FINAL STATEMENT OF REASONS

May, 2012

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

GENERAL COMMENTS APPLICABLE TO STATEMENT OF REASONS

The Architectural Paint Recovery Program mandated by Public Resources Code (PRC) section 48700 et seq. (Assembly Bill 1343, Huffman, 2010) ("AB 1343") requires a manufacturer of paint sold in this state, individually or through a paint stewardship organization, to submit a paint stewardship plan to the department. The plan would be required to contain specified elements, including a funding mechanism that provides sufficient funding to carry out the plan (such as administrative, operational, and capital costs of the plan), and the payment of fees to the department for its oversight and enforcement services. The department would be required within 90 days after receiving the plan to review and determine whether the plan complies with section 48702, and make a determination of whether or not to approve the plan.

Any architectural paint manufacturer or stewardship organization submitting a stewardship plan would be required to pay the department an annual administrative fee, as determined by the department. The department would set the fee at an amount that is adequate to cover the department's full costs of administering and enforcing the program, including any program development costs or regulatory costs incurred by the department prior to stewardship plans being submitted.

Each manufacturer of architectural paint sold in the state, individually or through a stewardship organization, would be required to prepare and submit to the department an annual report describing its architectural paint recovery efforts.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

For all the changes proposed in these regulations, the following statement applies:

Alternatives to the proposed regulations have been considered, including a “no-action” alternative. The Department has determined that: 1) no alternative would be as effective and less burdensome to private persons, while at the same time protecting human health, safety, and the environment; and 2) no alternative would lessen adverse economic impact on small businesses while protecting human health, safety, and the environment. The Department has attempted to use reasonable performance standards rather than prescriptive standards to minimize the impact on small businesses while still promoting health, safety and environmental benefits and collecting the information required by statute.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Department relied upon the following in proposing the adoption of these revised regulations:

1. Assembly Bill 1343
2. Assembly Member Jared Huffman Letter
3. Oregon Paint Stewardship Plan
4. Oregon 2010 Annual Report
5. Paint Product Stewardship Initiative (PPSI), 2nd Memorandum of Understanding
6. California Integrated Waste Management Board Signing Statement Attached to PPSI 2nd Memorandum of Understanding Signature Page

In its Decision of Disapproval of Regulatory Action, received by CalRecycle on April 13, 2012, the Office of Administrative Law (OAL) found that the department failed to identify in the Initial Statement of Reasons (ISOR), or otherwise make available to the public, documents reported as relied upon in the Final Statement of Reasons (FSOR). In response to this finding, CalRecycle initiated a fourth 15-day comment period that

began on April 13, 2012 and ran through April 30, 2012 in which the documents identified as relied upon were made available for public review prior to the close of the comment period.

INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made the finding that these regulations will not have a significant adverse economic impact on business or on the ability of California businesses to compete with businesses in other states; will not result in the creation or elimination of jobs, or the creation of new, or the expansion or elimination of existing California businesses; and do not affect small businesses because these regulations only provide procedural clarity. The Department is not aware of any costs impacts on private persons or representative businesses as a result of these regulations.

LOCAL MANDATE AND FISCAL DETERMINATIONS

The Department has determined that the regulations do not impose: a mandate on local agencies or school districts that requires State reimbursement pursuant to Part 7, commencing with section 17500 of Division 4 of the Government Code; significant costs or savings to any state agency; other non-discretionary costs or savings on local agencies; or, costs or savings in federal funding to the state.

DUPLICATION OR CONFLICTS WITH CODE OF FEDERAL REGULATIONS

The Department has made the finding that no unnecessary duplication or conflict exists between the proposed regulations and federal regulations contained in the Code of Federal Regulations because federal law or regulations do not contain comparable requirements.

FINDING ON NECESSITY OF REPORTS (GOVERNMENT CODE SECTION11346.3(c))

The Department has found that the requirements for specific reports are necessary for the health, safety and welfare of the people of the state because it will help to ensure that the requirements of these regulations are met and adequately monitored.

SPECIFIC PURPOSE AND NECESSITY OF REGULATIONS

Section 18950. Purpose.

Section 18950 is necessary to clarify existing law 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, retailers, and distributors pursuant to Section 48700 of the Public Resources Code.

§18951. Definitions.

Section 18951 is necessary as several technical and administrative terms appear in this chapter that require definitions to assure regulatory consistency and clarity.

Subsection (a)

Subsection (a) is necessary to clarify that the terms "must" or "shall" and "may" used in this article mean:

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

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

(a) Subsection (b)

Subsection (b) is necessary to clarify that the term "Administrative fee" used in this chapter 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.

Subsection (c)

Subsection (c) is necessary to clarify that the term “Assessment” used in this chapter 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 plan. Recycled paint given away by government programs that filter or process postconsumer paint for free shall not be subject to the assessment as they are not offering the paint for sale.

Subsection (d)

Subsection (d) is necessary to clarify that the term “Brand” used in this chapter means a name, sign, symbol, slogan, or anything that is used to identify and distinguish a specific architectural paint product. This is reasonably necessary as some architectural paint manufacturers market their product under different brand names.

Subsection (e)

Subsection (e) is necessary to clarify that the term “collection” used in this chapter means any method by which a service provider receives postconsumer architectural paint from a consumer.

Subsection (f)

Subsection (f) is necessary to clarify that the term “operational costs” used in this chapter means the 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. The department determined this definition to be necessary in order to differentiate operational costs borne by stakeholders other than a manufacturer or stewardship organization, as those entities’ participation is not mandated in the same way as manufacturers or stewardship organizations under AB 1343.

Subsection (g)

Subsection (g) is necessary to clarify that the term “Reporting period” used in this chapter means a consecutive 12-month period as specified in statute.

Subsection (h)

Subsection (h) is necessary to clarify that the term “service provider” used in this chapter 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, processing, or proper disposal of postconsumer architectural paint.

Subsection (i)

Subsection (i) is necessary to clarify that the term “Significant or Material Change” used in this chapter means any change in the architectural paint stewardship assessment previously approved by the department.

§18952. Submittals.

Section 18952 is necessary because stewardship plans, under PRC Section 48703, and annual reports, under PRC Section 48705, must be submitted to the department for review as required under PRC Section 48704. It is reasonably necessary for regulations to be enacted to establish procedures and acceptable format for submission and review of these Plans and Reports consistent with statute.

Subsection (a) and Subsection (a) (1)

Subsection (a) and Subsection (a)(1) set forth that a corporate officer acting on behalf of a manufacturer or stewardship organization must submit certain contact information as part of the submission of a stewardship plan. This subsection is necessary because it identifies the person in an organization who is held the most responsible for the actions of that organization and with whom the department will coordinate for matters concerning the organization’s program.

Subsection (a) (1) (A) through (G)

Subsections (a) (1) (A) through (G) specify the contact information that must be submitted to the department. These subsections are necessary to allow the department to verify the information submitted by a manufacturer or stewardship organization and to follow-up with enforcement-related activities as necessary.

Subsection (a) (2)

Subsection (a) (2) specifies information that must be submitted to the department for each manufacturer participating in a stewardship organization. This subsection is necessary to allow the department to verify the information submitted by a stewardship organization and to follow-up with enforcement-related activities as necessary.

Subsection (a) (2) (A) through (C)

Subsections (a) (2) (A) through (C) are necessary to allow the department to verify the information submitted by a manufacturer or stewardship organization and to follow-up with enforcement-related activities, as necessary. This subsection also specifies additional information the department shall receive upon request and the time allotted to the stewardship organization to provide requested information.

Subsection (a) (3)

Subsection (a) (3) specifies that a list of covered brands must be submitted to the department. The department needs this to post at the department's website in order for retailers to identify which products may be sold in the state. This allows retailers to maintain compliance with the law.

Subsection (b)

Subsection (b) is necessary because it facilitates the transfer of documents electronically for easier retrieval. The language "…according to instructions provided by the department" is not intended to require additional informational elements from a manufacturer or stewardship organization. Rather, this refers to the actual process of electronically submitting the stewardship plan (e.g., submit in a Microsoft Word

document or Adobe PDF and send to a specific e-mail address or contact person). CalRecycle modified this subsection in response to OAL's Decision of Disapproval of Regulatory Action, received by CalRecycle on April 13, 2012, to clarify that the electronic submittal of the stewardship plan is a permissive activity but that the hard copy submittal is required.

Subsection (b) (1) and subsections (b) (1) (A) through (F)

Subsection (b) (1) and subsections (b) (1) (A) through (F) correspond to the required stewardship plan sections and are necessary to ensure that the information submitted in a stewardship plan is in a standardized form that will ensure consistency of future stewardship plan submittals and facilitate their review and use by the department and other stakeholders within CalRecycle's statutorily-mandated 90-day plan review and approval time period.

Subsection (b) (2)

Subsection (b) (2) is necessary because it describes the department's receipt and notification procedures once staff determines that a plan submitted by a manufacturer or stewardship organization is complete and establishes how the department will respond to an incomplete submittal. This subsection also establishes the amount of time a manufacturer or stewardship organization has to resubmit a complete plan, once their plan has been deemed incomplete. This subsection also establishes the review start date and length of the review period once a complete plan is received for the department to approve, disapprove, or conditionally approve a plan.

Subsection (b) (3) and subsections (b) (3) (A) through (D)

Subsection (b) (3) outlines the three specific determinations that the department may make on a submitted stewardship plan. Subsection (b) (3) (A) establishes that no further action is required once a plan is deemed complete. Subsections (b) (3) (B) and (D) outline the procedures for a plan to be conditionally approved, and what happens if plan deficiencies are not corrected. Subsection (b) (3) (C) describes the department's notification and the timeframe a manufacturer or stewardship organization has to

resubmit if the department disapproves their plan. This is necessary to clarify the impacts of the approval, disapproval, or conditional approval of a plan.

Subsection (b) (4)

Subsection (b) (4) specifies when a plan must be resubmitted for re-approval by the department, and identifies a time limit for the department to make its determination.

Subsection (b) (5)

Subsection (b) (5) is necessary to ensure that a manufacturer's financial, production, or sales data and information is made available to the public in a way that protects that manufacturer's confidential business information. Transparency is ensured by allowing the department to make the aforementioned information publically available if it is in summary form and not attributable to a specific manufacturer.

Subsection (c)

Subsection (c) sets forth that a corporate officer acting on behalf of a manufacturer or stewardship organization that is operating a paint stewardship program under a department-approved stewardship plan must submit the annual report to the department. This subsection is necessary because it identifies the person in an organization who may certify the accuracy of reported actions of that organization and with whom the department will coordinate for matters concerning the organization's program. This is reasonably necessary for the department to ensure that the information being provided is coming through a reliable source that has the authority to certify the accuracy of information for the department's review.

During the fourth 15-day comment period, staff inadvertently failed to modify the "should" in the following sentence in Section 18952(c), "The annual report should be submitted electronically to the department according to directions provided by the department," which means that its meaning is still unclear. Revising this section to modify the word "should" would require a fifth 15-day comment period. However, the sentence did not require manufacturers or stewardship organizations to make electronic

submittals, but rather identified that a manufacturer or stewardship organization may do so at their discretion. Therefore, staff elected not to include this sentence in the final version submitted to ensure clarity and doing so would not modify any mandatory requirements in the regulations."

Subsection (c) (1) and subsections (c) (1) (A) through (G)

Subsection (c) (1) and subsections (c) (1) (A) through (G) correspond to the required annual report sections and are necessary to ensure that the information submitted in an annual report is in a standardized form that can easily be compared to the approved plan, as is required under PRC Section 48704 (c), and will ensure consistency of future annual report submittals and facilitate their review and use by the department and other stakeholders. Because a manufacturer or stewardship organization is required to "implement … the approved plan," per PRC Section 48704 (c), and must accurately "submit a report to the department describing its architectural paint recovery efforts", per PRC Section 48705 (a), the department found that it was reasonably necessary for the annual report to mirror the format of the submission of the stewardship plan as closely as possible, even though the annual report must provide additional information.

Subsection (c) (2)

Subsection (c) (2) is necessary because it describes how the department will determine that an annual report submitted by a manufacturer or stewardship organization is complete. This allows the department to ensure that it has received all the information that is needed to adopt a finding of compliance, non-compliance, or conditional approval.

Subsection (c) (3) and subsections (c) (3) (A) through (D)

Similar to the description under Subsection (b) (3), Subsection (c) (3) outlines the three specific determinations that the department may make on a submitted annual report, while subsections (b) (3) (A) through (D) outline what each of these determinations mean. This is necessary to clarify the impacts of a determination of compliance, non-compliance, and conditional approval.

§18953. Stewardship Plan Approval Criteria.

Section 18953 is necessary to clarify what information must be provided to the department in any submitted plan. The stewardship plan must include all elements specifically called for in PRC Section 48703. Additionally, for the department to adequately assess the funding mechanism for the plan, as required under PRC Section 48703 (b), information on categories of expenditures that the department anticipates are highly likely, or that the department feels will be reasonably necessary to effectuate the purpose of the legislation, as articulated under PRC Section 48702, are also required. Moreover, because certain elements are required to be reported to the department under PRC Section 48705, it is reasonably necessary that a manufacturer or stewardship organization have a baseline in their plan relative to their stated goals such that results can be better understood in the annual report.

Subsection (a)

Subsection (a) is necessary to clarify what information the stewardship plan must contain and what criteria the department will use in evaluating the plan for approval, disapproval, or conditional approval.

Subsection (a) (1)

Subsection (a) (1) specifies contact information that must be submitted to the department. This subsection is necessary to allow the department to verify the information submitted by a stewardship organization and make it easy to identify who is submitting the plan and therefore in compliance with that element of PRC Section 48703. It also allows manufacturers or stewardship organizations to provide updates to their lists of participating manufacturers and brands instead of submitting a complete list each time an update occurs so that the department can comply with PRC Section 48702 (c) (1). This is intended to streamline the update process for both manufacturers and the department, and will subsequently enable retailers to be informed more quickly of any changes and make adjustments to the products they sell such that they can

comply with PRC Section 48702 (d).

Subsection (a) (2)

Statute requires manufacturers or stewardship organizations to establish goals to, "…reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life management of postconsumer paint, including recovery and recycling of postconsumer paint, as practical..." (PRC Section 48703 (d).) Subsection (a) (2) is reasonably necessary because it specifies what should be included when describing the program goals and factors that may be considered when determining program goals. Per PRC Section 48703 (d), the baseline should be based on the status of household hazardous waste management in California at the time of plan submission, which is available through CalRecycle Form 303 data collected and posted online annually. A baseline is also reasonably necessary for the manufacturer or stewardship organization to provide meaningful data measuring the effectiveness of, and performance in the implementation of, the plan in their annual report, as is required under PRC Section 48705 (a) (1), (2) and (5).

Subsections (a) (2) (A) through (D)

Subsections (a) (3) (A) through (D) are necessary as a manufacturer or stewardship organization must align their program goals with the broadly-stated statutory program goals as described in PRC Section 48702 (a) and in uncodified Section 1 of AB 1343. Subsection (a) (3) (D) also clarifies that a manufacturer or stewardship organization need only report on paint container management and market development activities to the extent that they choose to participate in those activities.

Subsection (a) (3)

Subsection (a) (3) is necessary because it requires a manufacturer or stewardship organization to describe the system that they are proposing to properly manage postconsumer architectural paint.

Subsections (a) (3) (A) through (F)

Subsections (a) (3) (A) through (F) specify information relevant to a program's collection system that must be included in a stewardship plan. This information is required to allow the department to verify that a stewardship program provides statewide coverage, manages postconsumer paint in a proper manner, has provided opportunities for coordination with both existing programs and retailers, and has sufficient funding.

Subsection (a) (3) (A)

Subsection (a) (3) (A) is needed to inform the department of the methods that will be used for postconsumer architectural paint collection, by type. The department finds that it is reasonably necessary to identify the management activities by type. The legislature identified in Section 1, Subsection (b), of AB 1343 that it recognized that different types of architectural paint had different characteristics; "The Department of Toxic Substances Control has deemed latex paint as presumed hazardous in California and oil-based paint is characteristically hazardous, making both latex and oil-based prohibited from disposal in California." The department is required to ensure that the assessment amount is sufficient to recover, but not exceed, the cost of the program; thus, the department needs to know how the management of the different paint types will affect the program cost.

Subsection (a) (3) (B)

Subsection (a) (3) (B) is needed to inform the department how the postconsumer architectural collected will be managed. Destination and individual processing information is reasonably necessary by type, as described above.

Subsection (a) (3) (C)

Subsection (a) (3) (C) is needed to inform the department how the manufacturer or stewardship organization intends to inform and train their service providers that are acting as collection points on the proper management of postconsumer architectural paint in order to demonstrate how the manufacturer or stewardship organization is managing the end-of-life of postconsumer architectural paint in an environmentally

sound fashion, per PRC Section 48702 (a). Stakeholders lobbied for and passed through Stats. 2011, c 603 (A.B. 408), Health and Safety Code Section 25217.2.1, which, in part, allows collection locations established under this architectural paint recovery program, if they accept recyclable latex paint "stored and handled in a manner that minimizes the chance of exposing the handler and the environment to potentially hazardous constituents that may be in, or have been incidentally added to, the recyclable latex paint", to accept oil-based paint under specified conditions. It is likely that some parties intend to seek this exception, through a manufacturer or stewardship organization, through PRC Section 48703 (f), since it is reasonably foreseeable that some collection points will require safety or processing training, and that a manufacturer or stewardship organization may be involved in providing some or all of this training as it relates to their management program. For the department to adequately assess the funding mechanism for the plan, as required under PRC Section 48703 (b), information is required on categories of expenditures, like training, that the department anticipates are highly likely, or that the department feels will be reasonably necessary to effectuate the purpose of the legislation, as articulated under PRC Section 48702.

Subsection (a) (3) (D)

Subsection (a) (3) (D) is needed to ensure that all residents of California who are paying the assessment have the opportunity to use the stewardship program that the assessment is funding such that the costs allocated to any payer bear a fair or reasonable relationship to the benefits received from the paint stewardship program they are funding. PRC Section 48703 (b) (3), requires that the stewardship assessment be added by the retailer to the price of all architectural paint sold in California, therefore it is reasonably necessary to identify that the individual "consumer", PRC Section 48701 (b), should be the focus of services provided.

Subsection (a) (3) (E)

Subsection (a) (3) (E) is needed to clarify the terms of household hazardous waste collection program participation under PRC Section 48703 (c). Participation as a collection site in a product stewardship program is voluntary on the part of existing local

household hazardous waste programs, and while a manufacturer or stewardship organization must attempt to establish an agreement with those programs that wish to participate, any agreement formed must be mutually agreeable and reasonably feasible among all parties.

Subsection (a) (3) (F)

Subsection (a) (3) (F) is needed to clarify the terms of retailer participation under PRC Section 48703 (f). Retailer participation as a collection point in a product stewardship program is voluntary on the part of the retailer, and while manufacturers must make reasonable efforts to establish an agreement with those retailers that wish to participate, through some form of negotiation, any agreement formed must be mutually agreeable and reasonably feasible among all parties.

Subsection (a) (4)

Subsection (a) (4) sets forth criteria to be met when a manufacturer or stewardship organization describes their financing mechanism. Statute requires the financing mechanism to provide sufficient funding to recover, but not exceed, the cost of the paint stewardship program, including the administrative, operational, and capital costs. This subsection is strictly necessary under PRC Section 48703 (b)(1), which must be assessed by the department pursuant to PRC Section 48703 (b)(4) to ensure that the residents of California are not overcharged for the services.

Subsection (a) (4) (A)

Subsection (a) (4) (A) is necessary because the manufacturer or stewardship organization must identify the amount of the assessment, charged on each container of paint, recommended to the department for approval.

Subsection (a) (4) (B)

Subsection (a) (4) (B) is necessary because the manufacturer or stewardship organization must identify the total amount of the assessment and specify a budget for

the program that includes revenue estimates from the assessment, operational costs, and administrative costs. This subsection is necessary to ensure that the assessment will recover, but not exceed, the cost of the program as required under PRC Section 48703 (b) (4). This subsection is also necessary to ensure adequate funding to pay the annual administrative fee as required under PRC Section 48704 (e).

Subsection (a) (4) (C)

Subsection (a) (4) (C) ensures that revenues and expenditures are allocated in a manner that is in accordance with Generally Accepted Accounting Principles (GAAP) as a means of adequately tracking program revenue and expenditures. This is reasonably necessary to assist the department in ensuring the assessment is appropriate as required under PRC Section 48703 (b) (4) and provides clarity and consistency with annual report requirements. The authoritative source of guidance for these principles can be found at the following website: http://www.fasab.gov/accounting-standards/authoritative-source-of-gaap/

Subsection (a) (5)

Subsection (a) (5) requires a description of the methods of education and outreach to consumers, contractors, and retailers that will be used. This is necessary because educational materials must be provided, for reproduction, to include consumers, contractors, and retailers under PRC Section 48703 (e) (2). While education and outreach to consumers and contractors is optional, it is reasonably foreseeable that it will be necessary to provide some education and outreach materials to other stakeholders like consumers and contractors in order to help promote participation in achieving the purposes of the stewardship plan. Additionally, the department finds that it is likely that some materials may be provided by the manufacturer or stewardship organization to parties other than retailers. Some description of the scope of this activity is needed for the department to adequately assess the funding mechanism for this part of the plan, as is required under PRC Section 48703 (b).

This subsection is also necessary as it prohibits manufacturers or stewardship organizations from promoting a collection point as being part of their stewardship program if it is not participating, as this could place an undue burden on those collection points which may not be prepared for increased costs and volumes resulting from such advertisement. Additionally, this is consistent with the requirement in PRC Section 48703 (c), that coordination with household hazardous waste collection programs be "mutually agreeable".

Subsection (a) (6)

Subsection (a) (6) is necessary because it clarifies stakeholders other than local household hazardous waste collection programs that could be beneficial for a manufacturer or stewardship organization to consult with during plan development.

Subsection (b)

Subsection (b) is necessary to inform manufacturers and stewardship organizations that information may be needed for the department to approve a plan as required under the California Environmental Quality Act.

Section §18954. Annual Report Compliance Criteria.

Section 18954 is necessary because the department must establish a consistent statewide set of standards for meeting the reporting requirements so that the manufacturer or stewardship organization can submit an annual plan reporting its architectural paint recovery efforts as required under PRC Section 48705. Additionally, pursuant to PRC Section 48705 (d), the department is required to ensure that the manufacturer or stewardship organization implement "the approved plan", per PRC Section 48705 (c), and not some other unapproved program. Therefore, it is reasonably necessary for the department to obtain sufficient information to determine that the plan was fully implemented and activities not related to the California Architectural Paint Recovery Program were not funded from the stewardship assessment.

Subsection (a)

Subsection (a) is necessary because it allows the department, through its oversight authority, to issue a finding of compliance, non-compliance, or conditional approval of the manufacturer or stewardship organization's annual report, while providing the regulated community with a consistent statewide set of standards for meeting the reporting requirements of PRC section 48705.

Subsection (a) (1)

Subsection (a) (1) is necessary to allow the department to identify the manufacturer or stewardship organization submitting the annual report to verify compliance with statute.

Subsection (a) (2)

Subsection (a) (2) is necessary because it provides a brief summary of the stewardship program as a whole, provides valuable context for the data and information provided later in the plan, and helps the department form a general impression so that it can determine if the manufacturer or stewardship organization implemented the plan as approved.

Subsection (a) (3)

Subsection (a) (3) is necessary because it requires manufacturers or stewardship organizations to describe the system that they are implementing to properly manage postconsumer architectural paint in greater detail than was provided under Subsection (a) (2).

Subsections (a) (3) (A) through (D)

Subsections (a) (3) (A) through (D) specify details about the stewardship program infrastructure and elements that must be included in an annual report under PRC Section 48705 (a). Additionally, this information is required to ensure that a stewardship

program is providing statewide coverage and managing postconsumer paint in a proper manner for the reasons previously discussed above. In response to OAL's Decision of Disapproval of Regulatory Action, received by CalRecycle on April 13, 2012, CalRecycle corrected a citation in subsection (a)(3)(D) from, "…§18953 (a) (4) (E) and (F)…" to "…§18953 (a) (3) (E) and (F)…".

Subsection (a) (4)

Subsection (a) (4) corresponds to section 18953 (a) (2) of the regulation and requires a description of goals and activities based on the stewardship plan.

Subsection (a) (4) (A)

Subsection (a) (4) (A) is necessary to ensure that the department is aware of how much architectural paint is sold, per PRC Section 48705 (a) (1). This information will aid the department in its program oversight role.

Subsection (a) (4) (B)

Subsection (a) (4) (B) is necessary to inform the department how much postconsumer architectural was recovered, per PRC Section 48705 (a) (2). This information will aid the department in its program oversight role.

Subsection (a) (4) (C)

Subsection (a) (4) (C) is required under PRC Section 48705 (a) (3) and is reasonably necessary to inform the department how the manufacturer or stewardship organization is managing the postconsumer architectural paint received. Names and corporate addresses for each contracted processor and estimated volumes for each disposition method are necessary to ensure "proper" management of postconsumer paint, as required under PRC Section 48703 (d), as household hazardous waste facilities often maintain liability for materials that they collect. Disposition volumes may be reported in statewide aggregated form and do not require information to be broken down by jurisdiction, as is described under PRC 48704 (b). The names and corporate addresses

of contracted processors used by a manufacturer or stewardship organization do not need to be associated with specific estimated volumes of paint processed. The department's previous experience with electronic waste has also shown a need for the department to track the ultimate disposition of potentially hazardous wastes.

Subsection (a) (5)

Subsection (a) (5) corresponds to subsection 18953 (a)(4) in the stewardship plan and is necessary because it fulfills statutory requirements under PRC Section 48705 (a) (5), for a manufacturer or stewardship organization relevant to how its program's financing mechanism operated and because it assists the department in its assessment oversight role. It also requires that a manufacturer or stewardship organization indicate how they will keep funds used for the California paint stewardship program separate from funds used for other activities, thus ensuring that the revenue generated through the assessment is used only for the California paint stewardship program, as required under PRC Section 48703 (b) (4). This subsection is also necessary because any changes in the amount of the paint stewardship assessment will impact the implementation of the plan and must be approved by the department prior to implementation, also required under PRC Section 48703 (a) (4).

Subsections (a) (5) (A) through (I)

Subsections (a) (5) (A) through (I) are necessary to assist the department in its assessment oversight role to ensure that the assessment is appropriate to cover the costs of implementing the plan as required under PRC Section 48703 (a) (4).

Subsection (a) (6)

Subsection (a) (6) corresponds to section 18953 (a) (5) in the stewardship plan and is necessary so that a manufacturer or stewardship organization may explain the education and outreach that it provided to consumers, contractors, and retailers to help promote their participation and achieve the purposes of the paint stewardship plan. Method(s) used to determine effectiveness of education and outreach are to be reported

on if they are applicable, and the regulations do not mandate any specific methods be used. This information will give the department an idea if the plan, and expenditure of assessment derived funding, was carried out as required under PRC Section 48704 (c). In response to OAL's Decision of Disapproval of Regulatory Action, received by CalRecycle on April 13, 2012, CalRecycle corrected a citation in this subsection from, "…§48703 (b) (4) (e)…" to "…§48703 (e)…".

Subsections (a) (6) (A) through (D)

Subsections (a) (6) (A) through (D) are necessary, as described above, because they describe the types of education and outreach materials that may be used to promote the paint stewardship program. Subsections (a) (6) (A) through (C) repeat statute and are included here for reference and so that the department may readily verify a manufacturer or stewardship organization's compliance with statute.

Subsection (a) (7)

Subsection (a) (7) is necessary because this subsection clarifies how the independent financial audit funded by the paint stewardship assessment, as required by Public Resources Code Section 48705 (a) (6), must be conducted in order to ensure the validity of its results for all manufacturers or stewardship organizations. These requirements will also ensure that funds are disbursed appropriately and solely for the implementation of the program.

Subsections (a) (7) (A) through (D)

Subsections (a) (7) (A) through (D) are necessary because they describe what materials are to be provided from an independent financial audit, which will aid the department in its evaluation of the assessment for the program as required under PRC Section 48705 (b). The Generally Accepted Accounting Principles referenced in the regulation can be found online at http://www.fasab.gov/accounting-standards/authoritative-source-of-gaap/.

§ 18955. Civil Penalties.

Section 18945 is necessary to clarify that, under PRC Section 48704 (d) and (f), the department may impose civil penalties for violation of the law for violations of the chapter by any entity and to describe what entities would be subject to specific penalties. In order to have an effective program and to maintain a level playing field for all participants, the department must effectively enforce the law. These civil penalties are necessary for the enforcement of the law.

Subsection (a)

Subsection (a) is necessary to describe which manufacturers and stewardship organizations are subject to penalties under the law, and to specify that manufacturers are individually subject to civil penalties if their stewardship organization fails to comply. As previously stated [18951(c)], recycled paint given away by government programs that filter or process postconsumer paint for free shall not be subject to the assessment as they are not offering the paint for sale.

Subsection (b)

Subsection (b) clarifies that if a manufacturer has supplied true and accurate information, the manufacturer is not subject to penalties for any violations of the law caused by a stewardship organization failing to report true and accurate information. This is to prevent the manufacturer from being subject to a penalty as the result of another party's non-compliant actions. If a manufacturer relies on information that is clearly false or should not reasonably have been relied upon, such information would not be the "direct cause" of a failure to comply with the requirements of PRC Sections 48700 et. seq. or these regulations. A manufacturer will still be subject to penalties if the false information is not the direct cause of its failure to comply.

Subsection (c)

Subsection (c) clarifies that if a stewardship organization is found to be in violation of the law for submitting false or misleading information, it is not subject to penalties if it

can demonstrate the false or misleading information came from a manufacturer. This is to prevent the stewardship organization from being subject to a penalty as the result of another party's non-compliant actions.

Subsection (d)

Subsection (d) is necessary to clarify which retailers are subject to penalties under the law.

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

Section 18955.1 is necessary to clarify Section 18955 and is generally necessary for the same reasons articulated above. In response to OAL's Decision of Disapproval of Regulatory Action, received by CalRecycle on April 13, 2012, CalRecycle corrected a citation in Base Penalty Table 1 of this subsection from, "…18952 (b) (2)…" to "…18952 (b) (3)…".

Subsections (a) (1) (A) through (C)

Subsections (a) (1) (A) through (C) are needed to explain how the Base Penalty Table I identifies and categorizes various types of violations subject to civil penalties for stewardship organizations and manufacturers.

Base Penalty Table I is necessary because it identifies the various types of violations subject to civil penalties for stewardship organizations and manufacturers. It also describes the severity level of each violation. The department needs to identify violations that impede proper implementation of, or negatively affect, the program.

Subsections (a) (2) (A) through (C)

Subsections (a) (2) (A) through (C) are needed to explain how the Base Penalty Table II identifies and categorizes various types of violations subject to civil penalties for retailers.

Base Penalty Table II is necessary because it identifies the various types of violations subject to civil penalties for retailers. It also describes the severity level of each violation. The department needs to identify violations that impede proper implementation of or negatively affect the program.

Subsections (b) (1) through (3)

Subsections (b) (1) through (3) are necessary to establish the base penalty range within which the department may set a penalty amount consistent with PRC Section 48704 (f).

Subsection (c)

Subsection (c) is necessary to clarify that penalties will only exceed $1,000 per day if a person intentionally, knowingly, or negligently violates this Article.

Subsection (d)

Subsection (d) is necessary to describe how the department will determine the final penalty amount for violations.

Subsection (e)

Subsection (e) is necessary to clarify that the limits which will apply to aggregated penalties for multiple violations are consistent with PRC Section 48704 (f).

§ 18955.2. Criteria to Impose a Civil Penalty.

Section 18955.2 is necessary to clarify Section 18955 and is generally necessary for the same reasons articulated above.

Subsections (a) through (k)

Subsections (a) through (k) describe the various factors that the department may take into consideration when determining the amount of a civil penalty. This is necessary to inform the public of what elements will be considered when the department sets penalty amounts.

§ 18955.3 Procedure for Imposing Civil Penalties.

Section 18955.3 is necessary to clarify Section 18955 and is generally necessary for the same reasons articulated above.

Subsection (a)

Subsection (a) describes the procedures for administering civil penalties. This is necessary as it informs the public of the due process that is to be followed.

Subsections (b) (1) through (3)

Subsections (b) (1) through (3) describe how entities may be informed of actions taken against them for civil penalties under the law. This is necessary as it describes an element of due process to be followed.

Subsection (c)

Subsection (c) describes how civil penalties are to be imposed. This is necessary as it informs the public of the due process that is to be followed.

§18956. Record Keeping Requirements

Subsection (a)

Subsection (a) sets forth that manufacturers and retailers will be required to compile, maintain, and make existing records available to the department to demonstrate compliance with the Architectural Paint Recovery Program. Since manufacturers and

retailers are subject to enforcement from the department, under PRC Section 48704 (d), authority to require maintenance and production of records is implied. This section is reasonably necessary to provide clear, statewide standards regarding recordkeeping for the regulated community. This section is also necessary to ensure that specific data are maintained by manufacturers and retailers that will allow the department to evaluate compliance with the Architectural Paint Recovery Program.

Subsections (a) (1) through (4)

Subsections (a) (1) through (4) outline specific records that retailers must maintain. This is necessary to ensure that data necessary for the department to evaluate compliance under PRC Section 48702 (c).

Subsection (b)

Subsection (b) specifies that manufacturers and retailers must give the department reasonable and timely access to their facilities, operations, and any relevant records upon request and retain records for three years after the submission of the plan and annual report required by this article. This subsection is necessary to ensure the department is given access to all the information it needs to be able to evaluate compliance with, and the overall effectiveness of, PRC section 48700 et seq.

Subsection (c)

Subsections (c) is necessary to ensure the department is given access to all the information it needs to be able to evaluate compliance with, and the overall effectiveness of PRC section 48700 et seq.

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

Section 18957 is necessary to make clear to manufacturers, stewardship organizations, and retailers that data and information that is confidential, proprietary, or a trade secret will be handled appropriately by the department and will not be released to the public or

any competitor. This subsection refers to the department's existing process for handling and maintenance of confidential, proprietary, or trade secret information.

§18958. Service Payments to Department of Resources Recycling and Recovery.

Section 18958 is necessary to establish timing and administrative procedures for the payment of the department's annual administrative fee under PRC Section 48704 (e).

Subsection (a)

Subsection (a) is necessary as it clarifies PRC Section 48704 (e) (2) by specifying the types of department costs relevant to administer and enforce the requirements of this chapter for each fiscal year and the timing for approval of the administrative fee.

Subsection (b)

Subsection (c) is necessary to clarify how the annual administrative fee will be allocated amongst different entities in the event that there is more than one approved or conditionally-approved stewardship plan.

Subsection (c)

Subsection (b) is necessary to clarify when the department will issue invoices and when payment is due to the department.

STAKEHOLDER COMMENTS ON REGULATIONS

In response to OAL's Decision of Disapproval of Regulatory Action, received by CalRecycle on April 13, 2012, and in order to ensure that CalRecycle has provided a summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reason for making no change, CalRecycle is incorporating, by reference, all comments

matrices from the 45-day comment period through the fourth 15-day comment period, including the addendum to the 45-day comment period matrix.

REFERENCE AND AUTHORITY

In response to OAL's Decision of Disapproval of Regulatory Action, received by CalRecycle on April 13, 2012, and in order to ensure that there is a listing of "…the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations," CalRecycle made specific the reference and authority sections throughout.