (ACA) & PaintCare	Gene	Livingston	CalRecycle should either strike all of section 18958, or propose a specific fee. If it proposes a specific fee, it needs to demonstrate the need for the specific amount in the record of the rulemaking proceeding.	Statute requires CalRecycle to impose fees in an amount sufficient to cover the department's full costs of administering and enforcing this chapter, including program development or regulatory costs [PRC §48704(e)(2)]. CalRecycle has estimated its costs through the current fiscal year and next two fiscal years, assuming smooth program implementation. These estimates represent roughly 1.1 percent of the total estimated program budget, based on a similar program in Oregon run by PaintCare, the same SO that intends to submit a plan to CalRecycle, and scaling for California's population. These estimates were also provided directly to PaintCare. CalRecycle is committed to continue to make every effort to keep costs related to administering and enforcing this law to a minimum, and to implement its responsibilities in the most efficient manner possible.  The administrative fee will be estimated and approved by the department by April 30 each year. Actual program costs will be documented and provided to a manufacturer or stewardship organization with the annual invoice. CalRecycle believes that this process is sufficient to allow for a MFR/SO to budget their program(s) accordingly while allowing CalRecycle to meet its statutory requirement.  Since statute provides that the fee is to be an amount to cover the department's full costs of administering and enforcing the chapter, there is no need to establish a fee amount in regulation. The fee will simply be a bill for the actual staff time and expenses. Staff costs (salaries, etc.) are not items that the department has the authority to set or change in regulation. <b>Setting a specific dollar amount in advance of incurring those expenses runs the risk of conflicting with statute, as the department's exact full costs can't be known in advance.</b>	None
General	W42-01	Los Angeles Co. Solid Waste Mgmt Cmte/Integrated Waste Mgmt Task Force	Margaret	Clark	Consistent with the EPR Framework, the program must be designed to ensure system effectiveness through maximized convenience to consumers and set minimum recovery rates to measure program performance. As written, the proposed regulations do not directly address this element.	See response to comment W14-12 (45-day comment period).  In addition, this comment is not related to the modifications which were the subject of the 15-day comment period.	None
General	W42-02	Los Angeles Co. Solid Waste Mgmt Cmte/Integrated Waste Mgmt Task Force	Margaret	Clark	Consistent with the EPR Framework, it is important for CalRecycle to collaborate with agencies, internal and external, to effectively address cross-media and cross-organizational issues when considering approval of product stewardship plans. Consequently, provisions need to be incorporated into CalRecycle's review and approval process to allow and consider local government input prior to approval of the stewardship plan by allowing local governments a 30-day opportunity to review and comment on the plan.	See response to comment W14-04 (45-day comment period).  In addition, this comment is not related to the modifications which were the subject of the 15-day comment period.	None
General	W42-03	Los Angeles	Margaret	Clark	We recommend that the Regulations be revised to address and establish a	See response to comments W14-12 and W22-01 (45-day comment period).	None

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		Co. Solid Waste Mgmt Cmte/Integrated Waste Mgmt Task Force			reimbursement cost structures for local jurisdictions and also, include transitional goals to relieve local governments from the burden of collecting architectural paint.	In addition, this comment is not related to the modifications which were the subject of the 15-day comment period.	
General	W43-01	California Product Stewardship Council	Heidi	Sanborn	<p>CPSC’s main concerns are:</p> <ol style="list-style-type: none"> <li>1) All consumers that pay the fee have access to recycle their paint;</li> <li>2) Regulations are fair, clear, not overly burdensome, and enforceable; and</li> <li>3) Regulations allow for effective oversight of the industry program</li> </ol> <p>CPSC will continue to follow this program through implementation and for its duration to ensure it meets the expectations of our local governments and partners.</p>	No response is needed since the comment does not suggest further modifications.	None
§18953(a)(3)(D) and §18954(a)(3)(B)	W44-01	Rural Counties Environmental Services Joint Powers Authority	Mary	Pitto	CalRecycle has proposed extensive revisions to the product stewardship plans to accommodate paint industry concerns. The ESJPA does not object to the changes with the exception of the removal of the requirement for collection points located in “each county.” We believe failure to include the “each county” requirement sends a message that product stewardship is limited to only convenient options rather than a convenience for all participants and removal of this provision is not warranted.	While CalRecycle staff acknowledges this concern, under the current statutory language, the department is unable to require collection points in each county. The “each county” phrase that has been stricken in the stewardship plan and annual report sections of the proposed regulation did not require collection in each county, but rather a description of the proposed number, location, and type – if any -- of collection points located in each county. The “each county” language has been replaced with “the state” for consistency with statute. However, CalRecycle staff would still be able to provide a by county description as part of a separate department analysis.	None
§18953(a)(3)(F)	W45-01	Californians Against Waste	Mark	Murray	<p>Without targeted, measurable ‘numeric recovery goals’, demonstration of program success and accountability becomes more dependent on ensuring that proven recycling program elements are in place (such as consumer convenience)...</p> <p>We agree with the San Luis Obispo Integrated Waste Management Authority’s suggestion:</p> <p><u>18953(a)(3)(F) Address the coordination of the architectural paint stewardship program with potential retail collection points.</u> Any retailer may participate, on a voluntary basis, as a paint collection point site pursuant to the paint stewardship program <b>on the same basis as any other retailer participating in the paint stewardship program.</b> <del>A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in their 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.</del></p>	<p>See response to comment W38-01.</p> <p>In addition, as AB 1343 contains neither numeric recovery goals nor convenience goals specifically, CalRecycle is limited in its ability to propose certain requirements related to these key program aspects.</p>	None
General	W45-02	Californians Against Waste	Mark	Murray	CalRecycle should reinstate requiring market development in the regulations because market development is, by definition, part of recycling. Recycling is a required element in the goals as stated in PRC	CalRecycle cannot “reinstate requiring market development” in the proposed regulation both because it was never required (only a description was required, to the extent a manufacturer or stewardship organization participated in these activities), and since this permissive	None

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					48703(d).  According to PRC 40180: <i>“Recycle” or “recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would have otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.</i> <i>“Recycling” does not include transformation, as defined in Section 40201.</i>	requirement was not removed completely but rather moved into §18953(a)(2)(D) and §18954(a)(2). In addition, while PRC §40180 applies to all of Division 30 (per PRC §40100), PRC §40180 does not mandate market development.	
§18953(a)	W45-03	Californians Against Waste	Mark	Murray	CalRecycle should require paint containers in the stewardship program – the statute is clear on this issue that the funding mechanism is to provide a stewardship assessment on each container, not just the paint in the container, as demonstrated in this section:  <i>PRC 48703(a)(2) The funding mechanism shall provide for an architectural paint stewardship assessment for each container of architectural paint sold by manufacturers in this state and the assessment shall be remitted to the stewardship organization, if applicable.</i>  We ask the department to revert to the previous regulation where it says:  <i>(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.</i>	CalRecycle never required a manufacturer or stewardship organization to manage paint containers under the proposed regulation; rather, it required a description of the management that was to occur, to the extent that this is an activity that the manufacturer or stewardship organization intended to conduct.  The description of paint container management was not deleted from the proposed regulation; rather it was moved from the subsection previously called “Scope” to the subsection called “Program Goals and Activities.”  CalRecycle staff asserts that the management of paint containers is not a requirement under AB 1343 as currently written.  It appears that the reference to paint “containers” in PRC § 48701(a) may have been inended to differentiate architectural paint sold in containers of 5 gallons or less from architectural paint sold in an aerosol can.	None
§18953(a) (2)	S02-04	American Coatings Association and PaintCare	Gene	Livingston	The regulation requires the Stewardship Program Operator to come up with a baseline, how much paint is being collected today, and then to predicate its coordination and its goals on that baseline. And so you can imagine my chagrin when I see that the Carpet Plan is only conditionally approved because you're not satisfied with the baseline. Is that the future that Paint Care is going to be facing, as well, that because your Regulation has gone beyond the statute, then our approval will be conditional because we've not satisfied that extraneous provision? So that's a real concern.	PRC §48703(d) states that “The plan shall include goals established by the manufacturer or stewardship organization...based on current household hazardous waste program information.”  See response to comments W11-05 and W02-12 (45-day comment period).	None
§18954(a) (4)	S02-05	American Coatings Association and PaintCare	Gene	Livingston	The statute requires a report on the total volume of paint sold and the total volume of paint recovered. The Regulation requires that broken down by type of paint; there's nothing in the statute that would suggest that you have authority to impose that breakdown.	See responses to comment W41-14 (second 15-day comment period) and comment W02-25 (45-day comment period).	None
§18954(a) (5)	S02-06	American Coatings Association and	Gene	Livingston	The statute requires the Annual Report to reflect the total cost of the program and a description of how the funding mechanism worked, but what your Regulation does is it breaks out that cost into eight or nine sub-parts. And I have to be candid and say that I don't buy the notion that you	See response to comment W27-07.5 (initial 15-day comment period).	None

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		PaintCare			have to have it broken down into such detail in order to be assured that consumers in California are funding an appropriate program; the total cost as the Legislature contemplated is sufficient for you to make that determination.		
§18954 & §18958	S02-02	American Coatings Association and PaintCare	Gene	Livingston	While our greatest heartburn today still rests with the Annual Report and the detail that is required there, that goes well beyond the articulation in the statute of what's to be included in the Annual Report, and of course, we have concerns about the absence of any proposed fee or any justification for that fee.	CalRecycle is committed to continue to make every effort to keep costs related to administering and enforcing this law to a minimum, and to implement its responsibilities in the most efficient manner possible.  Staff has considered these comments and has amended §18958 to ensure that the administrative fees being established relate directly to actual costs incurred; this will require billing for services provided rather than providing an estimated invoice in advance of services provided. Staff has made edits to this section based on guidance provided and language approved by the OAL in a similar provision in the carpet stewardship regulation that was developed in parallel with this regulation, and subsequently approved by OAL in January 2012.  Since statute provides that the fee is to be an amount to cover the department's full costs of administering and enforcing the chapter, there is no need to establish a fee amount in regulation.  Staff can also provide unofficial estimates upon request to assist a manufacturer or stewardship organization with program budgetary planning.	§18958
§18955	S02-07	American Coatings Association and PaintCare	Gene	Livingston	I think it's appropriate that you would impose a monetary penalty on a retailer who sells paint from a manufacturer who is not covered, or from a manufacturer who sells paint into California. But the penalties talk about if there are omissions in the Stewardship Plan, you would impose penalties, as well. Now, the Penalties section talks about, if it doesn't contain the provisions of the statute, and yet you have a Regulation that imposes content of a Stewardship Plan that goes beyond the statute. So I assume there will be no penalty imposed, but, again, that's part of the schizophrenia.	Based on the commenter's previous comments, staff believes he is re-stating his position as originally stated in comment W27-11 and W27-12.  See responses to General Comment #1 and 3 (initial 15-day matrix).	None
§18958	S02-08	American Coatings Association and PaintCare	Gene	Livingston	Now, the way the Recommendation for Approval would be interpreted, I think, is that you're reading the statute to say that you're to bill the Stewardship Program Operator for your expenses in administering the program. But the statute says that you shall impose a fee to recover your cost, it doesn't say to bill after the fact, it talks about imposing the fee in advance. Our concern is that, without a public process where you set forth the fee in your costs, and where we have an opportunity to address those and question the propriety of some of the expenditures, we have really very little basis to be confident about the imposition of that fee. So, rather than approve that Regulation today, we would ask you to address these additional concerns, issue another 15-day letter, and let's just bridge that gap. Let's get a program that implements the statute that the Legislature enacted.	Please see response to comment S02-02.  Additionally, staff notes that CalRecycle initiated an additional 15-day comment period to address concerns related to §18958.	§18958

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General Comment	S01-01	Californians Against Waste (CAW)	Teresa	Bui	The goal -- under AB 1343, is to reduce the generation of post-consumer paint, to promote the re-use of post-consumer paint, and the proper end-of-life management of post-consumer paint, including the recovery and recycling. With the promise and innovative approach of 1343 is that the environmental objectives might be achieved cost-effectively with a single statewide, non-governmental enterprise financed by paint consumers, rather than hundreds of separately operated and taxpayer funded local programs. CAW remains supportive of this vision, and we will watch the implementation of this program closely to make sure that it meets its intended goals, and whether it will perform well in a post-AB 3041 world.	CalRecycle acknowledges CAW's comment. No further response is needed since the comment does not suggest further modifications.	None
General Comment	S02-01	American Coatings Association and PaintCare	Gene	Livingston	The paint industry objects not on the grounds that some of the regulations are not necessary, but that CalRecycle does not have the authority to go beyond the provisions in statute.	See responses to General Comment #1 (initial 15-day comment period).	None
General Comment	S02-03	American Coatings Association and PaintCare	Gene	Livingston	The statute says that the dept. shall approve a Stewardship Plan that meets the components of the preceding section. The Regulation unfortunately expands on those statutory provisions. Where the statute said that you should consider a certain factor, then the dept. added to that. For example, one of the things is there has to be goals. We acknowledge that. But the Regulation talks about goals and activities, and then the Regulation, in terms of defining what is to be included in the goals, goes beyond goals; it talks about a description of how those goals are derived, and then also a description of how those goals shall be met in a number of areas. Again, whenever you ask for implementation strategies in the context of goals, you're going beyond the statutory language.	Goals are an essential part of the program and are required under PRC§48703(d). Staff is required to approve an assessment based largely on these goals and the measures taken to accomplish these goals, as is required per PRC§48703(b)(4).  Also see responses to General Comment #1 and #3 (initial 15-day comment period).	None
General Comment	S03-01	California Product Stewardship Council (CPSC)	Heidi	Sanborn	We are at the edge of the solution, we're very close, we have a bill, we're close to agreement on the Regulations. I think CalRecycle did a lot of giving on this last version of the Regulations. Some of the things we'd like to have seen stay in, but we understand that there's compromise in this process, so we're supporting it. The differences seem to be down to two major issues and we would just like to say for the record that we really hope that the industry and CalRecycle can work this out on those two specific issues, and let this program with the law on the books go forward July 1st, and I don't know if they can be taken out and taken separately, but we've got an agreement on 99 percent, and we need this cost relief, we need the program to keep moving, so we would just urge all the stakeholders to please try and work it out, and we will support the industry in a roll-out and CalRecycle in their oversight.	CalRecycle acknowledges CPSC's comment. No further response is needed since the comment does not suggest further modifications.	None