

**State of California
Office of Administrative Law**

In re:
Department of Resources Recycling and
Recovery

NOTICE OF APPROVAL OF REGULATORY
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 14, California Code of Regulations

OAL File No. 2011-1212-01 S

Adopt sections: 18940, 18941, 18942,
18943, 18944, 18945,
18945.1, 18945.2, 18945.3,
18946, 18947, 18948

This is the adoption of regulations to implement Statutes of 2010, Chapter 681, Product Stewardship for Carpets by defining terms, specifying the procedure for submittal of Carpet Stewardship Plans, standards for review and approval, record keeping, inspection and annual reporting, penalties for violations, and the required fee.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/26/2012.

Date: 1/26/2012



David D. Potter
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director

Original: Caroll Mortensen
Copy: Ty Moore

REGULAR NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2011-0708-01	REGULATORY ACTION NUMBER 2011-1212-DIS	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
RECEIVED FOR FILING PUBLICATION DATE JUL 08 '11 JUL 22 '11		2011 DEC 12 AM 11:29 OFFICE OF ADMINISTRATIVE LAW	
Office of Administrative Law		REGULATIONS	
NOTICE			

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

slc
JAN 26 2012 2:37 PM

DEBRA BOWEN
Secretary of State

AGENCY WITH RULEMAKING AUTHORITY
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Product Stewardship for Carpet		TITLE(S) 14	FIRST SECTION AFFECTED 18940	2. REQUESTED PUBLICATION DATE 7/22/2011
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Kathy Frevert	TELEPHONE NUMBER (916) 341-6476	FAX NUMBER (Optional) (916) 319-7246
OAL USE ONLY <input checked="" type="checkbox"/>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2011, 292	PUBLICATION DATE 7-22-2011

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Product Stewardship for Carpet	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) N.A.
---	---

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Sections 18940, 18941, 18942, 18943, 18944, 18945, 18945.1, 18945.2, 18945.3, 18946, 18947, 1894
	AMEND
	REPEAL
TITLE(S) 14	

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
Sept 19 - Oct 4, 2011 and Oct 11 - Oct 26, 2011

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	---	---	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM 56660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Ty Moore	TELEPHONE NUMBER 916-341-6756	FAX NUMBER (Optional) 916-319-7238	E-MAIL ADDRESS (Optional) ty.moore@calrecycle.ca.gov
--------------------------------------	---	--	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Elliot W. Block</i>	DATE 12/6/11
TYPED NAME AND TITLE OF SIGNATORY Elliot Block, Chief Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 26 2012

Office of Administrative Law

**DELEGATION OF AUTHORITY
FOR
ADOPTION OF REGULATIONS
(STD. 400)**

I, Caroll Mortensen, am Director
of the Dept of Resources Recycling and Recovery (CalRecycle)
and am there empowered and required to review and adopt regulations and approve rulemaking
calendars.

I thereby delegate my authority and responsibilities for these matters to the following individuals:

Howard Levenson
Jason Marshall
Tom Estes
Elliot Block
Mark DeBie

Lorraine Van Kekerix
Scott Walker
Mark Leary
Kent Harvis

This delegation shall be effective during my term as Director
or until withdrawn by me in writing.

In witness of this delegation, I hereby affix my signature to this delegation order.

Caroll Mortensen

Date 11/21/11

We fully understand and accept this delegation.

Elliot W. Block
Lorraine Van Kekerix

Date 11/2/11
Date 12/7/11
Date _____
Date _____
Date _____
Date _____
Date _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ADOPTED PRODUCT STEWARDSHIP FOR CARPET REGULATIONS

TITLE 14: NATURAL RESOURCES
DIVISION 7. DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY
CHAPTER 11. PRODUCT STEWARDSHIP
ARTICLE 1. PRODUCT STEWARDSHIP FOR CARPETS

Section 18940. Purpose.

The purpose of this Article is to clarify existing statute and establish administrative procedures to efficiently and effectively implement the department's responsibilities under the law for product stewardship for carpets and to provide a uniform competitive business environment to all carpet manufacturers, retailers, and wholesalers pursuant to §42970 of the Public Resources Code.

Note: Authority cited: Sections 40502 and 42970, Public Resources Code. Reference: Section 42970, Public Resources Code.

Section 18941. Definitions.

(a) The following definitions shall only apply to this Article and except as otherwise noted, the definitions of this Article supplement and are governed by the definitions set forth in Chapter 20 (commencing with §42970), Part 3, Division 30 of the Public Resources Code:

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

(b) "Administrative fee" means payments from the carpet assessment to the department that cover the costs of its 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.

- 1 (c) "Assessment" means the amount added to the purchase price of carpet that is
2 subsequently remitted to a stewardship organization or manufacturer, and shall be
3 spent on implementing the carpet stewardship plan.
- 4 (d) "Aggregate Assessment" means the sum of all assessments collected in the state
5 of California in a calendar year.
- 6 (e) "Carpet As Alternative Fuel" (CAAF): Fuel that has been produced from source-
7 separated, and sorted post-consumer carpet and processed, including (1) extraction of
8 components for recycling if at all possible; and (2) size reduction, shredding, and/or
9 blending with coal fines, etc. CAAF is not a type recycling, but it is a type of diversion
10 for the purpose of this Article.
- 11 (f) "Diversion" or "divert" means activities which reduce or eliminate the amount of
12 solid waste disposed at landfills in a manner consistent with the state's hierarchy for
13 waste management pursuant to Section 40051. Nothing in this definition is intended to
14 change the definition of diversion that applies to jurisdictions pursuant to section
15 40192(b) of the Public Resources Code or the applicability of that definition through Part
16 2 of Division 30 of the Public Resources Code (commencing with section 40900).
- 17 (g) "Indoor/outdoor carpet" means a type of carpet, regardless of construction, made
18 of synthetic materials that have been especially designed or treated to withstand
19 moisture, extremes of temperature, ultra-violet rays, and other types of exposures.
20 Indoor/outdoor carpet may be broadloom or carpet tiles that are applied in building
21 interiors as well as exteriors. Indoor/outdoor carpet is defined as carpet for the purpose
22 of this Article.
- 23 (h) "Reporting period" means the period that commences in January and ends in
24 December, and represents twelve consecutive months in the preceding calendar year.
- 25 (i) "Rug" means a loose laid (not installed or attached at wall base) soft floor covering
26 manufactured from natural or synthetic fiber, including carpet cut into room or area
27 dimensions, that is not intended to cover the entire floor.
- 28 (j) "Significant or Material Change" means any change in a required element of the
29 carpet stewardship plan or annual report.

1 (k) "Synthetic turf" means a primarily outdoor synthetic product manufactured to look
2 like natural grass for use as a sports playing surface and/or alternative to lawns.

3 Synthetic turf is not carpet.

4 (l) "Transformation" is defined in Section 40201 of the Public Resources Code.

5

6 Note: Authority cited: Sections 40502 and 42971, Public Resources Code. Reference:
7 Sections 40124, 40127, 40180, 40191, 40192, 40201, 41780, 42970, 42971, Public
8 Resources Code.

9

10 **Section 18942. Submittals.**

11 (a) A corporate officer, acting on behalf of a manufacturer or stewardship organization,
12 shall register with the department. The registration process shall include, but not be
13 limited to, the following information:

14 (1) Contact information of the corporate officer responsible for submitting
15 stewardship plan and annual report documents to the department and for
16 overseeing carpet stewardship program activities, including, but not limited to:

17 (A) Contact Name

18 (B) Title

19 (C) Name of Company or Stewardship Organization

20 (D) Mailing address and physical address

21 (E) Phone number

22 (F) E-mail address

23 (G) Web address, if applicable

24 (H) Location and custodian of records

25 (2) List each manufacturer participating in the stewardship organization, including,
26 but not limited to:

27 (A) Contact Name

28 (B) Title

29 (C) Name of Company or Stewardship Organization

30 (D) Mailing address and physical address

31 (E) Phone number

- 1 (F) E-mail address
- 2 (G) Web address, if applicable
- 3 (H) Location and custodian of records
- 4 (3) List of brands covered under the stewardship plan.
- 5 (b) The stewardship plan must be submitted electronically according to instructions
- 6 provided by the department. A hard copy signed by a corporate officer of a
- 7 manufacturer or stewardship organization, under the penalty of perjury, must also be
- 8 submitted to the department.
- 9 (1) The information submitted in a stewardship plan shall address the criteria for
- 10 approval in §18943 and be organized according to this standard outline:
- 11 (A) Contact Information
- 12 (B) Scope
- 13 (C) Performance Goals and Activities
- 14 (D) Solid Waste Management Hierarchy
- 15 (E) Collection System
- 16 (F) Market Development
- 17 (G) Financing Mechanism
- 18 (H) Education and Outreach
- 19 (I) Program Performance Measurement
- 20 (J) Stakeholder Consultation
- 21 (K) Audits
- 22 (2) The department may approve, disapprove, or conditionally approve a
- 23 stewardship plan. A manufacturer or stewardship organization has 60 days to
- 24 resubmit a plan or provide any supplemental information requested by the
- 25 department when a plan is disapproved or conditionally-approved.
- 26 (3) Plans shall be updated within 30 days of a significant or material change.
- 27 (4) The approved stewardship plan shall be a public record, except that financial,
- 28 production, or sales data reported to the department by a manufacturer or
- 29 stewardship organization is not a public record under the California Public Records
- 30 Act, as described in Chapter 3.5 (commencing with §6250) of Division 7 of Title 1 of
- 31 the Government Code and shall not be open to public inspection. The department

1 may release financial, production, or sales data in summary form only that cannot
2 be attributable to a specific manufacturer.

3 (c) The annual report shall be submitted by a corporate officer acting on behalf of a
4 manufacturer or stewardship organization that is operating a carpet stewardship
5 program under a department-approved stewardship plan.

6 (1) The annual report must be submitted electronically to the department,
7 according to instructions provided by the department. A hard copy, signed by a
8 corporate officer of a manufacturer or stewardship organization under the penalty of
9 perjury, must also be submitted.

10 (2) The information submitted in an annual report shall address the criteria for a
11 finding of compliance per 42976 as outlined in §18944 Annual Report Compliance
12 Criteria and be organized according to this standard outline:

- 13 (A) Contact Information
- 14 (B) Executive Summary
- 15 (C) Scope
- 16 (D) Program Outline
- 17 (E) Description of Goals and Activities
- 18 (F) Market Development
- 19 (G) Financing Mechanism
- 20 (H) Education and Outreach
- 21 (I) Audits

22
23 Note: Authority cited: Section 40502, Public Resources Code. Reference: Sections
24 42972, 42975, 42976, Public Resources Code.

25
26 **Section 18943. Criteria for Plan Approval.**

27 (a) Product stewardship plans must contain the following:

- 28 (1) Contact information. Identify the manufacturer or designated stewardship
29 organization responsible for the plan submittal.
- 30 (2) Scope. The program described in the stewardship plan is:

1 (A) Designed to accept and manage all applicable post-consumer carpet,
2 regardless of polymer type or primary materials of construction.

3 (B) The stewardship plan submitted follows the standard outline (see §18942
4 Stewardship Submittal Instructions).

5 (3) Performance Goals and Activities. The program described in the stewardship
6 plan shall contain a set of performance goals and criteria that include, but are not
7 limited, to the following items:

8 (A) Performance goals, which shall be numeric as noted, and include a
9 description of how program goals will be achieved for the following
10 categories:

- 11 1. Increase the recyclability of carpets.
- 12 2. Incentivize the market growth of secondary products made from post-
13 consumer carpets.
- 14 3. Increase the reuse of post-consumer carpets (numeric goal).
- 15 4. Increase the recycling of post-consumer carpets (numeric goal).
- 16 5. Increase the diversion of post-consumer carpet from landfills.

17 (B) The goals established in the plan are at a minimum equal to the goals
18 established in the CARE MOU, while recognizing the current recycling
19 infrastructure and capacity in California is higher than the nation, and
20 estimating changes in market conditions, and anticipating recycling
21 infrastructure and capacity in California.

22 (C) Each goal has a baseline from which it is measured using the units used in
23 the CARE MOU and reporting requirements.

24 (D) The plan describes a methodology for estimating the amount of carpet
25 available for collection in California.

26 (E) Report on source reduction.

27 (4) Solid Waste Management Hierarchy. Describe:

28 (A) Proposed measures that will enable the management of post-consumer
29 carpet in a manner consistent with the state's solid waste management
30 hierarchy pursuant to PRC Section 40051 and demonstrate that over time

- 1 source reduction, reuse, and recycling will increase, over environmentally
2 safe transformation and land disposal.
- 3 (B) Management of carpet through source reduction, reuse and recycling
4 must be greater than, and grow at a higher rate than the management of
5 carpet in any form, including Carpet As Alternative Fuel (CAAF), used as a
6 fuel.
- 7 (C) This Article does not modify or abrogate in any manner existing provisions
8 of Section 41783 of the Public Resources Code related to transformation
9 that allow jurisdictions to reduce their per-capita disposal rate by no more
10 than 10 percent.
- 11 (5) Collection Systems. Describe the system that will be used to collect and
12 properly manage post-consumer carpet. This description must include the following:
- 13 (A) Type of collection sites used.
- 14 (B) Types of reuse and recycling activities, processing and/or disposal by
15 product type.
- 16 (C) Description of how service providers handling old carpet will be able to
17 readily, accurately, and economically identify the type of carpet polymer to
18 facilitate reuse and recycling, e.g., labeling on the back of carpet,
19 affordable laser detection devices, or other technology.
- 20 (D) General description of best management practices to be followed by the
21 service providers, including any training that the manufacturer or
22 stewardship organization intends to provide to or require of service
23 providers to ensure proper collection and management of post-consumer
24 carpet.
- 25 (E) Description of how each consumer that pays a carpet stewardship
26 assessment, including but not limited to those in rural areas, will be
27 provided reasonably convenient opportunity(ies) in each county to manage
28 their post-consumer carpet.
- 29 (6) Market Development. Describe incentives or methods to increase recycling of
30 carpet into secondary products.

1 (7) Financing Mechanism. Include a funding mechanism that provides sufficient
2 funding to recover, but not exceed, the cost of the carpet stewardship program,
3 including the administrative, operational, and capital costs of the plan. The funding
4 mechanism includes the following:

5 (A) A carpet stewardship assessment per square yard of carpet sold in the
6 state, or by some other unit, as approved by the department.

7 (B) A budget for the program that includes revenue estimates from the
8 assessment, full program costs, and administrative costs; including those
9 pursuant to Section 18948 regarding service payments to the department.

10 (C) A requirement that any surplus funds will be put back into the program to
11 reduce the costs of the program, including the assessment amount.

12 (D) An assessment amount that is sufficient to meet, but not exceed, the
13 anticipated cost of carrying out the plan.

14 (E) An assessment amount that does not create an unfair advantage in the
15 marketplace.

16 (F) An allocation of funds that support the solid waste management hierarchy
17 and program goals identified in the stewardship plan.

18 a. Funds designated for CAAF, must be supported with
19 documentation that provides evidence of a net environmental
20 benefit over landfilling and that without an incentive more materials
21 would be landfilled.

22 (G) Stewardship organization and manufacturers shall allocate revenues and
23 expenditures applicable to this program in accordance with Generally
24 Accepted Accounting Principles.

25 (H) The stewardship plan shall describe how the collection and expenditure of
26 carpet assessment funds shall be kept separate from other activities of the
27 stewardship organization.

28 (8) Education and Outreach. Include education and outreach efforts to consumers,
29 commercial building owners, carpet installers, and retailers to promote their
30 participation in achieving the purposes of the carpet stewardship plan. The
31 description shall include how the outreach and education methods will be used and

1 distributed, and how effectiveness of these activities will be measured. Educational
2 information may include, but is not limited to, signage, written materials, advertising
3 or other promotional materials pursuant to Section 42972 (a) (5).

4 (9) Program Performance Measurement. Describe how attainment of the goals will
5 be measured per §18943(a)(3)(c). Program data shall be collected for purposes of
6 annual report submittal (see §18944 Annual Report Compliance Criteria).

7 Information to be provided includes, but is not limited to:

8 (A) Specific information on the measurement methodology, assumptions,
9 conversion factors, if used, and data sources.

10 (10) Stakeholder Consultations. A manufacturer or stewardship organization that
11 submits a plan shall include a process of consultation with affected stakeholders
12 and consider the existing infrastructure in the development of the plan.

13 Stakeholders may include, but are not limited to, other manufacturers and
14 stewardship organizations, service providers, state and local governments, non-
15 governmental organizations, haulers, demolition or other contractors, recyclers,
16 retailers and wholesalers, installers, and consumers.

17 (11) Audits. Include a process by which the financial activities of the stewardship
18 organization and individual manufacturer that are related to implementation of the
19 stewardship plan will be subject to an independent audit, results of which will be
20 submitted in the manufacturer or stewardship organization's annual report and
21 reviewed by the department.

22 (12) Environmental information. Plans shall be accompanied with information to
23 assist in completing an initial study under the California Environmental Quality Act.
24

25 Note: Authority cited: Sections 40502, Public Resources Code.

26 Reference: Sections 42972, 42973, Public Resources Code.
27

28 **Section 18944. Annual Report Compliance Criteria.**

29 (a) The annual report must contain the following:

30 (1) Contact information. Identify the manufacturer or stewardship organization
31 responsible for the annual report submittal.

1 (2) Executive Summary. Provide an evaluation of the effectiveness of the carpet
2 stewardship plan, and anticipated steps, if needed, to improve performance.

3 (3) Scope. The program described in the stewardship plan accepts and manages
4 all applicable post-consumer carpet.

5 (A) Indicate any changes in the program scope from the approved stewardship
6 plan.

7 (B) Indicate the scope is unchanged, if no changes have occurred during the
8 reporting period.

9 (4) Program Outline. Describe the carpet stewardship program, including
10 information on the following topics:

11 (A) Types of collections sites and basic information about recycling facilities in
12 California, e.g., how carpet is collected, number and location of
13 processors, throughput and capacity of recycling facilities.

14 (B) Include facility name(s) and address(es) for each method of disposition.

15 (5) Description of goals and activities based on the stewardship plan. State
16 goals from the approved plan, the baseline from which goals were measured, and
17 report on achievement during the reporting period.

18 (A) The annual report shall include, but is not limited to, quantitative information
19 data and discussion, specific to sales in California, on the following:

20 1. Amount of carpet sold by square yards and pounds, in the state during
21 the reporting period that is covered under the approved stewardship
22 plan. A stewardship organization with more than one manufacturer may
23 use average weight.

24 2. Amount (pounds) of post-consumer carpet that is available for
25 collection.

26 3. Amount (pounds) of carpet source reduced, if measureable.

27 4. Amount (pounds) of post-consumer carpet collected, by weight, during
28 the reporting period.

29 5. Disposition, that is, amounts reused, recycled, incinerated for energy
30 recovery or disposed of in a landfill; of collected post-consumer carpet,
31 by pounds, during the reporting period.

- 6. Describe efforts to increase recyclability of carpets.
- 7. Describe efforts to increase recycling of post-consumer carpet.
- 8. Describe efforts to increase diversion of post-consumer carpet from landfills.
- 9. Describe other environmental impacts as data are available, e.g., green house gas emissions. Descriptions of any enforcement actions or problems related to plan implementation.
- 10. Describe efforts to increase the market growth of secondary products made from post-consumer carpet.
- 11. Describe number of jobs attributable to the carpet stewardship program as data are available.

(B) Information on goals shall be accompanied by supporting information covering, but not be limited to the following topics:

- ~~4.~~ Report describes the measurement methodology, assumptions, conversion factors, and data sources.
 - ~~2.1.~~ _____
 - ~~3.2.~~ _____ Report demonstrates that over time source reduction, reuse, and recycling increased, while environmentally safe transformation and land disposal decreased.
 - ~~4.3.~~ _____ Report demonstrates continuous meaningful improvement toward achievement of goals.
 - ~~5.4.~~ _____ Report covers progress toward achievement of all goals in the approved stewardship plan.

(6) Market Development. The annual report shall include a description of possible market development activities to incentivize the market growth of secondary products made from post-consumer carpet.

(7) Financing Mechanism. The annual report shall include a description and evaluation of the program's financing mechanism, including whether or not the funding was sufficient to recover, but not exceed, the full cost of the stewardship program. The annual report shall include, but not be limited to, the following total program cost information, and include any supporting documentation. Any

1 proposed change in the amount of the carpet stewardship assessment fee must be
2 submitted to the department for re-approval (See §18943 *Criteria for Plan*
3 *Approval*):

4 (A) Total Program Cost

5 (B) Cost(\$)/capita

6 (C) Cost (\$)/pound collected

7 (D) Education/Communications (% of total program cost)

8 (E) End-of-life materials management (% of total program cost)

9 (F) Program administration (% of total program cost, including annual
10 administrative fee for service payments to the department)

11 (G) Governance (program oversight) (% of total program cost)

12 (H) Total cost to local government (if applicable)

13 (I) Amount of the assessment, aggregate assessment funds collected, how
14 spent and amounts of each major expenditure

15 a. Funds, if spent on CAAF, must be supported with documentation
16 reporting on economic and environmental impacts and that
17 incentives shall expire, if they no longer serve a benefit.

18 (J) Surplus funding, if any, and how it will be applied to reduce program costs

19 (K) An evaluation of the assessment rate

20 (8) Outreach/Education. List educational outreach activities in the stewardship
21 plan. Provide a description of educational materials that were provided to retailers,
22 consumers, carpet removers/installers, contractors, during the reporting period
23 (provide electronic samples). Identify the method used to determine the
24 effectiveness of educational and outreach surveys (e.g., surveys, hits on specific
25 web pages, number of participants at events, etc). Education and outreach
26 materials may include, but are not limited to, signage, written materials, advertising
27 or other promotional materials pursuant to Section 42972 (a) (5) and Links to
28 website(s) created and maintained by the manufacturer or stewardship
29 organization.

30 ~~(9) Audits. The annual report shall include an independent financial audit funded~~
31 ~~from the carpet stewardship assessment. The audit shall be conducted in~~

1 (9) Audits. The annual report shall include an independent financial audit funded
2 from the carpet stewardship assessment. The audit shall be conducted in
3 accordance with auditing standards generally accepted in the United States of
4 America, and standards set forth in Government Auditing Standards issued by the
5 Comptroller General of the United States. The audit report shall also include a
6 separate state compliance report on the carpet program requirements as directed
7 by the department.

8 (A) The department may investigate further. If the department decides to
9 further review the findings of the independent auditor, the review will be
10 conducted based on same information the individual manufacturer or
11 stewardship organization provided to the independent auditor.

12 (B) Financial audits must be prepared by a Certified Public Accountant.

13 (C) The department may request supplemental information from the individual
14 manufacturer or stewardship organization during the course of review of a
15 manufacturer- or stewardship organization-submitted financial audit, if
16 necessary.

17 (D) The department will inform the individual manufacturer or the stewardship
18 organization within 60 days of the results of its review.

19 (E) If after conducting further review of the audit, the Department deems it to
20 be necessary, the Department may conduct its own audit.

21
22 Note: Authority cited: Section 40502, Public Resources Code.

23 Reference: Sections 42972, 42976, Public Resources Code. Section 19812, Title 5,
24 California Code of Regulations.

25
26 **Section 18945. Civil Penalties.**
27

28 A civil penalty may be administratively imposed by the department on any person who is
29 in violation of any provision of this Article. The responsible party or parties shall be
30 determined by the department based on the totality of the circumstances.

- 1 (a) Any manufacturer offering carpet for sale or for promotional purposes in
2 California or a manufacturer or stewardship organization submitting a plan or report to
3 the department is subject to enforcement under this Article. Manufacturers are subject
4 to penalties as a result of the failure of their designated stewardship organization to
5 comply with this Article on their behalf.
- 6 (b) Notwithstanding paragraph (a), a product manufacturer is not subject to any
7 penalty for failing to comply if that product manufacturer can demonstrate that it
8 provided true and accurate information to the stewardship organization and the
9 stewardship organization failed to properly report this on behalf of the manufacturer.
- 10 (c) A stewardship organization is not subject to a penalty for failure to comply as a
11 result of submitting false or misleading information if it can demonstrate that it received
12 false or misleading information from a manufacturer that was the direct cause of its
13 failure to comply with this Article.
- 14 (d) Any wholesaler or retailer that offers carpet for sale in the state, or who offers
15 carpet for promotional purposes in the state, is subject to enforcement under this Article.

16

17 Note: Authority cited: Sections 40502 and 42974, Public Resources Code.

18 Reference: Section 42974 and 42978, Public Resources Code.

19

20 **Section 18945.1. Amount of Civil Penalties and Administrative Penalty Schedule.**21 (a) Civil penalties may be imposed administratively in accordance with the following
22 penalty tables:23 (1) Base Penalty Table I is to be used for stewardship organizations and
24 manufacturers.

25 (A) Identify what violations have occurred.

26 (B) Identify the severity of the violations.

27 (C) Establish the possible range of the base penalty per violation based on
28 the severity levels described in paragraph (b).

29

Base Penalty Table I: For Stewardship Organizations and Manufacturers		
Violation	Description of Violation	Severity
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 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	Level 2
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

1
2
3
4
5
6
7

(2) Base Penalty Table II is to be used for wholesalers and retailers.

(A) Identify what violations have occurred.

(B) Identify the severity of the violations.

(C) Establish the possible range of the base penalty per violation based on the severity levels described in paragraph (b).

Base Penalty Table II: For Wholesalers and Retailers		
Violation	Description of Violation	Severity
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

1

2 (b) For the purpose of implementing this [Section/Article], penalty severity levels are
 3 described as follows:

4 (1) For a violation classified as Level 1, the amount of the base penalty may be up
 5 to \$1,000 per day.

6 (2) For a violation classified as Level 2, the amount of the base penalty may be up
 7 to \$5,000 per day.

8 (3) For a violation classified as Level 3, the amount of the base penalty may be up
 9 to \$10,000 per day.

10 (c) The department will set the final penalty amount after considering the criteria set
 11 forth in Section 18945.2. The department may increase the final penalty beyond the
 12 penalty range established pursuant to paragraphs (a) and (b), if it determines, after
 13 considering the criteria set forth in Section 18945.2, that such an increase is warranted
 14 and appropriate.

15

16 Note: Authority cited: Sections 40502 and 42974, Public Resources Code.

17 Reference: Sections 42972, 42973, 42974, 42975, 42976, and 42977, Public
 18 Resources Code; and Section 11506, Government Code.

19

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

2 In assessing or reviewing the amount of civil penalty imposed for a violation of this
3 chapter, the department or the court shall consider all the following:

- 4 (a) The nature, circumstances, extent, and gravity of the violation(s).
- 5 (b) The number and severity of the violation(s).
- 6 (c) Evidence that the violation was intentional, knowing or negligent.
- 7 (d) The size of the violator.
- 8 (e) History of violation(s) of the same or similar nature.
- 9 (f) The willfulness of the violator's misconduct.
- 10 (g) Whether the violator took good faith measures to comply with this chapter and the
11 period of time over which these measures were taken.
- 12 (h) Evidence of any financial gain resulting from the violation(s).
- 13 (i) The economic effect of the penalty on the violator.
- 14 (j) The deterrent effect that the imposition of the penalty would have on both the
15 violator and the regulated community.
- 16 (k) Any other factor that justice may require.

17

18 Note: Authority cited: Sections 40502 and 42974, Public Resources Code.

19 Reference: Section 42978, Public Resources Code.

20

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

22 (a) Civil penalties may be administratively imposed in accordance with the procedures
23 outlined in the Administrative Procedure Act at Chapter 5 (commencing with Section
24 11500) of Part 1 of Division 3 of Title 2 of the Government Code with the exception of
25 Government Code Section 11505(c).

26 (b) The accusation or complaint and all accompanying documents may be served on
27 the respondent by the following means:

1 (1) Personal service.

2 (2) Substitute service by using the same service procedures as described in
3 Section 415.20 of the Code of Civil Procedure.

4 (3) Certified Mail: For respondents who have submitted a stewardship plan,
5 certified mail or registered mail if the letter containing the accusation or complaint
6 and accompanying material is mailed, addressed to the respondent at the latest
7 facility or mailing address(es) provided in the stewardship plan on file with the
8 Department. Any address provided in the stewardship plan may be used for service
9 of process. Proof of service of the accusation or complaint shall be the certified mail
10 receipts or registered mail receipts proving the accusation or complaint and
11 accompanying materials were sent to respondent by certified mail or registered
12 mail. For respondents who have not submitted or are not required to submit a
13 stewardship plan to the department, certified mail or registered mail pursuant to the
14 procedures indicated in the Administrative Procedure Act at Section 11505(c) of the
15 Government Code applies.

16 (c) Civil penalties may be imposed pursuant to the Public Resources Code Section
17 42978 in the discretion of the trier of fact in the civil proceeding.

18
19 Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference:
20 Section 11500, Government Code; and Section 42978, Public Resources Code.

21
22 **Section 18946. Record Keeping Requirements**

23 Each stewardship organization, manufacturer, wholesaler, or retailer required to comply
24 with Chapter 20 (commencing with Section 42970), Part 3, Division 30 of the Public
25 Resources Code shall:

26 (a) Maintain records to support the requirements in this Article. Stewardship
27 organizations and manufacturers must maintain records to support Sections 18943 and
28 18944. Wholesalers and retailers must maintain records on all carpet sold or offered for
29 promotional purposes in the state including:

1 (5) Certification letter(s) from the department if provided by a manufacturer to
2 demonstrate that carpet from the manufacturer is or was subject to a department-
3 approved stewardship plan.

4 (b) Provide the department with reasonable and timely access, as determined by the
5 department, to its facilities, operations, and any relevant records necessary to
6 determine compliance with this Article, upon request. The records required by this
7 Article shall be accessible for three years.

8 (c) Make all records required by this Article available for inspection or audit by the
9 department, or its agent and other duly authorized regulatory agencies during normal
10 working hours.

11 (d) Submit copies of specified records to the department upon request or at a
12 frequency approved by the department.

13 (e) The department may take disciplinary action against any stewardship organization
14 or manufacturer who fails to provide the department with access pursuant to this
15 ~~subdivision~~section including, but not limited to, imposing penalties and the immediate
16 removal from the department's list of manufacturers that are in compliance with Chapter
17 20 (commencing with Section 42970), Part 3, Division 30 of the Public Resource Code
18 and this Article.

19 Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference:
20 Sections 42972, 42972.5, 42973, 42974, 42975, 42976, 42977, 42977.1, 42978, and
21 42981, Public Resources Code.

22
23 **Section 18947. Proprietary, Confidential, or Trade Secret Information.**

24 The public disclosure of records supplied to the department pursuant to this Article that
25 are, at the time of submission, claimed to be proprietary, confidential, or trade secret
26 shall be subject to the disclosure provisions in Title 14, California Code of Regulations,
27 Division 7, Chapter 1, Article 4 (commencing with Section 17041).

1 Authority cited: Section 6253, Government Code. Sections 40502 and 40502 and 42972
2 through 42977.1, Public Resources Code.

3 Reference: Sections 6250 et seq., Government Code. Sections 40062 and 42323,
4 Public Resources Code.

5

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

8 (a) Not later than April 30 of each year, commencing in 2012, the department shall
9 notify each carpet stewardship organization that has submitted a carpet stewardship
10 plan which the department has approved the amount of the annual fee described in
11 Public Resources Code Section 42977, subdivision (a). The fee shall reflect the
12 department's actual annual costs to administer and enforce this chapter for the period
13 from May 1 of the prior year through April 30 of the current year. For payments due in
14 2012, 2013 and 2014, the fee shall also reflect the department's actual annual costs to
15 develop these regulations and the carpet stewardship program. The department's costs
16 shall include the cost of staff, overhead expenses applicable to staff, contract services
17 and any other expenses incurred in administering or enforcing the program and in
18 developing these regulations and the program.

19 (b) If the department approves or conditionally approves, more than one stewardship
20 plan for a fiscal year, the fee shall be prorated equally among the carpet stewardship
21 organizations submitting approved or conditionally approved stewardship plans .

22 (c) The department will issue invoices to each carpet stewardship organization to
23 which this section applies by May 31 of each year. Payment is due annually on July 1..

24 (d) The department's approval of a stewardship plan shall be revoked if payment is not
25 received by July 1. Plans revoked for lack of payment may be reinstated upon
26 payment. .

27

28 Note: Authority cited: Sections 40502, 42977, Public Resources Code. Reference:
29 Section 42977, Public Resources Code.