

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 936

102ND GENERAL ASSEMBLY

4302S.02C

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 701, RSMo, by adding thereto one new section relating to paint recycling.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 701, RSMo, is amended by adding thereto
2 one new section, to be known as section 701.151, to read as
3 follows:

701.151. 1. As used in this section, the following
2 terms mean:

3 (1) "Administrative fee", a fee set by the department
4 to reimburse the department for administering this section
5 and paid by each producer or representative organization
6 submitting a plan under this section;

7 (2) "Architectural paint", interior and exterior
8 architectural coatings sold in containers of five gallons or
9 less. "Architectural paint" shall not be construed to
10 include industrial, original equipment, or specialty
11 coatings;

12 (3) "Collection site", any location, event, or other
13 department-approved collection service at which
14 architectural paint is accepted into a post-consumer paint
15 collection program under a post-consumer paint collection
16 program plan;

17 (4) "Conditionally exempt small quantity generator",
18 the same definition as "very small generator" under 40 CFR
19 260.10;

20 (5) "Department", the department of natural resources;

21 (6) "Director", the director of the department of
22 natural resources or the director's designee;

23 (7) "Environmentally sound management practices",
24 procedures for the collection, storage, transportation,
25 reuse, recycling, and disposal of architectural paint that
26 shall:

27 (a) Be implemented by producers or a representative
28 organization or by contracted partners of the producers or a
29 representative organization to ensure compliance with all
30 applicable federal, state, and local laws and any
31 regulations and ordinances for the protection of human
32 health and the environment;

33 (b) Address adequate record keeping, tracking, and
34 documenting of the final disposition of materials; and

35 (c) Address appropriate environmental liability
36 coverage for the representative organization;

37 (8) "Household waste", the same definition as in 10
38 CSR 80.2-010;

39 (9) "Paint assessment fee", cost added per container
40 of paint by producers. Such cost shall cover the cost to
41 operate and sustain the program authorized under this
42 section and shall be verified by an independent financial
43 auditor;

44 (10) "Post-consumer paint", architectural paint not
45 used and no longer wanted by a purchaser;

46 (11) "Producer", a manufacturer of architectural paint
47 that sells, offers for sale, or distributes the
48 architectural paint in this state under the producer's own

49 name or brand. "Producer" does not include a retailer who
50 sells, offers for sale, or distributes within or into the
51 state architectural paint manufactured or trademarked by a
52 person other than the retailer;

53 (12) "Program", the post-consumer paint collection
54 program established under this section;

55 (13) "Recycling", the separation and reuse or
56 remanufacture of materials that might otherwise be disposed
57 of as solid waste;

58 (14) "Representative organization", a nonprofit
59 organization established by producers to implement the
60 program;

61 (15) "Retailer", a person who offers architectural
62 paint or other allied products for sale at retail in this
63 state.

64 2. Producers of architectural paint sold at retail in
65 this state may establish or join a representative
66 organization. The duties under this section shall be met by
67 the representative organization on behalf of all its member
68 producers. Any producer who is not a member of a
69 representative organization shall meet the duties under this
70 section separately.

71 3. (1) A representative organization or a producer of
72 architectural paint sold at retail in this state that is not
73 a member of such representative organization shall develop
74 and submit to the director for the director's approval a
75 plan for the establishment of a post-consumer paint
76 collection program. The program shall be structured to:

77 (a) Reduce the generation of post-consumer paint;

78 (b) Promote the reuse and recycling of post-consumer
79 paint;

80 (c) Manage the post-consumer paint waste stream using
81 environmentally sound management practices; and

82 (d) Limit the department's role to oversight
83 activities that include approving the program plan and
84 reviewing the annual report.

85 (2) The plan submitted under this section shall:

86 (a) Provide a list of participating producers and
87 brands covered by the program;

88 (b) Provide information on the architectural paint
89 products covered under the program, such as interior or
90 exterior water- and oil-based coatings, primers, sealers, or
91 wood coatings;

92 (c) Describe how the program will provide for
93 convenient and cost-effective statewide collection of post-
94 consumer paint in this state. The producers or
95 representative organization may coordinate the program with
96 existing household hazardous waste collection infrastructure
97 as is mutually agreeable. A paint retailer shall be
98 authorized by the producers or representative organization
99 as a paint collection site only if the paint retailer
100 voluntarily agrees to act as such and complies with all
101 applicable laws and regulations and the retail location is
102 consistent with the maintenance of a cost-effective network
103 of paint collection locations;

104 (d) Establish a goal for the number and geographic
105 distribution of sites for collection of post-consumer paint
106 based on the following criteria:

107 a. At least ninety percent of Missouri residents shall
108 have a collection site within a fifteen-mile radius and one
109 site will be established for every fifty thousand residents
110 of the state, unless otherwise approved by the director; or

111 b. If the program is unable to meet the requirements
112 of this subsection, a collection event or other department-
113 approved collection service will be scheduled on a periodic
114 basis to serve such residents;

115 (e) Describe how post-consumer paint will be managed
116 in the most environmentally and economically sound manner
117 using the following strategies in the following order:
118 reuse, recycling, energy recovery, and disposal;

119 (f) Describe education and outreach efforts to inform
120 consumers about the program. Such efforts should
121 incorporate at least:

122 a. Information about collection opportunities for post-
123 consumer paint;

124 b. Information about the charge for the operation of
125 the program that shall be included in the purchase price of
126 all architectural paint sold in this state; and

127 c. Efforts to promote the source reduction, reuse, and
128 recycling of architectural paint; and

129 (g) Establish a per-container cost to be added to
130 architectural paint sold in this state as a result of the
131 program. This per-container cost, known as the paint
132 assessment fee, shall be reviewed by an independent
133 financial auditor to assure that any added cost to paint
134 sold in this state as a result of the program does not
135 exceed the costs to operate and sustain the program in
136 accordance with sound management practices;

137 (h) Describe how the program will incorporate and
138 compensate service providers for activities conducted under
139 the program that may include:

140 a. The collection of post-consumer architectural paint
141 and architectural paint containers through permanent
142 collection sites, collection events, or curbside services;

143 b. The reuse or processing of post-consumer
144 architectural paint at a permanent collection site; and

145 c. The transportation, recycling, and proper disposal
146 of post-consumer architectural paint.

147 (3) The independent financial auditor required under
148 paragraph (g) of subdivision (2) of this subsection shall be
149 selected by the representative organization after
150 consultation with the department. The independent financial
151 auditor shall verify that the cost added to each unit of
152 paint will cover the costs of the program. The department
153 shall review the work product of the independent financial
154 auditor. The cost of any work performed by such independent
155 financial auditor shall be funded by the paint assessment
156 fees authorized by the program.

157 (4) Each manufacturer under the plan shall include in
158 the price of any architectural paint sold to retailers or
159 distributors in the state the per-container amount of the
160 fee set forth in the plan or fee adjustment. If a
161 representative organization implements the plan for a
162 manufacturer, the manufacturer shall be responsible for
163 filing, reporting, and remitting any fee assessed under this
164 section for each container of architectural paint to the
165 representative organization. A retailer or distributor
166 shall not deduct the amount of the fee from the purchase
167 price of any architectural paint the retailer or distributor
168 sells.

169 (5) No later than sixty days after the submission of a
170 plan under this section, the director shall make a written
171 determination of whether to approve the plan as submitted or
172 disapprove the plan. If the director finds the plan does
173 not meet the requirements of this section, the director
174 shall provide a written explanation of the nonconforming

175 items. Within sixty days following receipt of the
176 director's written explanation of items that do not meet the
177 requirements of this section, the representative
178 organization or the producer of architectural paint shall
179 submit a revised plan to the director for approval.

180 (6) The department shall enforce the producer's or the
181 representative organization's compliance with the plan and
182 may, by regulation or by using existing regulations
183 promulgated under sections 260.230, 260.240, and 260.249,
184 establish enforcement procedures and penalties.

185 (7) No later than the implementation date of the
186 program, information regarding the approved plan, the names
187 of participating producers, and the brands of architectural
188 paint covered by the program shall be posted on the
189 department's website and on the website of the
190 representative organization.

191 (8) The plan required under this subsection shall be
192 submitted to the department not later than twelve months
193 after the effective date of this section. The department
194 may, for good cause shown, grant an extension of the
195 deadline for submission.

196 (9) Nothing in this section shall be construed to
197 require the department to develop the plan or establish the
198 program authorized under this section. Such requirement
199 shall be the sole responsibility of the producers or
200 representative organization.

201 (10) Nothing in this section shall require a retailer
202 to track, file, report, submit, or remit a fee assessed
203 under this section, sales data, or any other information on
204 behalf of a manufacturer, distributor, or representative
205 organization. Nothing in this section shall prohibit a

206 manufacturer and a retailer from entering into remitter
207 agreements.

208 4. (1) The department shall establish an
209 administrative fee to be paid by each producer or
210 representative organization submitting a plan under this
211 section. The department shall set the fee at an amount
212 that, when paid by every producer or representative
213 organization that submits a plan, is adequate to reimburse
214 the department's full costs of administering this section.
215 The total amount of annual fees collected under this
216 subdivision shall not exceed the amount necessary to
217 reimburse costs incurred by the department to administer
218 this section. The department may consider relevant factors
219 when establishing the fee including, but not limited to, the
220 portion of architectural paint sold in the state by the
221 producer or the members of the representative organization
222 compared to the total amount of architectural paint sold in
223 the state by all producers or representative organizations
224 submitting a plan.

225 (2) Each producer or representative organization
226 implementing a plan under this section shall pay the
227 administrative fee required in subdivision (1) of this
228 subsection on or before July 1, 2025, and annually
229 thereafter. Each year after the initial payment, the annual
230 administrative fee shall not exceed five percent of the
231 aggregate program fee added to the cost of all architectural
232 paint sold by producers in the state for the preceding
233 calendar year. The department may extend the time for
234 payment upon good cause shown.

235 5. Upon implementation of the program, each producer
236 shall include in the price of any architectural paint sold
237 to retailers and distributors in this state the per-

238 container amount, known as the paint assessment fee, in the
239 approved plan. No retailer or distributor shall deduct such
240 amount from the purchase price.

241 6. Retailers may incorporate the fee as part of the
242 price amount displayed to consumers of architectural
243 products. Retailers shall not be required to incorporate
244 the fee as part of the price amount displayed to consumers
245 for architectural products, provided that the retailers make
246 information about the fee available to consumers of
247 architectural paint products prior to purchase.

248 7. (1) After the program is implemented, no producer
249 or retailer shall sell or offer for sale architectural paint
250 to any person in this state unless the producer of a paint
251 brand or a representative organization is implementing or
252 participating in the program as required by this section.

253 (2) A retailer shall be deemed to be in compliance
254 with this section if, on the date the architectural paint
255 was offered for sale, the producer is listed on the
256 department's website as implementing or participating in the
257 program or if the paint brand is listed on the department's
258 website as being included in the program.

259 (3) A paint collection site authorized under this
260 section shall not charge any additional amount for the
261 disposal of paint when the paint is offered for disposal.

262 (4) A producer or the representative organization that
263 organizes the collection, transport, and processing of post-
264 consumer paint in accordance with the program shall not be
265 liable for any claim of a violation of antitrust, restraint
266 of trade, unfair trade practice, or other anticompetitive
267 activity arising from conduct undertaken in accordance with
268 the program under this section.

269 (5) Before March thirty-first of each year, the
270 producers or representative organization shall submit an
271 annual report for the previous year to the director that
272 details the program. The first report shall be submitted
273 after the first full year of implementation. The director
274 may, for good cause shown, extend the deadline for filing
275 the report. The report or information relating to the
276 report shall be posted on the department's website and on
277 the website of the representative organization. The
278 department shall also submit a copy of the report to the
279 Missouri house of representatives and senate within fifteen
280 days of receipt. The report shall contain at least the
281 following:

- 282 (a) A description of the methods used to collect,
283 transport, and process post-consumer paint in this state;
284 (b) The volume and type of post-consumer paint
285 collected by method of disposition, containing information
286 about reuse, recycling, other methods of processing, and any
287 other related and appropriate information;
288 (c) Samples of educational materials provided to
289 consumers of architectural paint;
290 (d) The total cost of the program; and
291 (e) An independent financial audit completed by an
292 individual financial auditor chosen by the producers or the
293 representative organization.

294 (6) Financial, production, or sales data reported to
295 the department by a producer or by the representative
296 organization shall not be subject to disclosure, but the
297 director may release a summary form of such data that does
298 not disclose financial, production, or sales data of the
299 producer, retailer, or representative organization.

300 (7) The producers or the representative organization
301 shall implement the program required under this section on
302 January 1, 2026, or six months after the approval of the
303 plan under this section, whichever later occurs.

304 8. (1) Generators of household wastes and
305 conditionally exempt small quantity generators may transport
306 or send architectural paints to a paint collection site to
307 the extent permitted by a program approved by the director.

308 (2) Paint collection sites may collect and temporarily
309 store architectural paints generated by entities specified
310 in subdivision (1) of this subsection in accordance with the
311 requirements of the program in lieu of any otherwise
312 applicable requirements of state laws or regulations.

313 (3) Nothing in this section shall be construed to
314 restrict the collection of architectural paint by a program
315 where such collection is authorized by any other state laws
316 or regulations.

317 (4) Nothing in this section shall be construed to
318 affect any requirements applicable to facilities that treat,
319 dispose, or recycle architectural paint under any other
320 state laws or regulations.

321 9. The director may promulgate all necessary rules and
322 regulations for the administration of this section. Any
323 rule or portion of a rule, as that term is defined in
324 section 536.010, that is created under the authority
325 delegated in this section shall become effective only if it
326 complies with and is subject to all of the provisions of
327 chapter 536 and, if applicable, section 536.028. This
328 section and chapter 536 are nonseverable and if any of the
329 powers vested with the general assembly pursuant to chapter
330 536 to review, to delay the effective date, or to disapprove
331 and annul a rule are subsequently held unconstitutional,

332 then the grant of rulemaking authority and any rule proposed
333 or adopted after August 28, 2024, shall be invalid and void.

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