

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require a producer of paint sold in the District to establish and implement a paint stewardship program in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Paint Stewardship Act of 2014”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Distributor” means a company that has a contractual relationship with one or more producers to market and sell paint to retailers in the District.

(2) “Environmentally sound management practices” means procedures for the collection, storage, transportation, reuse, recycling, and disposal of paint, to be implemented by the producer, representative organization, or their contracted partners to ensure compliance with applicable federal and District laws and regulations and to protect human health and the environment. These procedures shall address adequate record keeping, tracking, and documenting the fate of materials, and adequate environmental liability coverage for professional services and for the contractors working on behalf of the producer or representative organization.

(3) “Paint” means interior and exterior architectural coatings sold in containers of 5 gallons or less and does not mean industrial, original equipment, or specialty coatings.

(4) “Paint stewardship assessment” means the amount added to the purchase price of paint sold in the District necessary to cover the paint stewardship program’s cost of collecting, transporting, and processing the postconsumer paint District-wide.

(5) “Postconsumer paint” means paint not used and no longer wanted by a purchaser.

(6) “Producer” means a manufacturer of paint who sells, offers for sale, or distributes that paint in the District under the producer’s own name or brand. The term “producer” does not include a retailer that adds tint, colorant, or other additives to paint at the retail location.

(7) “Recycling” means a process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity but does not include energy recovery or energy generation by means of incineration or combustion of discarded products, components, and by-products with or without other waste products.

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(8) “Representative organization” means a nonprofit organization created by producers to implement a paint stewardship plan required by section 3.

(9) “Retailer” means a person or entity that offers paint for sale at retail in the District.

(10) “Reuse” means the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product’s identity.

(11) “Sell” or “sale” means any transfer of title for consideration including remote sales conducted through sales outlets, catalogs, or electronic means.

Sec. 3. Producer paint stewardship plan required.

(a) By April 1, 2016, a producer of paint sold at retail in the District, or a representative organization in which the producer is a member, shall submit a plan for the establishment of a paint stewardship program to the Mayor for approval. The plan shall:

(1) Minimize District involvement in the management of postconsumer paint by reducing its generation, promoting its reuse and recycling, and implementing agreements to collect, transport, reuse, recycle, and dispose of postconsumer paint using environmentally sound management practices;

(2) Provide for convenient and available collection of postconsumer paint that, at a minimum, provides for collection rates and convenience equal to or greater than the collection programs available to consumers before the paint stewardship program and addresses coordination of the paint stewardship program with existing household hazardous waste collection infrastructure;

(3) Ensure the program addresses coordination with local nonprofit building material reuse organizations without charge to the organizations;

(4) Identify each producer participating in the program and the brands of paint sold in the District by each producer;

(5) Describe sufficient funding for the paint stewardship program, including a funding mechanism for securing and disbursing funds to cover administrative, operational, and capital costs, including the assessment of charges on paint sold by producers in the District. The funding mechanism shall provide for a paint stewardship assessment for each container of paint sold in the District by producers and the assessment shall be remitted to the representative organization, if applicable; and

(6) Describe how postconsumer paint will be managed in the most environmentally and economically sound manner, including following the sustainable solid waste management hierarchy established in section 102 of the Sustainable Solid Waste Management Amendment Act of 2014, enacted on September 23, 2014 (D.C. Act 20-423; 61 DCR 9971).

(b)(1) A paint stewardship assessment established in accordance with paragraph (2) of this subsection shall be added to the cost of all paint sold to retailers and distributors in the District. Retailers and distributors shall add the assessment to the purchase price of all paint sold in the District.

(2) The paint stewardship assessment shall be approved by the Mayor as part of

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the plan, and shall be sufficient to recover, but not exceed, the cost of the paint stewardship program. The plan shall require that any surplus funds be put back into the program to reduce the costs of the program, including the assessment amount.

(c) A producer or its representative organization shall implement its paint stewardship program plan within 3 months of the plan's approval by the Mayor.

(d) Beginning September 1, 2016, a producer shall not sell or offer for sale paint to any person in the District unless the producer of the paint or a representative organization of which the producer is a member submitted a paint stewardship plan to the Mayor on or before April 1, 2016, that has not been disapproved, or is implementing an approved paint stewardship program plan as required by this section.

(e) A producer or representative organization shall provide consumers in the District with educational materials regarding the paint stewardship assessment and paint stewardship program, including information regarding available end-of-life management options for paint offered through the paint stewardship program and information notifying consumers that a charge for the operation of the program is included in the purchase price of all paint sold in the District.

(f) On or before October 1, 2017, and annually thereafter, a producer or representative organization shall submit a paint stewardship program report to the Mayor that includes:

(1) A description of the methods used to collect, transport, and reuse or process postconsumer paint in the District;

(2) The total volume and type of postconsumer paint collected in the District and the volume by method of disposition;

(3) The total cost of implementing the program, as determined by an independent financial audit funded from the paint stewardship assessment;

(4) Samples of educational information provided to consumers of paint and a description of how the information is distributed; and

(5) Other information as required by the Mayor through rulemaking.

Sec. 4. Retailer obligations.

(a) Beginning September 1, 2016, or within 2 months of the Mayor's first website publication of the list required under section 5(d), whichever is later, a retailer shall not sell or offer for sale paint to a person in the District unless the producer or the paint brand was listed on the website maintained by the Mayor under section 5(d) on the date the paint was ordered from the paint producer or the producer's agent.

(b) A paint retailer may participate on a voluntary basis as paint collection points pursuant to a paint stewardship program.

Sec. 5. Mayor's responsibilities.

(a) The Mayor shall review and determine whether to approve a paint stewardship program plan submitted under section 3 within 120 days of its receipt. The Mayor shall make the plan available for public review for at least 30 days before determining whether to approve the plan.

(b) The Mayor may approve or deny the plan and may make approval of the plan

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contingent upon the removal, change, or inclusion of specific actions and practices, or the addition of paints covered under section 2(3).

(c) Within 60 days of submission of a report under section 3(f), upon a determination by the Mayor that the implementation of the approved plan fails to meet the requirements of this act or regulations promulgated pursuant to this act, the Mayor may request modifications to the producer of representative organization's paint stewardship program plan. The Mayor may approve or deny the proposed modifications to the plan as set forth in section 5(b). The Mayor may impose civil penalties under section 7 upon a determination that the paint stewardship organization or producer is not complying with the modified plan.

(d) Within 7 days of approving a paint stewardship program plan, the Mayor shall list the producers and brands implementing or participating in the plan on the Mayor's website.

(e) The Mayor shall impose an initial fee to be submitted with a proposed paint stewardship program plan under section 3(a) and an annual fee to be submitted thereafter in an amount sufficient to cover the costs of an agency reviewing a paint stewardship program plan, conducting inspections, and enforcing the provisions of this act. Permit fees collected pursuant to this section shall not exceed the cost of implementing and enforcing this act.

Sec. 6. Immunity from liability; confidential information.

(a) Notwithstanding the provisions of Chapter 45 of Title 28 of the D.C. Official Code, a producer or producers and a representative organization may negotiate, enter into agreements with, share the burdens of their operation with, and conduct business with each other in accordance with this act in ways that may affect competition. No producer or representative organization shall be prosecuted, held liable, or subject to penalties or damages under Chapter 45 of Title 28 of the D.C. Official Code for actions conducted in accordance with this act.

(b) Financial, production, and sales data reported to the Mayor by a producer or representative organization shall not be subject to disclosure under the Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), or any other law or regulation; provided, that the Mayor may release a summary form of the data that does not disclose individual producer information.

Sec. 7. Rules; enforcement.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.

(b) The Mayor may impose civil fines and penalties as sanctions for violations of the provisions of this act or any rules issued under the authority of this act, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

(c) In addition to the enforcement authority provided in subsection (b) of this section, the Mayor may seek injunctive relief or other appropriate remedy in any court of competent jurisdiction to enforce compliance with the provisions of this act.

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Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia