

## REQUEST FOR APPROVAL

**To:** Scott Smithline  
Director

**From:** Matt Henigan  
Deputy Director, Materials Management and Local Assistance  
Division

**Request Date:** November 19, 2019

**Decision Subject:** Consideration of CARE's Implementation of Chapter 0 of its 2018-2022 California Carpet Stewardship Plan

**Action By:** November 21, 2019

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### **Summary of Request:**

The Carpet America Recovery Effort (CARE) submitted its Chapter 0 Report on September 3, 2019 (Attachments 1-7). The Chapter 0 Report documents CARE's efforts to comply with the requirements contained in Chapter 0 of its approved plan. Chapter 0 of the California Carpet Stewardship Plan 2018-2022 (2018-2022 Plan) was developed by CARE to demonstrate how it would meet the conditions for approval of its plan as specified in CalRecycle's October 16, 2018, Request for Approval (RFA).

Staff evaluated CARE's implementation of Chapter 0 for compliance with all statutory, regulatory, plan, and October 16, 2018 RFA requirements and determined that:

1. CARE adequately fulfilled Requirements III and IV contained in Chapter 0 of its approved plan related to incentivizing markets for postconsumer carpet and source reduction.
2. CARE did not demonstrate it fulfilled Requirements I, II, and V.
  - a. Requirement I: The independent economic analysis did not account for commodity revenues. Accounting for revenues is necessary to justify subsidies and demonstrate that the funding mechanism is sufficient for CARE to meet statutory and programmatic goals. Additionally, the Subsidy Justification Model was not validated.
  - b. Requirement II: The Convenient Collection Study validates data reported by CARE that flooring professionals, including installers and retailers, generate the majority of postconsumer carpet collected through the program. However, CARE's proposed modifications to its convenience

goals do not address how the program will provide convenience for flooring professionals.

- c. Requirement V: CARE did not meet the timeline it established to complete audits of collector/sorters by September 1, 2019.

In addition to the aforementioned requirements, Assembly Bill (AB) 729 (Chu, Chapter 680, Statutes of 2019), was signed into law in October 2019 and establishes new stewardship plan requirements effective January 1, 2020. For example, AB 729 mandates that stewardship organizations include a contingency plan and establish an escrow account or trust fund into which all unexpended funds and ongoing consumer assessments would be deposited in the event that a plan terminates or is revoked. Under a contingency plan, the department would provide written direction to the trustee or escrow agent to continue the implementation of the most recently approved plan. If a new plan has not been approved within one year of termination or revocation, the department may make modifications to the previously approved plan. AB 729 also requires stewardship plans to establish a system of differential assessments that takes into account the financial burden that a particular carpet material has on the stewardship program, as well as the amount of postconsumer recycled content contained in a particular carpet.

**Options:**

1. Defer a compliance determination regarding CARE's implementation of Chapter 0 of its approved plan. Direct staff to:
  - i. Work with CARE to establish timelines that CARE must meet to fulfill all the remaining requirements specified in CalRecycle's October 16, 2018, RFA, as described in this RFA;
  - ii. Monitor CARE's fulfillment of the remaining requirements as described in this RFA by the agreed upon timelines.

If timelines are not agreed to by January 13, 2020, or if CARE does not fulfill any of the requirements within the agreed upon timelines, staff shall refer CARE to the Waste Permitting and Compliance Mitigation Division (WPCMD) for enforcement.

2. Find that CARE did not comply with Chapter 0 of its approved plan and did not fulfill all the requirements of CalRecycle's October 16, 2018, RFA. Refer CARE to the WPCMD for enforcement.

As part of any option selected, direct staff to work with CARE to establish timelines by January 13, 2020, for CARE to develop a contingency plan, set up a trust fund or an escrow account, and establish a system of differential assessments as required by AB

729. If CARE does not meet the agreed upon timelines to comply with the requirements of AB 729, staff shall refer CARE to the WPCMD for enforcement.

**Recommendation:**

Staff recommend Option 1. CARE has not demonstrated that it implemented Chapter 0 of its approved plan and fulfilled all the requirements within the agreed upon timeframe. Under Option 1, staff will work with CARE to establish timelines that CARE must meet to fulfill all of the remaining requirements specified in CalRecycle's October 16, 2018, RFA, while concurrently working with CARE to submit a contingency plan, set up a trust fund or an escrow account, and establish a system of differential assessments as required by AB 729. If timelines are not agreed to by January 13, 2020, staff shall refer CARE to the WPCMD for enforcement.

AB 729 requires safeguards such as a contingency plan and an escrow account to protect consumer assessment funds and the carpet recycling industry, should a stewardship plan terminate or be revoked. CARE's statutory responsibility to establish an escrow account or trust fund and have a contingency plan in place are effective January 1, 2020, the effective date of AB 729. However, CalRecycle recognizes that it is infeasible to submit a contingency plan by January 1, 2020, as statute requires that plans or plan amendments be provided to the advisory committee no less than 30 days before submittal to CalRecycle. In order to allow sufficient time for this process, CalRecycle staff will work with CARE to develop a timeline allowing CARE adequate time to set up a trust fund or escrow account and submit its contingency plan amendment for approval.

AB 729 also requires CARE to implement a system of differential assessments. Staff understand the process to set differential assessments necessitates substantive analysis to ensure assessment levels meet statutory requirements. The 2018-2022 Plan indicated that CARE would have internal discussions to consider a system of differential assessments, and that a public workshop for stakeholder input may be conducted to inform decisions related to differential assessments. Based on these considerations, and upon direction by CalRecycle's director, staff will work with CARE to determine a reasonable timeline for approving and implementing differential assessments which may be different than the timeline for the contingency plan and trust fund or escrow account.

**Action:**

On the basis of the information and analysis in this Request for Approval, I hereby approve Option 1 and direct staff to defer a compliance determination regarding CARE's implementation of Chapter 0. Staff are directed to work with CARE to establish timelines that CARE must meet to fulfill all of the remaining requirements specified in CalRecycle's October 16, 2018, RFA and to submit a contingency plan, set up a trust fund or an escrow account, and establish a system of differential assessments as required by AB 729. If timelines are not agreed to by January 13, 2020, staff shall refer CARE to the WPCMD for enforcement. Once timelines have been established and

approved by the department, staff shall provide public notice, and CARE shall meet all requirements by the agreed upon deadlines.

Failure to comply with the requirements by the agreed upon deadlines may result in referral to the WPCMD for enforcement.

**Dated:** 11/20/19

Signed by Scott Smithline, Director

**Scott Smithline**, Director

**Attachments:**

1. [Chapter 0 Report](https://carpetrecovery.org/wp-content/uploads/2019/09/Chapter-0-Submission_FINAL-ADA_8-30-19.pdf) (submitted September 3, 2019): [https://carpetrecovery.org/wp-content/uploads/2019/09/Chapter-0-Submission\\_FINAL-ADA\\_8-30-19.pdf](https://carpetrecovery.org/wp-content/uploads/2019/09/Chapter-0-Submission_FINAL-ADA_8-30-19.pdf)
2. [Crowe CARE Cost Analysis Report](https://carpetrecovery.org/wp-content/uploads/2019/09/CARE-Cost-Analysis-Report-08-28-2019.pdf) (submitted September 3, 2019): <https://carpetrecovery.org/wp-content/uploads/2019/09/CARE-Cost-Analysis-Report-08-28-2019.pdf>
3. [Crowe CARE Models Evaluation](https://carpetrecovery.org/wp-content/uploads/2019/09/CARE-Models-Evaluation-08-28-2019.pdf) (submitted September 3, 2019): <https://carpetrecovery.org/wp-content/uploads/2019/09/CARE-Models-Evaluation-08-28-2019.pdf>
4. [Model Team Report](https://carpetrecovery.org/wp-content/uploads/2019/09/Model-Report-FINAL-8-29-19_ACCESSABLE.pdf) (submitted September 3, 2019): [https://carpetrecovery.org/wp-content/uploads/2019/09/Model-Report-FINAL-8-29-19\\_ACCESSABLE.pdf](https://carpetrecovery.org/wp-content/uploads/2019/09/Model-Report-FINAL-8-29-19_ACCESSABLE.pdf)
5. [Cascadia Convenient Collection Study](https://carpetrecovery.org/wp-content/uploads/2019/09/CARE_ConvCollection_FINAL_2019_09_01.pdf) (submitted September 3, 2019): [https://carpetrecovery.org/wp-content/uploads/2019/09/CARE\\_ConvCollection\\_FINAL\\_2019\\_09\\_01.pdf](https://carpetrecovery.org/wp-content/uploads/2019/09/CARE_ConvCollection_FINAL_2019_09_01.pdf)
6. [Proposed Requirements for PCC Content](https://carpetrecovery.org/wp-content/uploads/2019/09/CAREs-Proposed-Requirements-for-PCC-Content_FINAL_08-30-2019.pdf) (submitted September 3, 2019): [https://carpetrecovery.org/wp-content/uploads/2019/09/CAREs-Proposed-Requirements-for-PCC-Content\\_FINAL\\_08-30-2019.pdf](https://carpetrecovery.org/wp-content/uploads/2019/09/CAREs-Proposed-Requirements-for-PCC-Content_FINAL_08-30-2019.pdf)
7. [Reuse Guidelines](https://carpetrecovery.org/wp-content/uploads/2019/09/Reuse-Guidelines_Chapter-0_FINAL_ADA_2019_08_31.pdf) (submitted September 3, 2019): [https://carpetrecovery.org/wp-content/uploads/2019/09/Reuse-Guidelines\\_Chapter-0\\_FINAL\\_ADA\\_2019\\_08\\_31.pdf](https://carpetrecovery.org/wp-content/uploads/2019/09/Reuse-Guidelines_Chapter-0_FINAL_ADA_2019_08_31.pdf)
8. [CalRecycle Consideration of Approval of Revised California Carpet Stewardship Plan 2018-2022, October 16, 2018:](https://www2.calrecycle.ca.gov/PublicNotices/Details/2448) <https://www2.calrecycle.ca.gov/PublicNotices/Details/2448>
9. [California Carpet Stewardship Plan Version 3.2.2 and Addenda:](https://www.calrecycle.ca.gov/carpet/plans) <https://www.calrecycle.ca.gov/carpet/plans>
10. [June 20, 2017 Final California Carpet Stewardship Program Enforcement Plan:](https://www2.calrecycle.ca.gov/PublicNotices/Documents/8030) <https://www2.calrecycle.ca.gov/PublicNotices/Documents/8030>

11. [Update to June 2017 Carpet Stewardship Program Enforcement Plan \(dated October 17, 2017\)](https://www2.calrecycle.ca.gov/PublicNotices/Documents/8382):  
<https://www2.calrecycle.ca.gov/PublicNotices/Documents/8382>
12. [California Carpet Stewardship Plan 2018-2022, submitted March 16, 2018](https://www2.calrecycle.ca.gov/Docs/Web/110229):  
<https://www2.calrecycle.ca.gov/Docs/Web/110229>
13. [CalRecycle Consideration of Carpet America Recovery Effort's California Carpet Stewardship Plan 2018-2022, May 15, 2018](https://www2.calrecycle.ca.gov/PublicNotices/Details/2356):  
<https://www2.calrecycle.ca.gov/PublicNotices/Details/2356>
14. [Update to June 2018 Carpet Stewardship Program Enforcement Plan \(dated June 19, 2018\)](https://www2.calrecycle.ca.gov/PublicNotices/Documents/9013): <https://www2.calrecycle.ca.gov/PublicNotices/Documents/9013>
15. [Revised California Carpet Stewardship Plan 2018-2022, submitted August 17, 2018](https://www.calrecycle.ca.gov/docs/cr/carpet/plans/care-final-plan8172018.pdf): <https://www.calrecycle.ca.gov/docs/cr/carpet/plans/care-final-plan8172018.pdf>
16. [Written Comments Received by CalRecycle on Carpet America Recovery Effort's \(CARE\) Chapter 0 Report](https://www2.calrecycle.ca.gov/Docs/Web/115695): <https://www2.calrecycle.ca.gov/Docs/Web/115695>

## **Background Information**

CARE's last approved stewardship plan (Attachment 9) was operational from 2011 to 2016 and expired on December 31, 2016. CalRecycle's Director allowed CARE to continue operating under that plan pursuant to the conditions specified in CalRecycle's June 20, 2017, Final California Carpet Stewardship Program Enforcement Plan (Attachment 10) and subsequent Update to the June 2017 Carpet Stewardship Program Enforcement Plan (Attachment 11). Under these Enforcement Plans, CARE was required to submit a carpet stewardship plan to CalRecycle by March 16, 2018, that complied with the provisions of Assembly Bill 1158 (codified in Public Resources Code [PRC] Sections 42970 – 42983). On March 16, 2018, CARE submitted its California Carpet Stewardship Plan 2018-2022 (Attachment 12) to CalRecycle for review and approval. CARE's plan did not meet all the requirements of PRC Section 42970 et seq. and CalRecycle disapproved the plan on May 15, 2018 (Attachment 13). Under the Enforcement Plan updated in June 2018 (Attachment 14), CalRecycle stated it would continue to defer potential enforcement actions if CARE resubmitted a revised plan within 60 days (July 15, 2018). On June 8, 2018, CARE requested a 30-day extension to allow for submittal of its revised plan to CalRecycle on August 14, 2018. CalRecycle granted CARE a 33-day extension, which provided CARE until August 17, 2018, to submit its revised plan. CARE submitted its revised California Carpet Stewardship Plan 2018-2022 (Attachment 15) to CalRecycle for review on August 17, 2018.

CalRecycle conditionally approved CARE's revised California Carpet Stewardship Plan 2018-2022 on October 16, 2018 (Attachment 8). Approval of the revised plan was contingent on CARE amending the revised plan in a manner that adequately addressed all of the requirements articulated in the October 16, 2018, RFA. CARE prepared Chapter 0 to amend its revised plan in response to the requirements of CalRecycle's conditional approval and submitted it to CalRecycle for review on December 15, 2018. On February 20, 2019, CalRecycle determined that CARE committed to fulfill all the requirements articulated in the October 16, 2018, RFA by September 1, 2019, and therefore satisfied the conditions for approval of that plan until September 1, 2019, when CARE was required to demonstrate that it fulfilled the requirements of Chapter 0. CARE submitted its Chapter 0 Report and supporting documents (Attachments 1-7) on September 3, 2019, to demonstrate the work it conducted relevant to the requirements set forth by CalRecycle.

## **Staff Analysis**

Staff reviewed and analyzed CARE's Chapter 0 Report and associated documents for compliance with all statutory and regulatory requirements and the requirements specified in CalRecycle's October 16, 2018, RFA.

The following summarizes the requirements of CalRecycle's October 16, 2018, RFA, CARE's efforts relevant to each requirement, staff's analysis of whether each requirement was sufficiently met, and remaining requirements that were not adequately

fulfilled, when applicable. The roman numerals, as introduced by CARE in Chapter 0, correspond to the bold bullets in the Recommendation Section found on page two of Attachment 8. For example, roman numeral I corresponds to the first bold bullet on page two of Attachment 8 regarding the economic analysis, and each lower-case letter corresponds to a sub-bullet.

**CalRecycle’s Requirement I:**

With respect to Finding 2 and economic analysis, CARE must fulfill these commitments by September 1, 2019:

- a. Conduct and provide to CalRecycle an independent, detailed economic analysis to validate the Subsidy Justification and Conversion Cost Models that justifies the assessment based on actual costs of program participants. This must include a summary of the range of costs for collecting, processing, and recycling different materials, along with other programmatic expenditures, that is sufficient to estimate how much overall funding and therefore what assessment level is needed to achieve the goal of a 24 percent recycling rate by January 1, 2020, and 26 percent by 2022; and
- b. Update the Subsidy Justification Model and the Conversion Cost Model (and continue to do so every six months thereafter); review changes to the models with CalRecycle staff, and present recommended changes to subsidies to CalRecycle for approval; and
- c. Demonstrate CARE’s Subsidy Justification and Conversion Cost Models use California-specific data and account for regional cost differences.

**Staff Analysis of Requirement I:**

- a. CARE partially fulfilled Requirement I.a. CARE contracted with Crowe LLP (Crowe) to conduct an independent cost analysis. Crowe’s independent cost analysis provides some justifications for the conclusions reached, which were based on relative costs and non-numerical cost ranges for collector/sorter entrepreneurs (CSEs), processors, and manufacturers, rather than numerical data. Crowe’s explanation for not providing quantitative cost data for CSEs, processors, and manufacturers was that the number of participants in each segment of the value chain was limited, and therefore, providing any quantitative data could divulge confidential information. Crowe signed nondisclosure agreements with survey participants that prevented it from sharing cost data with anyone, including CARE. CalRecycle does not agree with CARE’s conclusion that it lacks the authority to require its members to share data relevant to its program. CARE, as the stewardship organization providing subsidies to program participants, can require its members to share relevant data and information as a requirement of maintaining membership in “good standing.” Although staff acknowledge that the pool of participants may be small, knowledge of CARE’s

members' cost data, either directly or through an independent contractor such as Crowe, would enable CARE to determine how to best subsidize and incentivize the actual costs of carpet recycling. Furthermore, CalRecycle suggests Crowe define what it considers as a "critical mass" of carpet recyclers, that would enable CARE to conduct another independent analysis that provides quantitative data once the "critical mass" has been reached.

Crowe reviewed and validated the Conversion Cost Model and highlighted deficiencies related to the method by which shipping costs and depreciation are accounted for, which CalRecycle expects CARE to address in the next model update. However, Crowe reviewed, but did not confirm that it validated, CARE's Subsidy Justification Model. The Request for Proposals that Crowe was contracted to work under did not ask Crowe to validate either model, only to understand each model and provide recommendations for improvement. It was CARE's responsibility to ensure that Crowe carried out an independent economic analysis that addressed CalRecycle's requirements. Furthermore, although Crowe noted that the differential between costs and revenue would potentially drive the subsidies needed and is therefore a critical component, revenue was not included in the analysis. Without quantitative data, neither CARE, nor CalRecycle, can effectively determine whether the assessment and subsidy levels are sufficient to meet the program goals.

Further, while Crowe claims that the current assessment level is adequate to support the program over the next several years, its baseline analysis assumes that CARE will reach a recycling rate of 21.9 percent in 2019 (Attachment 2, p. 5-11), rather than the statutorily required recycling rate of 24 percent by January 1, 2020. While Crowe determined that the program could support a 10 percent increase in subsidies starting in 2020 and still maintain a fund balance of over \$5 million at the end of 2022, it does not state whether an increase in subsidies would support CARE's achievement of a 24 percent recycling rate. Therefore, CalRecycle cannot conclude that CARE has fulfilled the requirement to provide an economic analysis that justifies the assessment level needed to achieve the goal of a 24 percent recycling rate by January 1, 2020 and 26 percent by 2022.

- **Incomplete Requirements:** Provide a complete independent economic analysis that accounts for commodity revenues and justifies subsidies. Demonstrate how the assessment level will provide the overall funding necessary to achieve the recycling rate goals in statute and CARE's 2018-2022 Plan. Validate the Subsidy Justification Model.
- b. CARE adequately fulfilled Requirement I.b. Crowe conducted a review of CARE's Economic, Conversion Cost, Financial, and Subsidy Justification Models and made a number of recommendations, such as making the models predictive



instead of historical, breaking revenue and costs apart, and creating a single predictive model, rather than using four stand-alone models to derive the subsidy costs. CARE's modeling team updated the Subsidy Justification and Conversion Cost Models without incorporating Crowe's recommended changes and concluded that it does not need to make immediate modifications to its current subsidy levels. The modeling team will reevaluate Crowe's recommendations during the six-month model review period and determine if and how these recommendations can be incorporated.

Although Crowe's report found that the program budget can support a 10 percent increase in subsidies without increasing the assessment and identified ways that changes to various subsidies could increase program performance, CARE decided not to change subsidies at this time. Staff encourage CARE and its modeling team to incorporate Crowe's recommendations during the next six-month review period in an effort to improve its program.

- c. CARE adequately fulfilled Requirement I.c. Crowe stated that business size, economies of scale, processing technology differences, and throughput capabilities were more important factors than the geographic location of a business in determining recycling cost differences. While these other factors may also be relevant, Crowe's Cost Analysis Report discusses significant regional differences in labor, rent, and utility costs. For example, labor costs account for over a third of processors expenses, and California's minimum wage is, on average, 90 percent higher than Georgia's (Attachment 2, pp. 4-14 to 4-15). Crowe's proposed supplemental subsidy, which accounts for California's substantively higher minimum wage, is a change that CARE could implement to better support in-state recyclers and account for regional cost differences. CARE also stated that its ability to obtain and share data is limited by the small pool of participants, perceived lack of authority to require participation in cost data sharing, and the fundamental differences in operations for each recycler. As a result, neither CARE nor Crowe were able to reach conclusions based on the specific geographic cost details. CalRecycle recognizes that the limitations above prevented Crowe from confirming or validating regional differences at this time but expect that CARE will use Crowe's evaluation of publicly available data on regional differences to inform future model or subsidy changes.

### **CalRecycle's Requirement II:**

With respect to convenience, CARE must describe how it will fulfill these commitments by September 1, 2019:

- a. Submit modifications to CalRecycle regarding its convenience goals, such that the goals are consistent with the results of the convenience study.

## Staff Analysis of Requirement II:

- a. CARE partially fulfilled Requirement II.a. Following completion of the Convenient Collection Study conducted by Cascadia Consulting Group (Cascadia), CARE proposed convenient collection goals in the Chapter 0 Report that include siting a CARE drop-off site in every county with carpet retailers by the end of 2019, and ensuring counties with population densities of 500,000 or more have at least one public drop-off site per population increment by the end of 2021. CARE also mentioned the expanding private collection network contributing to providing access to carpet recycling, although CARE does not have direct control over the number or availability of, or types or quantities of carpet collected at private sites.

Although Cascadia found availability and proximity to be important convenience factors to survey participants, and geospatially analyzed the proximity of populations and various flooring professionals to CARE's current drop-off sites, it is unclear how CARE used this information to determine its proposed goals. Neither CARE nor Cascadia provided an analysis of CARE's proposed goals to demonstrate that the modifications will improve collection convenience consistent with the results of the study. While Cascadia's study supports CARE's conclusion that flooring professionals, including installers and retailers, generate a large volume of postconsumer carpet, CARE did not propose any modifications that focus on flooring professionals. Furthermore, Cascadia concluded that "most survey respondents across all sectors reported greater willingness to recycle carpet if it was free or cost less than current disposal methods" (Attachment 5, p. 222). However, CARE did not address cost in its proposed goals even though cost was identified as an important factor to increase carpet recycling in the survey results, especially for commercial carpet installers and construction and demolition contractors.

CARE offered several additional approaches to potentially expand access to collection opportunities including, but not limited to, developing a proposal to work with mills to provide on-site collection to large volume direct-ship customers with adequate storage space, continue developing possible collection sites at Union Training Centers, and completing the siting of at least one CARE drop-off site or developing creative alternative collection options in every county. While staff acknowledge that many of these additional approaches appear to be good ideas to increase collection convenience to relevant audiences, CARE does not commit to undertaking these efforts or provide specific goals or timelines associated with implementing these potential approaches.

- **Incomplete Requirements:** Demonstrate how the proposed convenience goals are consistent with the results of Cascadia's Convenient Collection Study or revise the goals to be consistent with the study, including

developing a convenience goal that provides collection convenience to flooring installers and retailers.

**CalRecycle's Requirement III:**

With respect to incentivizing markets for products made from postconsumer carpet (PCC), CARE must fulfill this commitment by September 1, 2019:

- a. Establish a minimum weight of PCC content a product must contain, on an annual basis, to be considered as a product made from postconsumer carpet.

**Staff Analysis of Requirement III:**

- a. CARE adequately fulfilled Requirement III.a. Crowe surveyed 24 companies receiving CARE's manufacturer subsidies and proposed the following requirements for a product to be considered a product made from California PCC: "Minimum weight of products begins at 3% by content and an annual minimum of 25,000 pounds. CARE expects to slowly increase over time the minimum weight content to 10% and 100,000 [sic] annually to qualify as a PCC content product." Staff note that CARE's Proposed Requirements for PCC Content (Attachment 6) states that the minimum weight content will increase over time to five percent, which is inconsistent with the commitment CARE made in its Chapter 0 Report. CalRecycle expects these requirements, as stated in CARE's Chapter 0 Report, to be incorporated into the plan.

**CalRecycle's Requirement IV:**

With respect to source reduction, CARE must fulfill this commitment by September 1, 2019:

- a. Develop AUPs for reuse. The AUPs must describe the documentation, processes, and procedures that must be kept and followed by reuse incentive recipients. The AUPs should also ensure that expansion of the reuse market is not adversely impacted by reused carpet not meeting the performance expectations.

**Staff Analysis of Requirement IV:**

- a. CARE adequately fulfilled Requirement IV.a. CARE submitted clarified AUPs for reuse, as well as draft Reuse Guidelines that will be presented to CSEs to sign during the next contract cycle that begins on January 1, 2020. The reuse AUPs describe the documentation that CSEs must provide in order to receive reuse incentives from CARE. The Reuse Guidelines outline the purpose of the guidelines, the definition of reuse, performance standards, and expectations for reuse, including a suggested system for grading carpet intended for reuse.

**CalRecycle's Requirement V:**

CARE must complete and include all of the following:

- a. Expanded and implementable collection procedures in CARE's AUPs for collector/sorters to support program convenience, including but not limited to, requirements that all carpet types must be accepted and carpet is transported to a processor participating in CARE's program and not directly to a landfill;
- b. A proposed timeline for auditing collector/sorters to ensure compliance with the revised AUPs; and
- c. Clarifications and corrections to the revised Plan as specified in Attachment 5.

### **Staff Analysis of Requirement V:**

- a. CARE adequately fulfilled Requirement V.a. CARE revised its AUPs to verify that all carpet types are accepted by CSEs and transported to a processor participating in CARE's program and not directly to a landfill. However, CARE's AUPs do not reflect revisions consistent with the results of the Convenient Collection Study. CARE stated that the next CSE contract, from 2020 to 2022, will be modified to reflect all changes in terms of requirements and AUP modifications to which CSEs must adhere.
- b. CARE did not fulfill Requirement V.b. CalRecycle provided CARE with the flexibility to create a proposed timeline to complete CSE audits. CARE stated that CSE audits would be completed no later than September 1, 2019. CARE did not complete audits of participating CSEs to ensure compliance with the revised AUPs. CalRecycle was not made aware that CARE would not be able to complete audits of CSEs by September 1, 2019, nor did CARE request an extension. However, in its Chapter 0 Report, CARE stated that due to delays, completion of CSE AUPs should instead be completed by the end of Q1 2020.
  - **Incomplete Requirements:** CARE must complete all CSE audits no later than March 31, 2020.
- c. All items related to Requirement V.c. specified in Attachment 5 of the Public Notice (Attachment 8) were previously corrected and incorporated into CARE's 2018-2022 Plan.

### **Stakeholder Comments**

CalRecycle solicited public comments on CARE's Chapter 0 Report and received four comment letters (Attachment 16), including a letter from the California Carpet Stewardship Program Advisory Committee ("Advisory Committee"). The Legislature formally established an Advisory Committee for the program with the passage of AB 1158, which made stakeholder consultation a mandatory requirement. While the Advisory Committee was not statutorily required to review and make recommendations on CARE's Chapter 0 Report, the Advisory Committee chose to submit a letter during the public comment period. The Advisory Committee passed seven motions

recommending various changes to CARE's Chapter 0 Report and general program, including a recommendation that CARE utilize its authority, such as its "member in good standing" agreement with subsidy recipients, to obtain all relevant financial data necessary for CARE to complete the cost analysis.

Another stakeholder comment letter recommended that CalRecycle disapprove CARE's Chapter 0 Report based on the report's lack of transparency related to the use of program assessment funds and carpet material flows, as well as CARE's failure to validate the economic models. Similarly, another stakeholder comment recommended that CalRecycle not approve the Chapter 0 Report because it is unclear what CARE is doing with the assessment funds. An additional stakeholder letter provided several recommendations for changes for CARE to consider with respect to its Chapter 0 Report and 2018-2022 Plan, including consideration of adjusting subsidies for California processors to account for higher operating costs.

### **Legislative History**

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country (PRC Section 42970), to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to PRC Section 40051. The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute.

AB 2398 mandated an extended producer responsibility approach for the end-of-life management of carpet in California. Extended Producer Responsibility is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of on the general public and local governments, with oversight and enforcement provided by a governmental agency. This approach provides flexibility for manufacturers, based on their expertise in designing products and the systems that bring these products to market, to design systems to capture those products at the end-of-life to meet statutory goals.

Under the law, carpet manufacturers, either independently or via a carpet stewardship organization, must prepare and submit a carpet stewardship plan for CalRecycle approval; implement approved plans; pay a quarterly fee to CalRecycle for CalRecycle's costs to administer and enforce its responsibilities under the law; and report annually on program performance. CalRecycle must review and approve, disapprove, or conditionally approve carpet stewardship plans and amendments; post lists of carpet manufacturers participating under a stewardship plan; and review annual reports to evaluate compliance with the law and the stewardship plan(s). The requirements for CalRecycle's approval or disapproval of carpet stewardship plans are set forth in PRC Sections 42970, 42973, and 42975, and California Code of Regulations Sections 18942-18943.

In October 2017, AB 1158 (Chu, Carpet Recycling, Chapter 794, Statutes of 2017) was signed into law, which made changes to the Product Stewardship for Carpets Law and became effective January 1, 2018. Key elements of AB 1158 include: the establishment of a recycling rate goal of 24 percent by January 1, 2020; the authority for CalRecycle to establish additional recycling rate goals after January 1, 2020 and receive necessary information in order to evaluate the effectiveness of the program; the establishment of an advisory committee appointed by the Director of CalRecycle to provide comments and recommendations to a carpet stewardship organization or a manufacturer on carpet stewardship plans, plan amendments, and annual reports; the requirement that postconsumer carpet removed from state buildings be managed in a manner consistent with the law; and revisions to state procurement manuals to require postconsumer content for carpet purchases.

In October 2019, AB 729 was signed into law, and will become effective on January 1, 2020. AB 729 requires carpet stewardship plans to outline a contingency plan should the plan terminate or be revoked by CalRecycle and instructs the department to carry out the previously approved plan through an escrow or trust company until a new plan is approved. AB 729 also requires plans to establish a system of differential assessments, increases the civil penalty amount that CalRecycle can assess from \$1,000 per day to \$5,000 per day, and eliminates the five percent fee cap on the costs that CalRecycle incurs to administer and enforce the Product Stewardship for Carpets Law. CalRecycle is evaluating whether revisions to the regulations are warranted as a result of AB 729 which made changes to the carpet law. If CalRecycle decides to promulgate regulations, CalRecycle will provide public notice of information as it becomes available.