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SB-1143 Paint products: stewardship program. (2023-2024)

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Senate Bill No. 1143

CHAPTER 989

An act to amend Section 17580 of the Business and Professions Code, to amend Sections 25217.2.1, 25404, 25507, and 25513 of the Health and Safety Code, and to amend Sections 42041, 48700, 48701, 48704, and 48705 of, to amend the heading of Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of, to add Sections 48701.1, 48703.1, 48703.2, 48703.3, 48703.4, 48703.5, 48705.1, 48706.1, and 48706.2 to, and to repeal and add Sections 48702, 48703, 48704.1, and 48706 of, the Public Resources Code, relating to paint products.

[Approved by Governor September 29, 2024. Filed with Secretary of State September 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1143, Allen. Paint products: stewardship program.

(1) Existing law establishes the architectural paint recovery program, which is administered by the Department of Resources Recycling and Recovery (CalRecycle) and requires a manufacturer or designated stewardship organization to develop and implement a stewardship plan. Existing law requires the stewardship plan to include a recovery program to reduce the generation of, promote the reuse of, and manage the end-of-life of, postconsumer architectural paint, as provided. Existing law prohibits a manufacturer or retailer from selling or offering for sale architectural paint in the state unless the manufacturer is in compliance with the program. Existing law requires the stewardship organization to pay to CalRecycle quarterly administrative fees to cover CalRecycle's full administrative and enforcement costs of the program, as provided. Existing law authorizes CalRecycle to impose a civil penalty on any person in violation of the program, as specified. Existing law authorizes CalRecycle to adopt regulations to implement the program. Existing law establishes the Architectural Paint Stewardship Account and the Architectural Paint Stewardship Penalty Subaccount in the Integrated Waste Management Fund for the deposit of fees and civil penalties, respectively, imposed pursuant to the program and makes moneys in the account and subaccount available upon appropriation by the Legislature for purposes of the program.

This bill would revise and recast the architectural paint recovery program as the paint product recovery program. The bill would expand the scope of the stewardship program from architectural paint to paint products, and thereby subject paint products to the requirements of the program. The bill would define "paint product" to mean architectural coatings, aerosol coating products, nonindustrial coatings, and coating-related products, as provided. The bill would exempt aerosol coating products, coating-related products, and nonindustrial coatings added to the stewardship program by the bill from the requirements of the program until January 1, 2028, or the approved stewardship plan's implementation date for those products, whichever occurs sooner, as specified. Among other changes, the bill would require a manufacturer, individually or through a stewardship organization, to review its plan at least every 5 years after approval by CalRecycle and determine whether amendments to the plan are necessary. The bill would rename the account for the deposit of fees the Paint Product Stewardship Account and would rename the subaccount for the deposit of civil penalties the Paint Product Stewardship Penalty Subaccount. The bill would make conforming changes.

The bill would require all reports and records stewardship plans, annual reports, and other submissions to CalRecycle required pursuant to the requirements of the program to be signed under penalty of perjury. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17580 of the Business and Professions Code is amended to read:

17580. (a) A person who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of such terms as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, or through the use of a chasing arrows symbol or by otherwise directing a consumer to recycle the consumer good, shall maintain in written form in its records all of the following information and documentation supporting the validity of the representation:

(1) The reasons the person believes the representation to be true.

(2) Any significant adverse environmental impacts directly associated with the production, distribution, use, and disposal of the consumer good.

(3) Any measures that are taken by the person to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.

(4) Violations of any federal, state, or local permits directly associated with the production or distribution of the consumer good.

(5) Whether, if applicable, the consumer good conforms with the uniform standards contained in the Federal Trade Commission Guidelines for Environmental Marketing Claims for the use of the terms "recycled," "recyclable," "biodegradable," "photodegradable," or "ozone friendly."

(6) If the person uses the term "recyclable," uses a chasing arrows symbol, or otherwise directs a consumer to recycle the consumer good, whether the consumer good meets all of the criteria for statewide recyclability pursuant to subdivision (d) of Section 42355.51 of the Public Resources Code.

(b) Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(c) For purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package shall not be deemed to have made the representation.

(d) It is the intent of the Legislature that the information and documentation supporting the validity of the representation maintained under this section shall be fully disclosed to the public, within the limits of all applicable laws.

(e) For purposes of this section, displaying a chasing arrows symbol or otherwise directing a consumer to recycle a consumer good shall not be considered misleading pursuant to Section 17580.5 or Section 42355.51 of the Public Resources Code if either of the following applies:

(1) The consumer good is required by any federal or California law or regulation to display a chasing arrows symbol, including, but not limited to, Section 103(b)(1) of the federal Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. Sec. 14322(b)(1)) and Section 25215.65 of the Health and Safety Code.

(2) The consumer good is a beverage container subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500) of the Public Resources Code).

(f) For purposes of this section, “chasing arrows symbol” means an equilateral triangle, formed by three arrows curved at their midpoints, depicting a clockwise path, with a short gap separating the apex of each arrow from the base of the adjacent arrow. “Chasing arrows symbol” also includes variants of that symbol that are likely to be interpreted by a consumer as an implication of recyclability, including, but not limited to, one or more arrows arranged in a circular pattern or around a globe.

(g) For purposes of this section, a direction to a consumer to properly dispose of or otherwise properly handle a consumer good at the end of its useful life shall not be considered “otherwise directing a consumer to recycle a consumer good” pursuant to subdivision (a) if both of the following requirements are met:

(1) The consumer good is subject to any of the following programs:

(A) Chapter 20 (commencing with Section 42970) of Part 3 of Division 30 of the Public Resources Code relating to product stewardship for carpets.

(B) The Used Mattress Recovery and Recycling Act (Chapter 21 (commencing with Section 42985) of Part 3 of Division 30 of the Public Resources Code).

(C) The California Tire Recycling Act (Chapter 17 (commencing with Section 42860) of Part 3 of Division 30 of the Public Resources Code).

(D) The Electronic Waste Recycling Act of 2003 (Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code).

(E) Article 10.3 (commencing with Section 25214.9) of Chapter 6.5 of Division 20 of the Health and Safety Code relating to electronic waste.

(F) The Rechargeable Battery Recycling Act of 2006 (Chapter 8.4 (commencing with Section 42451) of Part 3 of Division 30 of the Public Resources Code).

(G) The Cell Phone Recycling Act of 2004 (Chapter 8.6 (commencing with Section 42490) of Part 3 of Division 30 of the Public Resources Code).

(H) The paint product recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.

(I) The Mercury Thermostat Collection Act of 2008 (Article 10.2.2 (commencing with Section 25214.8.10) of Chapter 6.5 of Division 20 of the Health and Safety Code).

(J) The Lead-Acid Battery Recycling Act of 2016 (Article 10.5 (commencing with Section 25215) of Chapter 6.5 of Division 20 of the Health and Safety Code).

(2) The direction to the consumer accurately instructs the consumer to dispose of the consumer good through participation in, and consistent with, one of the programs identified in paragraph (1) as that program applies to the consumer good.

(h) For purposes of this section, directing a consumer to compost or properly dispose of a consumer good through an organics recycling program shall not be considered “otherwise directing a consumer to recycle a consumer good” pursuant to subdivision (a).

SEC. 2. Section 25217.2.1 of the Health and Safety Code is amended to read:

25217.2.1. (a) A location that accepts recyclable latex paint pursuant to Section 25217.2 may also accept oil-based paint if all of the additional following conditions are met:

(1) The collection location is established under a stewardship plan approved by the Department of Resources Recycling and Recovery pursuant to the paint product recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.

(2) The collection location receives oil-based paint only from either of the following:

(A) A person who generates oil-based paint incidental to owning or maintaining a place of residence.

(B) A very small quantity generator.

(3) The oil-based paint is still in liquid form and is in its original packaging or is in a closed container that is clearly labeled.

(4) The location manages the oil-based paint in accordance with the requirements in Section 25217.2.

(5) The collection location operates pursuant to a contract with a manufacturer or stewardship organization that has submitted a stewardship plan that has been approved by the Department of Resources Recycling and Recovery and the collected paint is managed in accordance with that stewardship plan.

(6) The oil-based paint is stored for no longer than 180 days.

(b) Oil-based paint initially collected at a collection location shall be deemed to be generated at the consolidation location for purposes of this chapter, if all of the following apply:

(1) The collection location is established under a stewardship plan in accordance with the requirements of paragraph (1) of subdivision (a).

(2) The oil-based paint is subsequently transported to a consolidation location that is operating pursuant to a contract with a manufacturer or stewardship organization under a stewardship plan approved by the Department of Resources Recycling and Recovery pursuant to the paint product recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.

(3) The oil-based paint is non-RCRA hazardous waste, or is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(c) A permanent household hazardous waste collection facility that accepts recyclable latex paint pursuant to and in compliance with Section 25217.2 and that accepts oil-based paint is not subject to the weight and volume limits on the amount of oil-based paint that may be accepted, pursuant to subdivision (b) of Section 25218.3.

SEC. 3. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 to 25404.2, inclusive. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with a requirement or condition of an applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation, as provided in Section 25110.8.5.

(G) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) "Secretary" means the Secretary for Environmental Protection.

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and permit or authorization requirements under a local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the California Fire Code or the California Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements and, to the maximum extent feasible within statutory constraints, shall ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant to that chapter, that are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(iv) Persons operating a collection location that has been established under a stewardship plan approved by the Department of Resources Recycling and Recovery pursuant to the paint product recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.

(v) A transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, that is operated by a door-to-door household hazardous waste collection program or household hazardous waste residential pickup service, as defined in subdivision (c) of Section 25218.1.

(vi) Persons who receive used oil from consumers pursuant to Section 25250.11.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.86 (commencing with Section 25396) of this division or Part 2 (commencing with Section 78000) of Division 45.

(iii) A remedial action plan approved pursuant to Chapter 6.86 (commencing with Section 25396) of this division or Part 2 (commencing with Section 78000) of Division 45.

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant to that chapter, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program shall not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program shall not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements for the hazardous materials plan and hazardous materials inventory statement of the California Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c).

(2) (A) The secretary shall establish a statewide information management system capable of receiving all data collected by the unified program agencies and reported by regulated businesses pursuant to this subdivision, in a manner that is most cost efficient and effective for both the regulated businesses and state and local agencies. The secretary shall prescribe an XML or other compatible web-based format for the transfer of data from CUPAs and regulated businesses and make all nonconfidential data available on the internet.

(B) The secretary shall establish milestones to measure the implementation of the statewide information management system and shall provide periodic status updates to interested parties.

(3) (A) (i) Except as provided in subparagraph (B), in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge provided for in subdivision (b) of Section 25404.5 by an amount necessary to meet the requirements of this subdivision for a period of three years, to establish the statewide information management system, consistent with paragraph (2). The increase in the oversight surcharge shall not exceed twenty-five dollars (\$25) in any one year of the three-year period. The secretary shall thereafter maintain the statewide information management system, funded by the assessment the secretary is authorized to impose pursuant to Section 25404.5.

(ii) No less than 75 percent of the additional funding raised pursuant to clause (i) shall be provided to CUPAs and PAs through grant funds or statewide contract services, in the amounts determined by the secretary to assist these local agencies in meeting these information management system requirements.

(B) A facility that is owned or operated by the federal government and that is subject to the unified program shall pay the surcharge required by this paragraph to the extent authorized by federal law.

(C) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) No later than three years after the statewide information management system is established, each CUPA, PA, and regulated business shall report program data electronically. The secretary shall work with the CUPAs to develop a phase-in schedule for the electronic collection and submittal of information to be included in the statewide information management system, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the California Emergency Management Agency, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency.

(5) The secretary, in collaboration with the CUPAs, shall provide technical assistance to regulated businesses to comply with the electronic reporting requirements and may expend funds identified in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

SEC. 4. Section 25507 of the Health and Safety Code is amended to read:

25507. (a) Except as provided in this article, a business shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503 if the business meets any of the following conditions at any unified program facility:

(1) (A) It handles a hazardous material or a mixture containing a hazardous material that has a quantity at any one time during the reporting year that is equal to, or greater than, 55 gallons for materials that are liquids, 500 pounds for solids, or 200 cubic feet for compressed gas. The physical state and quantity present of mixtures shall be determined by the physical state of the mixture as a whole, not individual components, at standard temperature and pressure.

(B) For the purpose of this section, for compressed gases, if a hazardous material or mixture is determined to exceed threshold quantities at standard temperature and pressure, it shall be reported in the physical state at which it is stored. If the material is an extremely hazardous substance, as defined in Section 355.61 of Title 40 of the Code of Federal Regulations, all amounts shall be reported in pounds.

(2) It is required to submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code.

(3) It handles at any one time during the reporting year an amount of a hazardous material that is equal to, or greater than, the threshold planning quantity, under both of the following conditions:

(A) The hazardous material is an extremely hazardous substance, as defined in Section 355.61 of Title 40 of the Code of Federal Regulations.

(B) The threshold planning quantity for that extremely hazardous substance listed in Appendices A and B of Part 355 (commencing with Section 355.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations is less than 500 pounds.

(4) (A) It handles at any one time during the reporting year a total weight of 5,000 pounds for solids or a total volume of 550 gallons for liquids, if the hazardous material is a solid or liquid substance that is classified as a hazard for purposes of Section 5194 of Title 8 of the California Code of Regulations solely as an irritant or sensitizer, except as provided in subparagraph (B).

(B) If the hazardous material handled by the facility is a paint that will be recycled or otherwise managed under a paint product recovery program approved by the Department of Resources Recycling and Recovery pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code, the business is required to establish and implement a business plan only if the business handles at any one time during the reporting year a total weight of 10,000 pounds of solid hazardous materials or a total volume of 1,000 gallons of liquid hazardous materials.

(5) It handles at any one time during the reporting year cryogenic, refrigerated, or compressed gas in a quantity of 1,000 cubic feet or more at standard temperature and pressure, if the gas is any of the following:

(A) Classified as a hazard for the purposes of Section 5194 of Title 8 of the California Code of Regulations only for hazards due to simple asphyxiation or the release of pressure.

(B) Oxygen, nitrogen, or nitrous oxide ordinarily maintained by a physician, dentist, podiatrist, veterinarian, pharmacist, or emergency medical service provider at their place of business.

(C) Carbon dioxide or carbon dioxide mixed with simple asphyxiation gases that are classified as a hazard for purposes of Section 5194 of Title 8 of the California Code of Regulations.

(D) A nonflammable refrigerant gas, as defined in the California Fire Code, that is used in a refrigeration system.

(E) A gas that is used in a closed fire suppression system.

(6) It handles a radioactive material at any one time during the reporting year in quantities for which an emergency plan is required to be considered pursuant to Schedule C (Section 30.72) of Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1) of Chapter I of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with these federal regulations.

(7) It handles perchlorate material, as defined in subdivision (c) of Section 25210.5, in a quantity at any one time during the reporting year that is equal to, or greater than, the thresholds listed in paragraph (1).

(8) (A) It handles a combustible metal or metal alloy that is defined as a pyrophoric or water-reactive material in the California Fire Code, in any quantity in raw stock, scrap, or powder form at any time during the reporting year.

(B) It handles a combustible metal or metal alloy that is defined as a combustible dust, flammable solid, or magnesium in the California Fire Code, in a quantity in raw stock, scrap, or powder form at any one time during the reporting year that is equal to, or greater than, 100 pounds.

(C) It handles a combustible metal or metal alloy that poses an explosive potential, when in molten form, in a quantity at any one time during the reporting year that is equal to, or greater than, 500 pounds.

(b) The following hazardous materials are exempt from the requirements of this section:

(1) Refrigerant gases, other than ammonia or flammable gas in a closed cooling system, that are used for comfort cooling for occupancies or space cooling for computer rooms.

(2) Compressed air in cylinders, bottles, and tanks used by fire departments and other emergency response organizations for the purpose of emergency response and safety.

(3) (A) Lubricating oil, if the total volume of each type of lubricating oil handled at a facility does not exceed 55 gallons and the total volume of all types of lubricating oil handled at that facility does not exceed 275 gallons at any one time.

(B) For purposes of this paragraph, "lubricating oil" means oil intended for use in an internal combustion crankcase, or the transmission, gearbox, differential, or hydraulic system of an automobile, bus, truck, vessel, airplane, heavy equipment, or other machinery powered by an internal combustion or electric powered engine. "Lubricating oil" does not include used oil, as defined in subdivision (a) of Section 25250.1.

(4) Both of the following, if the aggregate storage capacity of oil at the facility is less than 1,320 gallons and a spill prevention control and countermeasure plan is not required pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations:

(A) Fluid in a hydraulic system.

(B) Oil-filled electrical equipment that is not contiguous to an electric facility.

(5) (A) A hazardous material that meets the definition of a consumer product and is handled at, and found in, a retail establishment and intended for direct sale to the end user.

(B) The exemption provided for in subparagraph (A) shall not apply to either of the following:

(i) A consumer product handled at a facility that manufactures that product, or a separate warehouse or distribution center where there are no direct sales to consumers, or where a product is dispensed on the retail premises.

(ii) A consumer product sold at a retail establishment that has a National Fire Protection Association or "NFPA" or Hazardous Materials Identification System or "HMIS" rating of 3 or 4 and is stored, at any time, in quantities equal to, or greater than, 165 gallons for a liquid, 600 cubic feet for a gas, and 1,500 pounds for a solid. If a unified program agency determines that a consumer product stored at a retail establishment is stored at or above a reportable threshold listed in subdivision (a), and poses a significant potential hazard, the unified program agency may require the product to be reported in accordance with this chapter.

(6) Propane that is for on-premises use, storage, or both, in an amount not to exceed 500 gallons, that is for the sole purpose of cooking, heating employee work areas, and heating water within that facility, unless the unified program agency finds, and provides notice to the business handling the propane, that the handling of the on-premises propane requires the submission of a business plan, or any portion of a business plan, in response to public health, safety, or environmental concerns.

(7) Liquid or gaseous fuel in fuel tanks on vehicles or motorized equipment. For purposes of this section, the fuel tank shall be integral to the operation of the vehicle or motorized equipment.

(8) Treated wood and treated wood waste, unless the requirement that the facility submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code applies. For the purposes of this section, the definition of “treated wood” set forth in subdivision (c) of Section 25230.1 applies. For the purposes of this section, the definition of “treated wood waste” set forth in subdivision (d) of Section 25230.1 applies. Treated wood or treated wood waste that would otherwise be subject to the requirements of this section pursuant to subparagraph (B) of paragraph (5), is exempt if it satisfies the requirements of this paragraph.

(c) In addition to the authority specified in subdivision (e), the governing body of the unified program agency may, in exceptional circumstances, following notice and public hearing, exempt from Section 25506 a hazardous material, as defined in subdivision (n) of Section 25501, if the unified program agency finds that the hazardous material would not pose a present or potential danger to the environment or to human health and safety if the hazardous material was released into the environment. The unified program agency shall send a notice to the secretary within 15 days from the effective date of any exemption granted pursuant to this subdivision.

(d) A unified program agency, upon application by a handler, may exempt the handler, under conditions that the unified program agency determines to be proper, from any portion of the requirements to establish and maintain a business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment, or affect the ability of the unified program agency and emergency response personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The unified program agency shall specify in writing the basis for any exemption under this subdivision.

(e) A unified program agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this article upon proof that the material does not pose a significant present or potential hazard to human health or safety or to the environment if released into the workplace or environment. The unified program agency shall specify in writing the basis for any exemption under this subdivision.

(f) A unified program agency shall adopt procedures to provide for public input when approving applications submitted pursuant to subdivisions (d) and (e).

SEC. 5. Section 25513 of the Health and Safety Code is amended to read:

25513. (a) Each administering county or city may, upon a majority vote of the governing body, adopt a schedule of fees to be collected from each business required to submit a business plan pursuant to this article that is within its jurisdiction. The governing body may provide for the waiver of fees when a business, as defined in paragraph (3), (4), or (5) of subdivision (c) of Section 25501, submits a business plan. The fee shall be set in an amount sufficient to pay only those costs incurred by the unified program agency in carrying out this article. In determining the fee schedule, the unified program agency shall consider the volume and degree of hazard potential of the hazardous materials handled by the businesses subject to this article.

(b) A unified program agency shall not impose a fee upon a business that is implementing a paint product recovery program approved by the Department of Resources Recycling and Recovery pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code and that is exempt from the business plan requirements pursuant to subparagraph (B) of paragraph (4) of subdivision (a) of Section 25507, for the cost of processing that exemption.

SEC. 6. Section 42041 of the Public Resources Code is amended to read:

42041. For purposes of this chapter, the following definitions apply:

(a) “Advisory board” means the producer responsibility advisory board established pursuant to Section 42070.

(b) “Bulk or large format packaging” means packaging for a large amount of a product in a large packaging, thereby offsetting the need for multiple smaller packaging units for the same amount of product.

(c) “California circular economy administrative fee” means the fee imposed by the department pursuant to Section 42053.5.

(d) “Concentrate” or “concentration” means reducing the amount of packaging needed for a product by reformulating the product to allow for smaller quantities of the product to be used for the same purpose as the previous, larger quantity.

(e) (1) “Covered material” means both of the following:

(A) Single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.

(B) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. For

purposes of this subparagraph, "single-use food service ware" includes both of the following:

- (i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.
- (ii) Wraps or wrappers and bags used in the packaging of food offered for sale or provided to customers by food service establishments.

(2) Notwithstanding paragraph (1), "covered material" does not include any of the following:

(A) Packaging used for any of the following products:

- (i) Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).
- (ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.
- (iii) Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).
- (iv) Infant formula, as defined in Section 321(z) of Title 21 of the United States Code.
- (v) Medical food, as defined in Section 360ee(b)(3) of Title 21 of the United States Code.
- (vi) Fortified oral nutritional supplements used for persons who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the International Classification of Diseases, Tenth Revision, or other medical conditions as determined by the department.

(B) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(C) Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under Part 178 (commencing with Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.

(D) Packaging used to contain hazardous or flammable products classified by the 2012 federal Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200).

(E) Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500)).

(F) Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department.

(G) Packaging associated with paint products, as defined in Section 48701.

(H) (i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

- (I) The covered material is not collected through a residential recycling collection service.
- (II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.
- (III) The covered material is recycled at a responsible end market.
- (IV) Until January 1, 2027, the producer annually demonstrates to the department that the material has had a recycling rate of 65 percent for three consecutive years. On and after January 1, 2027, the producer demonstrates to the department that the material has had a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.

(f) "Covered material category" means a category that includes covered material of a similar type and form, as determined by the department.

(g) "Curbside collection" means a program that includes the collection of material, including, but not limited to, covered materials, by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction.

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

(i) "Disadvantaged community" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section 65302.10 of the Government Code.

(j) "Eliminate" or "elimination," with respect to source reduction, means the removal of a plastic component from a covered material without replacing that component with a nonplastic component.

(k) "Expanded polystyrene" means blown polystyrene and expanded or extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any technique or techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(l) "Lightweighting" means reducing the weight or amount of material used in a specific packaging or food service ware without functionally changing the packaging or food service ware. "Lightweighting" does not include changes that result in a recyclable or compostable covered material becoming nonrecyclable or noncompostable or less likely to be recycled or composted.

(m) "Local jurisdiction" means a city, county, city and county, regional agency formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code or Article 3 (commencing with Section 40970) of Chapter 1 of Part 2, or special district that provides solid waste collection services.

(n) "Low-income community" means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.

(o) "Malus fee" means a charge imposed by a PRO on a participant producer for a covered material due to the adverse environmental or public health impacts of the covered material.

(p) "Materials recovery facility" or "MRF" means a recycling facility that receives recyclable material, including, but not limited to, any covered material, for mechanical or manual sorting into specification-grade commodities for sale to a broker or end market.

(q) "Needs assessment" means a needs assessment prepared pursuant to Section 42067.

(r) "Optimize" or "optimization" means limiting the amount of covered material used in packaging by meeting product or packaging needs with minimal material. This includes, but is not limited to, eliminating unnecessary components, right-sizing, concentrating, and using bulk or large format packaging.

(s) "Packaging" means any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. "Packaging" includes, but is not limited to, all of the following:

(1) Sales packaging or primary packaging intended to provide the user or consumer the individual serving or unit of the product and most closely containing the product, food, or beverage.

(2) Grouped packaging or secondary packaging intended to bundle, sell in bulk, brand, or display the product.

(3) Transport packaging or tertiary packaging intended to protect the product during transport.

(4) Packaging components and ancillary elements integrated into packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except both of the following:

(A) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.

(B) A component or element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together.

(t) "Plastic" means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. "Plastic" includes, without limitation,

polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). "Plastic" does not include natural rubber or naturally occurring polymers such as proteins or starches.

(u) "Plastic component" means any single piece of covered material made partially or entirely of plastic. A plastic component may constitute the entirety of the covered material or a separate or separable piece of the covered material.

(v) "Processing" means to sort, segregate, break or flake, and clean material to prepare it to meet the specification for sale to a responsible end market.

(w) (1) "Producer" means a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

(2) If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered material is the owner or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the product using the covered material is used in a commercial enterprise, sold, offered for sale, or distributed in the state. For purposes of this subdivision, a licensee is a person holding the exclusive right to use a trademark or brand in the state in connection with the manufacture, sale, or distribution of the product packaged in or made from the covered material.

(3) If there is no person in the state who is the producer for purposes of paragraph (1) or (2), the producer of the covered material is the person who sells, offers for sale, or distributes the product that uses the covered material in or into the state.

(4) "Producer" does not include a person who produces, harvests, and packages an agricultural commodity on the site where the agricultural commodity was grown or raised.

(5) For purposes of this chapter, the sale of covered materials shall be deemed to occur in the state if the covered materials are delivered to the purchaser in the state.

(x) "Producer responsibility organization" or "PRO" means an organization that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code of 1986 and is formed for the purpose of implementing a plan to meet the requirements of this chapter.

(y) "Producer responsibility plan" or "plan," unless context requires otherwise, means the plan produced by a PRO, or by a producer that chooses to assume responsibility to comply with this chapter individually, and submitted to the advisory board and department pursuant to Section 42051.1.

(z) "Rate of inbound contamination" means the amount of nonrecyclable or noncompostable materials arriving at a materials recovery facility or other recycling or composting facility.

(aa) (1) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace.

(2) "Recycle" or "recycling" does not include any of the following:

(A) Combustion.

(B) Incineration.

(C) Energy generation.

(D) Fuel production, except for anaerobic digestion of source separated organic materials.

(E) Other forms of disposal.

(3) To be considered recycled, covered material shall be sent to a responsible end market.

(4) (A) The department may adopt regulations to define guidelines and verification requirements for covered material shipped out of state and exported to other countries for recycling, including processing requirements, and contamination standards, or to otherwise implement this paragraph.

(B) For any mixture of plastic waste exported to another country, the PRO or producer shall certify to the department that the processes and recycling technologies used meet both of the following requirements, as determined by the department:

(i) The plastic waste is a mixture of plastic types consisting only of one or more of polyethylene, polypropylene, or polyethylene terephthalate, and the export is destined for separate recycling of each material.

(ii) The plastic waste export is not prohibited by an applicable law or treaty of the destination jurisdiction, and the import of the plastic waste into the destination jurisdiction will be conducted in accordance with all applicable laws and treaties of that destination jurisdiction.

(C) For any mixture of plastic waste exported to other states or countries, the PRO or producer shall certify to the department that the recycling technology used meets the requirements of this subdivision.

(D) In meeting the requirements of subparagraphs (B) and (C), the PRO or producer shall provide documentation necessary to verify this certification and shall make the certification under penalty of perjury.

(5) The department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.

(ab) "Recycling rate" means the percentage, overall and by category, of covered material sold, offered for sale, distributed, or imported in the state that is ultimately recycled. The recycling rate shall be calculated as the amount of covered material that is recycled in a given year divided by the total amount of covered material disposed of, as defined in subdivision (b) of Section 40192, and the amount of covered material recycled, unless and until the department adopts a new methodology for calculating the recycling rate by regulation.

(ac) "Recycling service provider" means a solid waste enterprise that provides solid waste handling services on behalf of a local jurisdiction.

(ad) "Responsible end market" means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. The department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety.

(ae) (1) "Retailer" or "wholesaler" means the person or entity who sells covered material in the state to purchasers or offers to purchasers the covered material in the state through any means, including, but not limited to, any of the following:

(A) Remote offering, including sales outlets or catalogs.

(B) Electronically through the internet.

(C) Telephone.

(D) Mail.

(E) Direct sales.

(2) A person who sells covered material as a third-party seller using an online marketplace as described in paragraph (3) shall be considered the retailer or wholesaler for purposes of such transactions. The owner or operator of the online marketplace shall not be considered the retailer or wholesaler for such sales.

(3) For purposes of this subdivision, "online marketplace" means a consumer-directed, electronically accessed platform in which all of the following are true:

(A) The platform includes features that enable third-party sellers to sell consumer products directly to consumers in the state without the owner or operator of the platform involved in the transaction other than by providing order processing, payment, storage, shipping, or delivery services.

(B) Third-party sellers use the features described in subparagraph (A) to sell directly to consumers in the state, with title to the consumer product passing from the third-party sellers directly to consumers and not being held by the owner or operator of the online marketplace at any point during the transaction, including upon receipt of the order and throughout the order fulfillment process.

(C) Except as provided by subparagraph (E), the owner or operator of the platform does not directly or indirectly control the covered material used in packaging and shipping of a consumer product in this state.

(D) The person or entity operating the platform has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(E) Third-party sellers agree, pursuant to the platform's terms and conditions or other enforceable agreement, that they will not use the platform to offer for sale, sell, or distribute into the state covered material that does not meet the requirements of this chapter.

(af) "Reusable" or "refillable" or "reuse" or "refill," in regard to packaging or food service ware, means either of the following:

(1) For packaging or food service ware that is reused or refilled by a producer, it satisfies all of the following:

(A) Explicitly designed and marketed to be utilized multiple times for the same product, or for another purposeful packaging use in a supply chain.

(B) Designed for durability to function properly in its original condition for multiple uses.

(C) Supported by adequate infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles.

(D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for multiple cycles.

(2) For packaging or food service ware that is reused or refilled by a consumer, it satisfies all of the following:

(A) Explicitly designed and marketed to be utilized multiple times for the same product.

(B) Designed for durability to function properly in its original condition for multiple uses.

(C) Supported by adequate and convenient availability of and retail infrastructure for bulk or large format packaging that may be refilled to ensure the packaging or food service ware can be conveniently and safely reused or refilled by the consumer multiple times.

(ag) "Right-size" or "right-sizing" means reducing the amount of material used to package an item by reducing unnecessary space or eliminating unnecessary components of the packaging.

(ah) "Rural area" has the same meaning as defined in Section 50101 of the Health and Safety Code.

(ai) "Single use" means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

(aj) "Source reduction" means the reduction in the amount of covered material created by a producer relative to a baseline established pursuant to subdivision (b) of Section 42057. Methods of source reduction include, but are not limited to, shifting covered material to reusable or refillable packaging or a reusable product or eliminating unnecessary packaging. "Source reduction" does not include either of the following:

(1) Replacing a recyclable or compostable covered material with a nonrecyclable or noncompostable covered material or a covered material that is less likely to be recycled or composted.

(2) Switching from virgin covered material to postconsumer recycled content.

(ak) "Source reduction plan" means the plan prepared as part of the PRO plan in accordance with Section 42057.

(al) "Unexpended funds" means moneys in a PRO's accounts that the organization is not already obligated to pay pursuant to a contract, claim, or similar mechanism. "Unexpended funds" excludes the California circular economy administrative fees.

SEC. 7. The heading of Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code is amended to read:

CHAPTER 5. Paint Product Recovery Program

SEC. 8. Section 48700 of the Public Resources Code is amended to read:

48700. The purpose of the paint product 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.

SEC. 9. Section 48701 of the Public Resources Code is amended to read:

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

(a) (1) "Aerosol coating product" means a pressurized coating product containing pigments or resins dispensed by means of a propellant and packaged and sold in a disposable aerosol container for handheld application, or for use in specialized equipment for ground traffic or marking applications.

(2) "Aerosol coating product" does not include paint thinner, paint remover, graffiti remover, caulking compounds that contain no appreciable level of opaque fillers or pigments, products subject to Article 1 (commencing with Section 94500) or Article 2 (commencing with Section 94507) of Subchapter 8.5 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, or other nonaerosol coating products not regulated under Article 3 (commencing with Section 94520) of Subchapter 8.5 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.

(b) "Coating-related product" means a product used as a paint thinner, paint colorant, paint additive, paint remover, surface sealant, surface preparation, or surface adhesive and sold for home improvement. For purposes of this subdivision, "home improvement" has the same meaning as defined in Section 7151 of the Business and Professions Code.

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

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

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

(f) "Manufacturer" means a manufacturer of a paint product.

(g) "Nonindustrial coating" means arts and crafts paint, automotive refinish paint, driveway sealer, faux finish or glaze, furniture oil, furniture paint, lime wash, lime paint, marine paint, antifouling paint, road and traffic marking paint, two-component paint, wood preservative, fire retardant paint, dry fog paint, chalkboard paint, and conductive paint, sold in containers of five gallons or less for commercial and homeowner use, but does not include coatings purchased for industrial or original equipment manufacturer use.

(h) (1) "Paint product" includes all of the following:

(A) Interior and exterior architectural coatings, sold in containers of five gallons or less for commercial or homeowner use, but does not include coatings purchased for industrial or original equipment manufacturer use.

(B) Aerosol coating products.

(C) Nonindustrial coatings and coating-related products sold in containers of five gallons or less for commercial or homeowner use, but does not include products purchased for industrial or original equipment manufacturer use.

(2) "Paint product" does not include a health and beauty product.

(i) "Permanent collection site" means a permanent location in the state where discarded paint products may be returned at no cost, by a consumer or another party on behalf of a consumer, to be reused or otherwise managed.

(j) "Postconsumer paint" means a paint product not used by the purchaser.

(k) "Retailer" means a person that sells paint products in the state to a consumer. For purposes of this subdivision, a sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the internet or any other similar electronic means.

(l) "Stewardship organization" means an organization that is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1986 and formed for the purpose of implementing a stewardship plan to meet the requirements of this chapter.

(m) "Stewardship plan" means a plan developed by a stewardship organization that meets the requirements of Sections 48703.1, 48703.2, 48703.3, and 48703.4, and is submitted to the department for approval pursuant to Section 48703.

(n) "Temporary collection site" means a temporary location in the state where discarded paint products may be returned at no cost, by a consumer or another party on behalf of a consumer, to be reused or otherwise managed.

SEC. 10. Section 48701.1 is added to the Public Resources Code, to read:

48701.1. (a) The department shall adopt regulations to implement this chapter in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Any regulations

implementing this chapter as of January 1, 2025, shall remain in effect until they are amended or superseded by regulations adopted pursuant to this section.

(b) Aerosol coating products, coating-related products, and nonindustrial coatings shall not be subject to the requirements of this chapter until the implementation date of a stewardship plan or an amendment to a stewardship plan concerning the applicable product is approved by the department, or January 1, 2028, whichever occurs sooner. The department may authorize an extension of this implementation if the department determines the extension is necessary to implement the requirements of this chapter.

SEC. 11. Section 48702 of the Public Resources Code is repealed.

SEC. 12. Section 48702 is added to the Public Resources Code, to read:

48702. (a) To comply with the requirements of this chapter, a manufacturer shall establish and implement a stewardship program, either by itself or as part of a group of manufacturers participating in the stewardship organization.

(b) No later than 30 days after the effective date of regulations adopted pursuant to Section 48701.1, each manufacturer, or a stewardship organization on behalf of the manufacturers participating in the stewardship organization, shall notify the department, in writing, that the manufacturer has registered or intends to register with the stewardship organization in accordance with the procedures and requirements established by the stewardship organization and will comply with those procedures and requirements.

(c) No later than 180 days after the effective date of this chapter, a stewardship organization shall provide to the department, in a form and manner established by the department, all of the following:

(1) A list of all participating manufacturers and their contact information, including names, physical and mailing addresses, email addresses, and telephone numbers.

(2) A list of paint products and brands of paint products that each participating manufacturer sells, distributes for sale, imports for sale, or offers for sale in or into the state. The list shall be disaggregated according to manufacturer or retailer.

(d) Each participating manufacturer shall update the information described in subdivision (c) and provide the updated information to the stewardship organization on or before January 15 of each year, within 30 days of changes to the information, and upon request of the department.

(e) A manufacturer registered with the stewardship organization with an approved stewardship plan shall comply with the approved stewardship plan.

(f) The stewardship organization shall notify the department within 30 calendar days of any the following:

(1) The end of any three-month period in which the stewardship organization unsuccessfully attempted to obtain a fee, records, or information from a participating manufacturer, or received incomplete or incorrect records or information required by this chapter.

(2) The date a manufacturer no longer participates in the stewardship organization's approved stewardship plan.

(3) Any instance of noncompliance by a participating manufacturer.

SEC. 13. Section 48703 of the Public Resources Code is repealed.

SEC. 14. Section 48703 is added to the Public Resources Code, to read:

48703. (a) Within 12 months of the effective date of the regulations adopted by the department pursuant to Section 48701.1, a manufacturer shall, individually or through a stewardship organization, submit to the department either of the following in a form and manner determined by the department:

(1) A stewardship plan to accept and manage all postconsumer paint products.

(2) Amendments to an approved stewardship plan to include all paint products.

(b) (1) The department shall review the stewardship plan for compliance with this chapter and may approve or disapprove the stewardship plan within 120 days upon receipt.

(2) The department shall approve the stewardship plan if it provides for the establishment of a stewardship program that meets the requirements of Sections 48703.1, 48703.2, 48703.3, and 48703.4.

(3) If the department disapproves a stewardship plan or amendments to an approved stewardship plan, the department shall explain how the stewardship plan or the amendments to an approved stewardship plan do not comply with this chapter and provide written notice to the stewardship organization or manufacturer within 60 days of disapproval.

(4) The stewardship organization or manufacturer may resubmit to the department a revised stewardship plan within 30 days of the date the written notice was provided, and the department shall review the revised stewardship plan within 60 days of its receipt of the resubmittal.

(5) Within 24 months of the effective date of the regulations adopted by the department pursuant to Section 48701.1, the stewardship organization shall have a complete stewardship plan approved by the department and each manufacturer shall be subject to an approved stewardship plan to be compliant with this chapter.

(c) An approved stewardship 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 (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. The department may release financial, production, or sales data in summary form only so information cannot be attributable to a specific producer or to any other entity.

(d) A manufacturer shall, individually or through a stewardship organization, implement the approved stewardship plan within 12 months of the department's approval of the stewardship plan.

SEC. 15. Section 48703.1 is added to the Public Resources Code, to read:

48703.1. (a) The stewardship plan shall demonstrate sufficient funding for the stewardship program, including a funding mechanism for securing and disbursing funds to fully cover administrative, operational, and capital costs, including the assessment of charges on paint products covered by the program and sold by manufacturers in this state.

(b) Administrative costs shall include the department's actual and reasonable regulatory costs, which include full personnel costs, to implement and enforce this chapter as the criteria for all the costs are defined in the regulations adopted pursuant to Section 48701.1. For purposes of this subdivision, implementation begins once the department approves the stewardship plan, except the department's costs include actual regulatory development costs and other startup costs incurred before the submittal of a stewardship plan and approval of a stewardship plan.

(c) The funding mechanism shall include the stewardship assessment required by Section 48704.1 and a description of how it is calculated.

(d) The funding mechanism shall include a budget that establishes a funding level sufficient to operate the stewardship organization, as applicable, in a prudent and responsible manner. The budget shall demonstrate how estimated revenues will cover all budgeted costs for each cost category. Budgeted costs may include, but are not be limited to, administrative costs, education and outreach costs, operational costs, and capital costs.

SEC. 16. Section 48703.2 is added to the Public Resources Code, to read:

48703.2. The stewardship plan shall include quantifiable time-specific performance 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 collection, recovery, and recycling of postconsumer paint, as practical, based on 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 pursuant to Section 48705.

SEC. 17. Section 48703.3 is added to the Public Resources Code, to read:

48703.3. (a) The stewardship plan shall describe how the manufacturer, individually or through a stewardship organization, will provide a free dropoff and convenient collection system for paint products, which shall include approved collection sites.

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

(c) Approved collection sites shall meet all the conditions in Sections 25217.2 and 25217.2.1 of the Health and Safety Code for oil-based or recyclable latex paints, and Section 25201.16 of the Health and Safety Code for aerosol paint containers.

(d) The manufacturer shall, individually or through a stewardship organization, include as an approved collection site under its stewardship plan any retailer that offers in writing to voluntarily participate in the stewardship plan and agrees to comply with any requirements that are consistent with the stewardship plan.

(e) A manufacturer may, individually or through a stewardship organization, suspend or terminate use of an approved collection site that does not comply with all applicable state, federal, or municipal laws and regulations or adhere to the rules and conditions imposed by the stewardship organization.

SEC. 18. Section 48703.4 is added to the Public Resources Code, to read:

48703.4. A stewardship plan shall include consumer, contractor, and retailer education and outreach efforts to promote the source reduction and recycling of paint products. This information may include, but is not limited to, developing, and updating as necessary, educational and other outreach materials for retailers of paint products. These materials shall be made available to retailers. These materials may include, but are not limited to, one or more of the following:

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

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

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

(d) An internet website that publicizes the location of approved collection sites and provides information on how to access and drop off paint products at the free and convenient network of approved collection sites offered by the stewardship organization.

(e) All signage and materials required for approved collection sites by the stewardship organization, and a description of the method by which approved collection sites can access replacement materials at no cost to the approved collection site.

(f) A description of efforts to support participation by all California communities, including a description of efforts to communicate in languages other than English.

SEC. 19. Section 48703.5 is added to the Public Resources Code, to read:

48703.5. (a) A manufacturer shall, individually or through a stewardship organization, review its stewardship plan at least once every five years after approval by the department and determine whether amendments to the stewardship plan are necessary.

(b) If a manufacturer or stewardship organization determines that amendments are necessary, the manufacturer or stewardship organization shall submit to the department an amended stewardship plan for review and approval consistent with Section 48703. The manufacturer or stewardship organization shall submit the amended stewardship plan at least 12 months before the deadline described in subdivision (a). The amended stewardship plan shall include a cover letter that summarizes the amendments.

(c) If a manufacturer or stewardship organization determines that no amendments to a stewardship plan are necessary, the manufacturer or stewardship organization shall send a letter to the department, no later than 12 months before the review deadline described in subdivision (a), explaining that the manufacturer or stewardship organization has reviewed the stewardship plan and determined that no amendments are needed.

(d) The department may disapprove a manufacturer or stewardship organization's determination within 30 days of receipt of that determination if the department concludes that the manufacturer or stewardship organization cannot implement the objectives of this chapter without amending its stewardship plan. In the event the department disapproves a manufacturer or stewardship organization's determination, the manufacturer or stewardship organization shall submit to the department an amended stewardship plan for review and approval. The manufacturer or stewardship organization shall submit the amended stewardship plan within 60 days of receipt of the department's disapproval, unless the department determines that additional time is needed.

SEC. 20. Section 48704 of the Public Resources Code is amended to read:

48704. (a) No later than 90 days before a stewardship plan is required to be submitted to the department, the department shall notify each manufacturer acting individually and each stewardship organization of its reasonable regulatory costs, including its full personnel costs, related to implementing and enforcing this chapter. This shall include the actual and reasonable costs associated with regulation development pursuant to Section 48701.1 and other startup activities before the stewardship plan is submitted and approved.

(b) Manufacturers and stewardship organizations shall collectively pay on a quarterly basis the department's administrative fee for its reasonably incurred regulatory costs, as described in subdivision (a). Manufacturer and stewardship organizations shall pay the fee on or before the last day of the month following the end of each quarter.

(c) The Architectural Paint Stewardship Account, established pursuant to Section 48704.1, as it read on January 1, 2024, in the Integrated Waste Management Fund created pursuant to Section 40135, is hereby renamed the Paint Product Stewardship Account. The Architectural Paint Stewardship Penalty Subaccount, established in that fund pursuant to Section 48704.1, as it

read on January 1, 2024, is hereby renamed the Paint Product Stewardship Penalty Subaccount. The renamed account and subaccount shall remain in the fund.

(d) All fees collected by the department pursuant to this chapter shall be deposited into the Paint Product Stewardship Account and may be expended by the department, upon appropriation by the Legislature, to cover the department's reasonable costs to implement this chapter and to reimburse any outstanding loans made from other funds used to finance regulation development and startup costs of the department's activities pursuant to this chapter. The moneys in the Paint Product Stewardship Account shall not be expended for any other purpose. The department shall enforce this chapter.

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

SEC. 21. Section 48704.1 of the Public Resources Code is repealed.

SEC. 22. Section 48704.1 is added to the Public Resources Code, to read:

48704.1. (a) A stewardship organization's funding mechanism shall provide a stewardship assessment for each container of a paint product and sold by manufacturers in this state and the assessment shall be remitted to the stewardship organization, if applicable.

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

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

SEC. 23. Section 48705 of the Public Resources Code is amended to read:

48705. (a) On or before May 15 of each year, a manufacturer of a paint product sold in this state shall, individually or through a stewardship organization, submit a report to the department describing its paint product recovery efforts in a form and manner determined by the department. At a minimum, the report shall include all of the following:

- (1) The total volume of architectural paint sold, excluding aerosol coating products, in this state during the preceding calendar year.
- (2) The total volume of postconsumer architectural paint recovered, excluding aerosol coating products, in this state during the preceding calendar year.
- (3) A description of methods used to collect, transport, and process postconsumer architectural paint in this state, excluding aerosol coating products.
- (4) Commencing with the 2029 report, the total volume of the nonindustrial coatings, the coating-related products, and the aerosol coating products sold in this state during the preceding calendar year.
- (5) Commencing with the 2029 report, the total volume of the nonindustrial coatings, the coating-related products, and the aerosol coating products recovered, including the amount, in this state during the preceding calendar year.
- (6) Commencing with the 2029 report, a description of methods used to collect, transport, and process paint products in this state.
- (7) The total cost of implementing the stewardship program.
- (8) An evaluation of how the stewardship program's funding mechanism operated.
- (9) An independent financial audit funded from the stewardship assessment.
- (10) Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years.
- (11) Any other information deemed relevant by the stewardship organization for the department to determine compliance with the stewardship plan.

(b) The department shall review the annual report required pursuant to this section and within 120 days of receipt shall adopt a finding of compliance or noncompliance with this chapter. If the department determines that the annual report is noncompliant due to a failure to meet the requirements of this chapter, then the department may require the resubmittal of the annual report or take enforcement action.

SEC. 24. Section 48705.1 is added to the Public Resources Code, to read:

48705.1. (a) A stewardship organization shall do both of the following:

- (1) Upon the department's request, provide the department with reasonable and timely access, as determined by the department, to its facilities relating to its operation of a paint product recovery program, as necessary to determine compliance with this chapter.
- (2) Upon the department's request, within 14 days, provide the department with relevant records necessary to determine its compliance with this chapter.

(b) All stewardship plans, annual reports, and other submissions to the department required by this chapter shall be maintained and kept accessible for three years. All stewardship plans, annual reports, and other submissions to the department required under this chapter shall include the following affirmation signed by an authorized representative of the stewardship organization: "Under penalty of perjury, I affirm that the information being provided to the department is true and correct to the best of my knowledge and belief."

SEC. 25. Section 48706 of the Public Resources Code is repealed.

SEC. 26. Section 48706 is added to the Public Resources Code, to read:

48706. (a) Within 24 months of the effective date of the regulations adopted pursuant to Section 48701.1, the department shall post on its internet website a list of manufacturers that are compliant with this chapter and that have a stewardship plan approved by the department pursuant to Section 48703. The department shall list, as appropriate, the reported brands of paint products for each manufacturer. The department shall update this list no less than once every six months.

(b) (1) A manufacturer or retailer shall not sell or offer for sale in this state a paint product to any person in this state unless the manufacturer of the paint product 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 (a) is posted on the department's internet website, shall apply to any manufacturer that is not listed on the department's internet website, and shall remain in effect until the manufacturer is listed on the department's internet website or can demonstrate compliance as described in paragraph (3).

(3) A manufacturer that is not listed on the department's internet website 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. A manufacturer who receives that letter is in compliance with this chapter.

(4) If the department determines a manufacturer is not in compliance with this chapter, the department shall remove the manufacturer from the list of compliant manufacturers posted on the department's internet website pursuant to subdivision (a).

(c) Notwithstanding paragraph (1) of subdivision (b), a manufacturer may, for any inventory in stock before the initial list was posted by the department pursuant to subdivision (a), sell or distribute that inventory for sale in or into the state.

(d) A distributor or a retailer shall monitor the department's internet website to determine if the sale of a manufacturer's paint product is in compliance with this chapter.

SEC. 27. Section 48706.1 is added to the Public Resources Code, to read:

48706.1. (a) A civil penalty may be administratively imposed by the department on any person who violates this chapter in an amount up to one thousand dollars (\$1,000) per violation per day. 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.

(b) In assessing or reviewing the amount of an administrative penalty imposed pursuant to subdivision (a) for a violation of this chapter, the department or the court shall consider all the following:

- (1) The nature and extent of the violation.

(2) The number and severity of the violation or violations.

(3) The economic effect of the penalty on the violator.

(4) Whether the violator took good faith measures to comply with this chapter and the period over which these measures were taken.

(5) The willfulness of the violator's misconduct.

(6) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(7) Any other factor that justice may require.

(c) The department shall establish, through regulations adopted pursuant to Section 48701.1, a process that shall include an informal hearing process by which the penalties will be assessed. The Administrative Adjudication Bill of Rights (Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) applies to hearings conducted pursuant to this chapter and mandates minimum due process requirements for purposes of this chapter.

(d) The department shall deposit all penalties collected pursuant to this section into the Paint Product Stewardship Penalty Subaccount.

SEC. 28. Section 48706.2 is added to the Public Resources Code, to read:

48706.2. (a) A manufacturer or stewardship organization shall not be liable for a violation of any antitrust, restraint of trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in accordance with this chapter.

(b) Notwithstanding any other law, actions undertaken in accordance with this chapter, including the conduct described in subdivision (a), does not violate either of the following acts:

(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).

SEC. 29. The Legislature finds and declares that Section 14 of this act, which adds Section 48703 to the Public Resources Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to ensure the effective stewardship of paint products by paint manufacturers, it is necessary to protect certain proprietary financial, production, and sales data reported by paint manufacturers pursuant to Section 14 of this act.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.