

PUBLIC RESOURCES CODE - PRC

DIVISION 30. WASTE MANAGEMENT [40000 - 49620] (Division 30 added by Stats. 1989, Ch. 1096, Sec. 2.)

PART 7. OTHER PROVISIONS [47000 - 48706] (Part 7 added by Stats. 1989, Ch. 1095, Sec. 22.)

CHAPTER 5. Architectural Paint Recovery Program [48700 - 48706] (Chapter 5 added by Stats. 2010, Ch. 420, Sec. 2.)

48700. The purpose of the architectural paint recovery program established pursuant to this chapter is to require paint manufacturers to develop and implement a program to collect, transport, and process postconsumer paint to reduce the costs and environmental impacts of the disposal of postconsumer paint in this state.

(Added by Stats. 2010, Ch. 420, Sec. 2. Effective January 1, 2011.)

48701. For purposes of this chapter, the following terms have the following meanings:

(a) "Architectural paint" means interior and exterior architectural coatings, sold in containers of five gallons or less for commercial or homeowner use, but does not include aerosol spraypaint or coatings purchased for industrial or original equipment manufacturer use.

(b) "Consumer" means a purchaser or owner of architectural paint, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(c) "Department" means the Department of Resources Recycling and Recovery.

(d) "Distributor" means a person that has a contractual relationship with one or more manufacturers to market and sell architectural paint to retailers.

(e) "Manufacturer" means a manufacturer of architectural paint.

(f) "Postconsumer paint" means architectural paint not used by the purchaser.

(g) "Retailer" means a person that sells architectural paint in the state to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means.

(h) "Stewardship organization" means a nonprofit organization created by the manufacturers to implement the architectural paint stewardship program described in Section 48703.

(Amended by Stats. 2011, Ch. 603, Sec. 16. Effective October 8, 2011.)

48702. (a) A manufacturer of architectural paint sold in this state shall, individually or through a stewardship organization, submit an architectural paint stewardship plan to the department to develop and implement a recovery program to reduce the generation of postconsumer architectural paint, promote the reuse of

postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal.

(b) (1) A manufacturer or retailer shall not sell or offer for sale in this state architectural paint to any person in this state unless the manufacturer is in compliance with this chapter.

(2) The sales prohibition in paragraph (1) shall be effective on the 120th day after the notice described in subdivision (c) is posted on the department's Internet Web site, and shall apply to any manufacturer that is not listed on the department's Internet Web site, and shall remain in effect until the manufacturer is listed on the department's Internet Web site or can demonstrate compliance as described in paragraph (2) of subdivision (c).

(c) (1) On July 1, 2012, or upon the date the first plan is approved, whichever date is earlier, the department shall post on its Internet Web site a list of manufacturers for which the department has approved a plan pursuant to subdivision (a) of Section 48704. The department shall update this posting no less than once every six months thereafter. On and after April 1, 2013, the department shall post a notice on its Internet Web site listing manufacturers that are in compliance with this chapter pursuant to subdivision (b) of Section 48705 and shall update this posting no less than once every six months.

(2) A manufacturer that is not listed on the department's Internet Web site pursuant to this section, but demonstrates to the satisfaction of the department that it is in compliance with this chapter before the next notice is required to be posted pursuant to this section, may request a certification letter from the department stating that the manufacturer is in compliance. The manufacturer who receives that letter shall be deemed to be in compliance with this chapter.

(d) A wholesaler or a retailer that distributes or sells architectural paint shall monitor the department's Internet Web site to determine if the sale of a manufacturer's architectural paint is in compliance with this chapter.

(Added by Stats. 2010, Ch. 420, Sec. 2. Effective January 1, 2011.)

48703. (a) On or before April 1, 2012, a manufacturer or designated stewardship organization shall submit an architectural paint stewardship plan to the department.

(b) (1) The plan shall demonstrate sufficient funding for the architectural paint stewardship program as described in the plan, including a funding mechanism for securing and dispersing funds to cover administrative, operational, and capital costs, including the assessment of charges on architectural paint sold by manufacturers in this state.

(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.

(3) The architectural paint stewardship assessment shall be added to the cost of all architectural paint sold to California retailers and distributors, and each California retailer or distributor shall add the assessment to the purchase price of all architectural paint sold in the state.

(4) The architectural paint stewardship assessment shall be approved by the department as part of the plan, and shall be sufficient to recover, but not exceed, the cost of the architectural paint stewardship program. The plan shall require that any surplus funds be put back into the program to reduce the costs of the program, including the assessment amount.

(c) The plan shall address the coordination of the architectural paint stewardship program with existing local household hazardous waste collection programs as much as this is reasonably feasible and is mutually agreeable between those programs.

(d) The plan shall include goals established by the manufacturer or stewardship organization 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, based on current household hazardous waste program information. The goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report.

(e) The plan shall include consumer, contractor, and retailer education and outreach efforts to promote the source reduction and recycling of architectural paint. This information may include, but is not limited to, developing, and updating as necessary, educational and other outreach materials aimed at retailers of architectural paint. These materials shall be made available to the retailers. These materials may include, but are not limited to, one or more of the following:

(1) Signage that is prominently displayed and easily visible to the consumer.

(2) Written materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery, or both. Written materials shall include information on the prohibition of improper disposal of architectural paint.

(3) Advertising or other promotional materials, or both, that include references to architectural paint recycling opportunities.

(f) 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.

(Amended by Stats. 2011, Ch. 603, Sec. 17. Effective October 8, 2011.)

48704. (a) The department shall review the plan within 90 days of receipt, and make a determination whether or not to approve the plan. The department shall approve the plan if it provides for the establishment of a paint stewardship program that meets the requirements of Section 48703.

(b) (1) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by a manufacturer or the stewardship organization is not a public record under the California Public Records Act, as described in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection.

(2) Notwithstanding paragraph (1), the department may release a summary form of financial, production, or sales data if it does not disclose financial, production, or sales data of a manufacturer or stewardship organization.

(c) On or before July 1, 2012, or three months after a plan is approved pursuant to subdivision (a), whichever date is later, the manufacturer or stewardship organization shall implement the architectural paint stewardship program described in the approved plan.

(d) The department shall enforce this chapter.

(e) (1) The stewardship organization shall pay the department a quarterly administrative fee pursuant to paragraph (2).

(2) The department shall impose fees in an amount that is sufficient to cover the full administrative and enforcement costs of the requirements of this chapter, including any program development costs or regulatory costs incurred by the department prior to the submittal of the stewardship plans. The stewardship organization shall pay the fee on or before the last day of the month following the end of each quarter. Fee revenues collected under this section shall only be used to administer and enforce this chapter.

(f) (1) A civil penalty may be administratively imposed by the department on any person who violates this chapter in an amount of up to one thousand dollars (\$1,000) per violation per day.

(2) A person who intentionally, knowingly, or negligently violates this chapter may be assessed a civil penalty by the department of up to ten thousand dollars (\$10,000) per violation per day.

(Amended by Stats. 2013, Ch. 356, Sec. 34. Effective September 26, 2013.)

48704.1. (a) The Architectural Paint Stewardship Account and the Architectural Paint Stewardship Penalty Subaccount are hereby established in the Integrated Waste Management Fund created pursuant to Section 40135.

(b) All fees collected by the department pursuant to this chapter shall be deposited in the Architectural Paint Stewardship Account and may be expended by the department, upon appropriation by the Legislature, to cover the department's costs to implement this chapter.

(c) All civil penalties collected pursuant to this chapter shall be deposited in the Architectural Paint Stewardship Penalty Subaccount and may be expended by the department, upon appropriation by the Legislature, to cover the department's costs to implement this chapter.

(Added by Stats. 2011, Ch. 573, Sec. 3. Effective January 1, 2012.)

48705. (a) On or before November 1, 2016, 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 fiscal year.
- (2) The total volume of postconsumer architectural paint recovered in this state during the preceding fiscal year.
- (3) A description of methods used to collect, transport, and process postconsumer architectural paint in this state.
- (4) The total cost of implementing the architectural paint stewardship program.
- (5) An evaluation of how the architectural paint stewardship program's funding mechanism operated.
- (6) An independent financial audit funded from the paint stewardship assessment.
- (7) Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years.

(b) The department shall review the annual report required pursuant to this section and within 90 days of receipt shall adopt a finding of compliance or noncompliance with this chapter.

(Amended by Stats. 2015, Ch. 453, Sec. 2. Effective January 1, 2016.)

48706. (a) Except as provided in subdivision (c), an action solely to increase the recycling of architectural paint by a producer, stewardship organization, or retailer that affects the types or quantities being recycled, or the cost and structure of any return program, is not a violation of the statutes specified in subdivision (b).

(b) The following statutes are not violated by an action specified in subdivision (a):

- (1) The Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).
- (2) The Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

(c) Subdivision (a) shall not apply to any agreement establishing or affecting the price of paint, except for the architectural paint stewardship assessment, or the output or production of paint, or any agreement restricting the geographic area or customers to which paint will be sold.

(Added by Stats. 2010, Ch. 420, Sec. 2. Effective January 1, 2011.)