

## **FINAL STATEMENT OF REASONS**

**November 2, 2011**

**Title 14:                   Natural Resources**

**Division 7:               Department of Resources, Recycling and Recovery**

**Chapter 11:               Product Stewardship**

**Article 1:                 Product Stewardship for Carpets**

### **GENERAL COMMENTS APPLICABLE TO STATEMENT OF REASONS**

The Carpet Stewardship Program mandated by Public Resources Code (PRC) Section 42970 et seq. (Assembly Bill 2398, Pérez, 2010) requires a manufacturer of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the department. The plan would be required to include specified elements, such as a funding mechanism that provides sufficient funding to carry out the plan and cover administrative, operational, and capital costs of the plan, the payment of fees, and incentive payments. The department would be required within 60 days after receiving the plan to review and determine whether the plan complies with Section 42972, and notify the submitter of its decision to approve or disapprove the plan.

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

Each manufacturer of carpet sold in the state, individually or through a carpet stewardship organization, would be required to prepare and submit to the department

an annual report describing the activities carried out pursuant to the carpet stewardship plan.

## **SPECIFIC PURPOSE AND NECESSITY OF REGULATIONS**

### **Section 18940. Purpose.**

Section 18940 is necessary to clarify existing law and establish administrative procedures to efficiently and effectively implement the department's responsibilities under the law and to provide a uniform competitive business environment to all carpet manufacturers, retailers, and wholesalers pursuant to Section 42970 of the Public Resources Code.

### **Section 18941. Definitions.**

Section 18941 is necessary as a number of technical and administrative terms appear in this chapter that require definition to assure regulatory consistency and clarity.

#### **Subsection (a)**

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

- (1) "Must" or "shall" means a provision is mandatory.
- (2) "May" means a provision is permissive.

It also specifies that the definitions in this chapter shall only apply to this Article, except as otherwise noted..

#### **Subsection (b)**

Subsection (b) was amended from the original proposed text to clarify that the term "Administrative fee" used in this chapter means payments from the carpet assessment to the department that cover the costs of the department's administrative, oversight, and enforcement services necessary for manufacturers or stewardship organizations to

effectively implement carpet stewardship plans. The administrative fee will be paid by the individual manufacturer or stewardship organizations submitting a stewardship plan.

**Subsection (c)**

Subsection (c) is necessary to clarify that the term “Assessment” used in this chapter means the amount added to the purchase price of carpet that is subsequently remitted to a stewardship organization or manufacturer, and which shall be spent on implementing the product stewardship plan.

**Subsection (d)**

Subsection (d) is necessary to clarify that the term “Aggregate Assessment” used in this chapter means the sum of assessments from all stewardship organizations or individual manufacturers collected in a calendar year.

**Subsection (e)**

Subsection (e) is necessary to clarify that the term “Carpet As Alternative Fuel” (CAAF) used in this chapter means fuel that has been produced from source-separated and sorted post-consumer carpet and that has been processed, including (1) extraction of components for recycling if at all possible; and (2) size reduction, shredding, and/or blending with coal fines, etc. CAAF is not a type recycling, but it is a type of diversion for the purpose of this Article.

**Subsection (f)**

Subsection (f) was amended from the original text to emphasize that this Article places emphasis on landfill disposal, not solid waste disposal, and the definition was modified to clarify that the term “Diversion” or “Divert” used in this chapter means activities which reduce or eliminate the amount of solid waste disposed at landfills in a manner consistent with the state’s hierarchy for waste management pursuant to Section 40051. The definition section in Chapter 2 of Division 30 specifies in PRC Section 40100 that definitions will apply throughout the division unless the context requires otherwise. In this instance, the definition of “Disposal” from PRC Section 40120.1 and “solid waste disposal” from PRC Section 40192 apply to disposition of waste into land, atmosphere

or into state waters. The purpose of this program, as articulated in PRC Section 42970, is to recycle carpet and divert carpet from landfills, not necessarily to divert from atmosphere or state waters. Nothing in the definition in this Article is intended to change the definition of diversion that applies to jurisdictions pursuant to Section 40192(b) of the Public Resources Code or the applicability of that definition through Part 2 of Division 30 of the Public Resources Code (commencing with Section 40900). Furthermore, if the definition of “Diversion” or “Divert” in Part 2 is revised the new definition would not apply to this Article.

### **Subsection (g)**

Subsection (g) is necessary to clarify that the term “Indoor/outdoor carpet” used in this chapter means a type of carpet, regardless of construction, made of synthetic materials that have been especially designed or treated to withstand moisture, extremes of temperature, ultra-violet rays, and other types of exposures. Indoor/outdoor carpet may be broadloom or carpet tiles that are applied in building interiors as well as exteriors. Indoor/outdoor carpet is defined as carpet for the purpose of this Article.

### **Subsection (h)**

Subsection (h) is necessary to clarify that the term “Reporting period” used in this chapter means the period that commences in January and ends in December, and represents twelve consecutive months in the preceding calendar year.

### **Subsection (i)**

Subsection (i) is necessary to clarify that the term “Rug” used in this chapter means a loose-laid soft floor covering manufactured from natural or synthetic fiber that is not intended to cover the entire floor and is not made from carpet.

### **Subsection (j)**

Subsection (j) is necessary to clarify that the term “Significant or Material Change” used in this chapter means any change in a required element of the carpet stewardship plan or annual report.

**Subsection (k)**

Subsection (k) is necessary to clarify that the term “synthetic turf” used in this chapter means a primarily outdoor synthetic product manufactured to look like natural grass for use as a sports playing surface and/or alternative to lawns. Synthetic turf is not carpet.

**Subsection (l)**

Subsection (l) was added to the proposed text to clarify that current statutory provision that provides a jurisdiction with up to 10 percent diversion credit for solid waste managed through existing transformation facilities will not be affected. Transformation facilities subject to PRC 41783 are required to use front end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible. The term “Transformation” used in this chapter is defined in Section 40201 of the Public Resources Code. In this case, should the definition of transformation in Section 40201 be revised, that new definition would apply in this Article.

**Section 18942. Submittals.****Subsection (a)**

Subsection (a) sets forth that a corporate officer acting on behalf of a manufacturer or stewardship organization must register with the department and includes the process for registration. This subsection is necessary because it clarifies that the responsibility of submitting a carpet stewardship plan is with the person in an organization who is held the most responsible for the actions of that organization. This subsection is also necessary as it explains the process of registration to a corporate officer.

**Subsection (a) (1)**

Subsection (a) (1) specifies information that must be submitted to the department. This subsection is necessary to allow the department to verify the information submitted by a manufacturer or stewardship organization.

**Subsection (a) (1) (A) through (H)**

Subsection (a) (1) (A) through (H) specifies information that must be submitted to the department. These subsections are necessary to allow the department to verify the information submitted by a manufacturer or stewardship organization.

**Subsection (a) (2)**

Subsection (a) (2) specifies information that must be submitted to the department. This subsection is necessary to allow the department to verify the information submitted by a stewardship organization.

**Subsection (a) (2) (A) through (H)**

Subsection (a) (2) (A) through (H) is necessary to allow the department to verify the information submitted by a manufacturer or stewardship organization.

**Subsection (a) (3)**

Subsection (a) (3) specifies information that must be submitted to the department. The department needs this information to create a list of covered brands that it is required to post at the department's website.

**Subsection (b)**

Subsection (b) is necessary because it facilitates the retention of documents electronically for easier retrieval. This subsection is also necessary to ensure that complete and accurate information is submitted to the department, and for this reason a hard copy must be signed by a corporate officer of a manufacturer or stewardship organization under the penalty of perjury. While the department only has authority covering civil penalties, the plans and activity reports required to be filed under the Carpet Stewardship Regulation are instruments which are recorded within the meaning of Penal Code Section 115. In other words, this language is not included for enforcement by the department, but could be used by others. In adopting the regulatory

requirement for a penalty of perjury signature, the department is not violating the nondelegation rule because the crime and its punishment are already established in the Penal Code. The false swearing has already been made a crime by Congress, not the department. Similarly, the penalty is established by statute, not the department. The regulation adopted is consistent with established statute.

### **Subsection (b) (1) and subsection (b) (1) (A) through (K)**

Subsection (b) (1) and subsections (b) (1) (A) through (K) are necessary to ensure that the information submitted in a stewardship plan is in a standardized form that will ensure consistency of future stewardship plan submittals and facilitate their review and use by the department and other stakeholders.

### **Subsection (b) (2)**

Subsection (b) (2) was added to the proposed text because it is necessary to clarify that the department, in addition to approval or disapproval of a stewardship plan, may conditionally approve a stewardship plan. This subsection is also necessary to ensure that if the department disapproves or conditionally approves a stewardship plan, a manufacturer or stewardship organization has 60 days to resubmit a plan or provide any supplemental information requested by the department.

### **Subsection (b) (3)**

Subsection (b) (3) is necessary to ensure that plans are kept current and support compliance with the program. A change could lead to non-compliance limiting the submitter from selling carpet within California.

### **Subsection (b) (4)**

Subsection (b) (3) is necessary to clarify that while the approved stewardship plan is considered a public record, there are exceptions to that such as financial, production, or sales data reported to the department by a manufacturer or stewardship organization. This is provided to protect proprietary information. It is also necessary to clarify that the

department may release financial, production, or sales data in a summary form only that cannot be attributable to a specific manufacturer to allow for transparency.

### **Subsection (c)**

Subsection (c) sets forth that a corporate officer acting on behalf of a manufacturer or stewardship organization that is operating a carpet stewardship program under a department-approved stewardship plan must submit the annual report to the department. This subsection is necessary because it clarifies that the responsibility for submitting a carpet stewardship annual report is with the person in the organization who is held the most responsible for the actions of that organization.

### **Subsection (c) (1)**

Subsection (c) (1) is necessary because it facilitates the retention of documents electronically for easier retrieval. This subsection is also necessary to ensure that complete and accurate information is submitted to the department.

### **Subsection (c) (2) and subsection (c) (2) (A) through (I)**

Subsection (c) (2) and subsections (c) (2) (A) through (I) are necessary to ensure that the information submitted in an annual report is in a standardized form that will ensure consistency of future annual report submittals and facilitate their review and use by the department and other stakeholders.

## **Section 18943. Criteria for Plan Approval.**

### **Subsection (a)**

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

### **Subsection (a) (1)**

Subsection (a) (1) specifies information that must be submitted to the department. This

subsection is necessary to allow the department to verify the information submitted by a stewardship organization and make it easy to identify who is submitting the plan.

**Subsection (a) (2)**

Subsection (a) (2) is necessary to establish the scope of the stewardship plan and to clarify the criteria for approval of carpet stewardship plan as required in PRC Section 42972.

**Subsection (a) (2) (A)**

Subsection (a) (2) (A) specifies that the program covers all polymer types. Providing this information in plans helps ensure stewardship organizations and manufacturers do not overlook this requirement and this objective is met.

**Subsection (a) (2) (B)**

Subsection (a) (2) (B) is necessary to ensure that the information submitted in a stewardship plan is in a standardized form that will ensure consistency of future stewardship plan submittals and facilitate their review and use by the department and other stakeholders.

**Subsection (a) (3)**

Subsection (a) (3) is necessary because by setting performance goals the purpose of the carpet stewardship program can be realized.

**Subsection (a) (3) (A)**

Subsection (a) (3) (A) was amended from the original proposed text to specify that numeric performance goals are required for only two of the five categories, namely, increase the reuse of post-consumer carpets (category 3) and increase the recycling of post-consumer carpets (category 4). Numeric goals and a description of how these goals will be achieved for these categories are necessary in order to determine the

success of the program. Additionally, Subsections (a) (3) (A) (1), (2), and (5) are also necessary to achieve the purpose of the carpet stewardship program.

**Subsection (a) (3) (B)**

Subsection (a) (3) (B) sets forth that the goals in the stewardship plan be at minimum equal to the goals established in the CARE MOU. This subsection is necessary because the stewardship plan must have minimum goals against which progress in the implementation of the plan can be measured. It is also necessary to clarify that the recycling infrastructure in California is more established and has higher capacity than the nation, and consequently, the goals in the stewardship plan must be adjusted for California conditions.

**Subsection (a) (3) (C)**

Subsection (a) (3) (C) is necessary as it clarifies that a baseline and appropriate units are prerequisite for establishing goals.

**Subsection (a) (3) (D)**

Subsection (a) (3) (D) is necessary because a methodology is needed to estimate the available carpet for collection in California.

**Subsection (a) (3) (E)**

Subsection (a) (3) (E) is necessary because source reduction is the highest level in waste management hierarchy.

**Subsection (a) (4)**

Subsection (a) (4) is necessary as it clarifies that waste management practices according to the waste management hierarchy are included in the stewardship plan.

**Subsection (a) (4) (A)**

Subsection (a) (4) (A) sets forth that a stewardship plan include proposed measures that will enable the management of post-consumer carpet in a manner consistent with

the state's solid waste management hierarchy pursuant to PRC Section 40051 and demonstrate that over time source reduction, reuse, and recycling will increase at a greater rate than environmentally safe transformation and land disposal. This subsection is necessary because it clarifies the preference of using the State's waste management hierarchy in managing postconsumer carpet. This subsection is also necessary because it promotes recycling and diversion of postconsumer carpet from landfill.

#### **Subsection (a) (4) (B)**

Subsection (a) (4) (B) was amended from the original proposed text because it is necessary to emphasize that the management of carpet through source reduction, reuse and recycling must be greater than, and grow at a higher rate than, the management of carpet through Carpet As Alternative Fuel (CAAF). This ensures that priority is placed at the top of the solid waste management hierarchy, that is, source reduction, reuse and recycling. Without this statement, lower priority management options (such as combustion of carpet) could grow significantly while the priority approaches barely increase.

#### **Subsection (a) (4) (C)**

Subsection (a) (4) (C) was added to the proposed text because it is necessary to clarify that this Article does not modify or abrogate in any manner existing provisions of Section 41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent.

#### **Subsection (a) (5)**

Subsection (a) (5) is necessary because collection of postconsumer carpet is the essential first step in managing postconsumer carpet. The system of collection has an impact on the efficiency of collection and can be used as a means of measuring compliance.

#### **Subsection (a) (5) (A)**

Subsection (a) (5) (A) is necessary because the type of collection sites impacts the process of collection and can be used as a means of measuring compliance.

#### **Subsection (a) (5) (B)**

Subsection (a) (5) (B) was amended from the original proposed text because it is necessary to clarify that types of reuse and recycling activities, processing and/or disposal by product type rather than types of destination, which can be vague, will determine whether postconsumer carpet is put to the best and highest possible use. This subsection is also necessary as it can be used as a means of measuring compliance.

#### **Subsection (a) (5) (C)**

Subsection (a) (5) (C) is necessary as it specifies the methods service providers handling old carpet can use to readily, accurately, and economically identify the type of carpet polymer to facilitate reuse and recycling.

#### **Subsection (a) (5) (D)**

Subsection (a) (5) (D) is necessary because the education of service providers and their use of best management practices is a key factor in the effective collection and management of postconsumer carpet. This will ensure a level playing field within the regulated community.

#### **Subsection (a) (5) (E)**

Subsection (a) (5) (E) was amended from the original proposed text because it is necessary to ensure that each consumer that pays a carpet stewardship assessment, including but not limited to those in rural areas, will be provided reasonably convenient opportunities in each county to manage their post-consumer carpet in order to realize the benefit of paying the assessment and to provide more equal opportunity to all rate payers.

**Subsection (a) (6)**

Subsection (a) (6) is necessary because development of markets for recycled products from carpets is essential for increasing recycling and diversion of postconsumer carpet from landfill.

**Subsection (a) (7)**

Subsection (a) (7) sets forth a funding mechanism that provides sufficient funding to recover, but not exceed, the cost of the carpet stewardship program, including the administrative, operational, and capital costs of the plan. This subsection is necessary because a sound financing mechanism is essential for incentivizing recycling of carpets which leads to establishing an effective carpet stewardship program. This will also ensure that the residents of California are not over charged for the services or that the fee is not used to gain a market advantage.

**Subsection (a) (7) (A)**

Subsection (a) (7) (A) is necessary because a carpet stewardship assessment per square yard of carpet sold in the state is a prerequisite for a sound financing mechanism.

**Subsection (a) (7) (B)**

Subsection (a) (7) (B) specifies a budget for the program that includes revenue estimates from the assessment, full program costs, and administrative costs. This subsection is necessary for the effective implementation of the program and to ensure that the residents of California are not overcharged for the services. This subsection is also necessary because a service payment to the department is an element of the program.

**Subsection (a) (7) (C)**

Subsection (a) (7) (C) is necessary because any fund not disbursed in a calendar year is put back into the program to reduce the cost of the program including the assessment amount.

**Subsection (a) (7) (D)**

Subsection (a) (7) (D) is necessary because the assessment must be used solely for the implementation of the program.

**Subsection (a) (7) (E)**

Subsection (a) (7) (E) specifies that amount of assessment does not create an unfair advantage in the marketplace. The subsection is necessary to clarify that participation in the program is essential by all concerned entities.

**Subsection (a) (7) (F)**

Subsection (a) (7) (F) is necessary because funds must be allocated in a manner that supports both solid waste management hierarchy and program goals identified in the plan.

**Subsection (a) (7) (F) a**

Subsection (a) (7) (F) a was added to the proposed text to ensure that funds designated for CAAF are supported with documentation that provides evidence of a net environmental benefit over landfilling and that without an incentive more materials would be landfilled. This provision is necessary to ensure that program funds are distributed in accordance with the solid waste management hierarchy and are not spent where incentives are not needed to fulfill the goals of the Article. Incentivizing CAAF without demonstrating that the incentive is needed could enable CAAF, a low priority in waste management hierarchy, to grow significantly while the high priority approaches in waste management such as source reduction, reuse and recycling barely increase.

**Subsection (a) (7) (G)**

Subsection (a) (7) (G) is necessary to implement an element of the carpet stewardship program, namely auditing of the financial activities of the stewardship organization or individual manufacturer that are related to implementation of the plan.

**Subsection (a) (7) (H)**

Subsection (a) (7) (H) is necessary to prevent commingling of the funds and facilitate auditing of financial activities of stewardship organization or individual manufacturer.

**Subsection (a) (8)**

Subsection (a) (8) is necessary because education and outreach to consumers, commercial building owners, carpet installers, and retailers is needed to help promote their participation in achieving the purposes of the carpet stewardship plan. This subsection is also necessary as it requires a description of the methods of education and outreach to measure their effectiveness.

**Subsection (a) (9)**

Subsection (a) (9) is necessary because the methods of measuring attainment of goals determine the effectiveness of performance of the program and ensure consistency within the regulated community.

**Subsection (a) (9) (A)**

Subsection (a) (9) (A) is necessary because measurement methodology and assumptions used in the methodology determine the accuracy of data obtained on program performance.

**Subsection (a) (10)**

Subsection (a) (10) is necessary because consultation with stakeholders and consideration of existing infrastructure will lead to development of a stewardship plan that is more realistic and has minimum impact on the stakeholders.

**Subsection (a) (11)**

Subsection (a) (11) is necessary because auditing the financial activities of a stewardship organization or an individual manufacturer related to the implementation of the stewardship plan will ensure that funds are disbursed solely for the implementation of the program.

**Subsection (a) (12)**

Subsection (a) (12) was added to the proposed text because it is necessary to specify that the department, as the lead agency for compliance with the California Environmental Quality Act (CEQA), needs to receive relevant environmental information from manufacturers or stewardship organization, who may be unfamiliar with CEQA, in order to assess the product stewardship plan and make a determination on its approval. Additionally, by making this requirement known upfront, it encourages any entity submitting a plan to carefully consider environmental impacts in the design of the plan.

**Section 18944. Annual Report Compliance Criteria.****Subsection (a)**

Subsection (a) is necessary because it allows the department through its oversight authority to evaluate the overall effectiveness of the Product Stewardship for Carpet Program, while providing the regulated community with a consistent statewide set of standards for meeting the reporting requirements of PRC section 42976.

**Subsection (a) (1)**

Subsection (a) (1) is necessary to allow the department to verify the information submitted by a manufacturer or stewardship organization.

**Subsection (a) (2)**

Subsection (a) (2) is necessary because it provides an evaluation of the effectiveness of the carpet stewardship plan and anticipated steps, if needed, to improve performance.

**Subsection (a) (3)**

Subsection (a) (3) is necessary because for the effectiveness of the overall recycling program in California, the program must accept and manage all postconsumer carpets, regardless of polymer type or material of construction.

**Subsection (a) (3) (A)**

Subsection (a) (3) (A) is necessary because any changes in the program scope from the approved stewardship plan will have an impact on the implementation of the plan and, therefore, must be reported.

**Subsection (a) (3) (B)**

Subsection (a) (3) (B) is necessary as it verifies that the scope of the plan has remained unchanged.

**Subsection (a) (4)**

Subsection (a) (4) is necessary because it describes the product stewardship program. This subsection is also necessary to ensure that the information submitted in an annual report is in a standardized form that will ensure consistency of future annual reports and facilitate their review by the department.

**Subsection (a) (4) (A)**

Subsection (a) (4) (A) is necessary because the type of collection sites and their throughput capacities impacts the process of collection.

**Subsection (a) (4) (B)**

Subsection (a) (4) (B) is necessary to allow the department to verify the information in an annual report.

### **Subsection (a) (5)**

Subsection (a) (5) specifies goals and activities based on the stewardship plan. It requires the measurement of goals from a baseline and the achievement of those goals. This subsection is necessary because by achieving the goals the purpose of the carpet stewardship program can be realized.

### **Subsection (a) (5) (A)**

Subsection (a) (5) (A) is necessary because quantitative information is needed to determine the effectiveness of the program. Furthermore, subsections (a) (5) (A) (1) through (12) require specific information which is necessary to ascertain that the carpet stewardship plan has achieved its goals.

### **Subsection (a) (5) (B)**

Subsection (a) (5) (B) specifies that supporting information must be provided with information on goals. The subsection is necessary to determine how the information on goals was obtained.

### **Subsection (a) (5) (B) (1)**

Subsection (a) (5) (B) (1) is necessary because methodology, assumptions, conversion factors, and data sources are needed to determine the available carpet for collection in California.

### **Subsection (a) (5) (B) (2)**

Subsection (a) (5) (B) (2) was amended from the original proposed text to clarify that data must be specific to sales in California or post-consumer carpet diverted from California landfills because the stewardship plan is specifically for California.

### **Subsection (a) (5) (B) (3)**

Subsection (a) (5) (B) (3) is necessary because it clarifies the preference of using the State's waste management hierarchy in managing postconsumer carpet. This

subsection is also necessary because it promotes reuse and recycling over safe transformation and landfill disposal.

#### **Subsections (a) (5) (B) (4) and (5)**

Subsections (a) (5) (B) (4) and (5) specify continuous meaningful improvement towards achievement of goals and progress toward achievement of all goals in the approved plan. This subsection is necessary because it demonstrates the success of the plan.

#### **Subsection (a) (6)**

Subsection (a) (6) is necessary because giving incentives to promote products made from postconsumer carpet will lead to the development of markets for these products.

#### **Subsection (a) (7)**

Subsection (a) (7) sets forth a funding mechanism that provides sufficient funding to recover, but not exceed, the cost of the carpet stewardship program, including the administrative, operational, and capital costs of the plan. This subsection is necessary because a sound financing mechanism is essential for incentivizing recycling of carpets and establishing an effective carpet stewardship program. This subsection is also necessary because any changes in the amount of the carpet stewardship assessment fee will impact the implementation of the plan.

#### **Subsections (a) (7) (A) through (I)**

Subsections (a) (7) (A) through (I) are necessary because the data generated will help determine the effectiveness of the plan and ensure the fee is adequate to cover the costs of implementing the plan.

#### **Subsections (a) (7) (I) a**

Subsections (a) (7) (I) a was added to the proposed text to ensure that funds designated for CAAF are supported with documentation reporting on economic and environmental impacts and that incentives must expire, if they no longer serve a benefit. This provision is necessary to ensure that program funds are distributed in accordance

with the solid waste management hierarchy and are not spent where incentives are not needed to fulfill the goals of the Article. Incentivizing CAAF without demonstrating that the incentive is needed could enable CAAF, a low priority in waste management hierarchy, to grow significantly while the high priority approaches in waste management such as source reduction, reuse and recycling barely increase.

### **Subsections (a) (7) (K)**

Subsections (a) (7) (K) is necessary because the data generated will help in the determination of the effectiveness of the plan and ensure the fee is adequate to cover the costs of implementing the plan.

### **Subsection (a) (8)**

Subsection (a) (8) is necessary because education and outreach to consumers, commercial building owners, carpet installers, and retailers help promote their participation in achieving the purposes of the carpet stewardship plan. This subsection is also necessary as it requires a description of the methods of education and outreach to measure their effectiveness.

### **Subsection (a) (9)**

Subsection (a) (9) is necessary because auditing the financial activities of a stewardship organization or an individual manufacturer related to the implementation of the stewardship plan will ensure that funds are disbursed solely for the implementation of the program. This subsection is also necessary because it will ensure that the requirements as directed by the department are complied with.

### **Subsections (a) (9) (A) through (C)**

Subsections (a) (9) (A) through (C) are necessary because if the department decides to review the findings of the independent auditor, it will need the same data that was given to the auditor by the stewardship organization or the individual manufacturer to preserve

integrity and consistency of the audit and the audit process. This section is also necessary because it allows the department to request supplemental information as needed from individual manufacturer or stewardship organization in order to complete its review of the audit.

**Subsections (a) (9) (D)**

Subsection (D) is necessary as it specifies a timely reply to auditee.

**Subsections (a) (9) (E)**

Subsection (E) was added to the proposed text to clarify that if after conducting further review of the audit, the department deems it to be necessary, the department may conduct its own audit. This acknowledges that the department has the authority to conduct audits if it is deemed necessary.

**Section 18945. Civil Penalties.**

Section 18945 is necessary to specify that the department may impose civil penalties for violation of the law and to describe what entities would be subject to those penalties. In order to have an effective program and to maintain a level playing field for all participants, the department must effectively enforce the law. These civil penalties are necessary for the enforcement of the law.

**Subsection (a)**

Subsection (a) is necessary to describe which manufacturers are subject to penalties under the law, and to specify that manufacturers are individually subject to civil penalties if their stewardship organization fails to comply.

**Subsection (b)**

Subsection (b) clarifies that if a manufacturer has supplied true and accurate information, they are not subject to penalties for any violations of the law caused by a stewardship organization failing to report true and accurate information. This is to

prevent them from being subject to a penalty as the result of another party’s non-compliant actions.

**Subsection (c)**

Subsection (c) clarifies that if a stewardship organization is found to be in violation of the law for submitting false or misleading information, it is not subject to penalties if it can demonstrate the false or misleading information came from a manufacturer. This is to prevent them from being subject to a penalty as the result of another party’s non-compliant actions.

**Subsection (d)**

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

**Section 18945.1. Amount of Civil Penalties and Administrative Penalty Schedule.**

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

Subsections (a) (1)(A) through (C) are needed to explain how the Base Penalty Table I functions to identify and categorize various types of violations subject to civil penalties for stewardship organizations and manufacturers. Base Penalty Table 1 is amended to reflect additions and amendments to the proposed text.

<b>Base Penalty Table I: For Stewardship Organizations and Manufacturers</b>		
<b>Violation</b>	<b>Description of Violation</b>	<b>Severity</b>
PRC 42972(a)	Failure to submit, individually or through a stewardship organization, a stewardship plan to the Department	Level 3
PRC 42973(b)	Failure to resubmit a stewardship plan within 60 days after receiving a notice of disapproval from the Department	Level 1
14 CCR 18942(b)(2)	Failure to resubmit a stewardship plan within 60 days after receiving a conditional approval from the Department.	Level 1
PRC 42972(e)	Failure to notify the Department within 30 days after instituting a significant or material change to a Department-approved stewardship plan	Level 2
PRC 42975	Failure to demonstrate to the Department continuous meaningful	Level 2

	improvement in the rates of recycling and diversion of postconsumer material subject to a stewardship plan and in meeting the other goals included in an organization's stewardship plan	
PRC 42976	Failure to submit, individually or through a stewardship organization, an annual report to the Department	Level 3
PRC 42976	Annual report does not contain required elements	Level 2
PRC 42977(a)	Failure to pay an annual administration fee to the Department	Level 3
PRC 42974(b)	Offering a carpet for sale or for promotional purposes that is not subject to a Department-approved stewardship plan	Level 3
PRC 42972(c)(3)(B)	Stewardship assessment is not clearly visible on invoice or functionally equivalent billing document as a separate line item	Level 1
PRC 42972(c)(3)(B)	Invoice or functionally equivalent billing document is not accompanied by a brief description of the stewardship assessment or a Department-approved label	Level 1
14 CCR 18946	Failure to meet record keeping requirements	Level 2

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

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

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

<b>Base Penalty Table II: For Wholesalers and Retailers</b>		
<b>Violation</b>	<b>Description of Violation</b>	<b>Severity</b>
PRC 42974(b)	Offering a carpet for sale or for promotional purposes that is not subject to a Department-approved stewardship plan	Level 3
PRC 42972(c)(3)(B)	Stewardship assessment is not clearly visible on invoice or functionally equivalent billing document as a separate line item	Level 1
PRC 42972(c)(3)(B)	Invoice or functionally equivalent billing document is not accompanied by a brief description of the stewardship assessment or a Department-approved label	Level 1

14 CCR 18946	Failure to meet record keeping requirements	Level 2
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Base Penalty Table II is necessary because it identifies the various types of violations subject to civil penalties for stewardship wholesalers and retailers. It also describes the severity level of each violation. The department needs to identify violations that impede proper implementation of or negatively affect the program.

**Subsections (b) (1) through (3)**

Subsections (b) (1) through (3) are necessary to establish the base penalty range within which the department may set a penalty amount.

**Subsection (c)**

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

**Section 18945.2. Criteria to Impose a Civil Penalty.**

**Subsections (a) through (k)**

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

**Section 18945.3. Procedure for Imposing Civil Penalties.**

**Subsection (a)**

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

**Subsections (b) (1)-(3)**

Subsections (b) (1)-(3) describe how entities may be informed of actions taken against

them for civil penalties under the law. This is necessary as it describes an element of due process to be followed.

### **Subsection (c)**

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

## **Section 18946. Record Keeping Requirements**

### **Subsection (a)**

Subsection (a) sets forth that manufacturers, wholesalers and retailers will be required to compile, maintain records, and make them available to the department, to demonstrate compliance with the carpet stewardship Program. Since the manufacturers, wholesalers and retailers are subject to enforcement from the department, this section is necessary to provide clear, statewide standards regarding recordkeeping for the regulated community. This section is also necessary to ensure that specific data are maintained by manufacturers, wholesalers and retailers that will allow the department to evaluate the overall effectiveness of the carpet stewardship Program.

### **Subsection (b)**

Subsection (b) was amended from the original proposed text to specify that manufacturers, wholesaler and retailer must give the department reasonable and timely access as determined by the department to their facilities, operations, and any relevant records upon request and retain records for three years after the submission of the plan and annual report required by this article. The department would issue a notice that would provide information on reason and time for access to facilities and information. This subsection is necessary to demonstrate compliance with the carpet stewardship program.

### **Subsections (c) and (d)**

Subsections (c) and (d) are necessary to ensure the department is given access to all the information it needs to be able to evaluate compliance with, and the overall effectiveness of PRC Section 42970 et seq.

### **Subsection (e)**

Subsection (e) is necessary to enforce the requirement of this article.

## **Section 18947. Proprietary, Confidential, or Trade Secret Information.**

### **Subsection (a)**

Subsection (a) is necessary to make clear to manufacturers, wholesalers and retailers that data and information that is confidential, proprietary or a trade secret will be handled appropriately by the department and will not be released to the public or any competitor. This subsection refers to the department's existing process for handling and maintenance of confidential, proprietary or trade secret information.

## **Section 18948. Service Payments to Department of Resources, Recycling and Recovery.**

### **Subsection (a)**

Subsection (a) is necessary as it specifies the sources of information that the department will use to estimate the cost it will incur to administer and enforce the requirements of this chapter for the next fiscal year.

### **Subsection (b)**

Subsection (b) is necessary to specify the person responsible for approving the fee charged for each stewardship plan for the full cost of administering and enforcing the plan.

**Subsection (c)**

Subsection (c) is necessary to specify how the cost will be shared by different entities to avoid creating an unfair advantage.

**Subsection (d)**

Subsection (d) is necessary to ensure that payments received by the department are in a timely manner.

**Subsection (e)**

Subsection (e) is necessary to ensure that the department has adequate fund to administer the plan.

**ALTERNATIVES DETERMINATION**

The department has determined that no alternative it considered or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

**LOCAL MANDATE DETERMINATION**

The department has determined that the proposed regulations impose no mandates on local agencies or school districts.