

## MEMORANDUM

**To:** Office of Administrative Law

**Date:** November 28, 2017

**From:**

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**Elliot Block, Chief Counsel**  
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CalRecycle)

**Subject: Written Statement Explaining Changes Without Regulatory Effect to Title 14, California Code of Regulations Sections 18943(a)(3), 18943(a)(7)(F), 18944(a)(5)(B)(3), 18944(a)(7)(I), and 18945.1(a)(1).**

The California Department of Resources Recycling and Recovery (CalRecycle) requests approval of the ” attached amendments, pursuant to Title 1 California Code of Regulations (CCR) section 100, to Title 14 CCR Sections 18943(a)(3), 18943(a)(7)(F), 18944(a)(5)(B)(3), 18944(a)(7)(I), and 18945.1(a)(1). The requested changes qualify as “Changes Without Regulatory Effect” as they are necessary to make these regulatory provisions consistent with changes to statute contained in Assembly Bill 1158, Carpet Recycling (Chapter 794, Statutes of 2017), effective January 1, 2018, as explained below:

**First, 14 CCR 18943(a)(3)** has been changed to include a reference to the new specific recycling rate of 24 percent for postconsumer carpets and additional goals that are clearly stated in the new statute, Assembly Bill 1158, which is codified in Public Resources Code (PRC) Section 42972(a)(2). In contrast, there was no specific recycling rate mentioned in PRC Section 42972(a)(2) in the old statute, Assembly Bill 2398. Additionally, Assembly Bill 1158 removed reference to the CARE MOU from PRC 42972(a)(2). As a result, CalRecycle amended 14 CCR 18943(a)(3) to refer to the new recycling rate and other goals and remove reference to the CARE MOU. The following are the relevant PRC sections of the two statutes:

**AB 2398 - PRC Section 42972(a)(2)**

Include goals that, to the extent feasible based on available technology and information, increase the recycling of postconsumer carpet, increase the diversion of postconsumer carpets from landfills, increase the recyclability of carpets, and incentivize the market growth of secondary products made from postconsumer carpet. The goals established in the plan shall, at a minimum, be equal to the goals established in the CARE MOU, if it has been adopted at the time the plan is submitted to the department.

**AB 1158 - PRC Section 42972(a)(2)**

Achieve a **24 percent** recycling rate for postconsumer carpet by January 1, 2020, and any other recycling rate established by the department pursuant to Section 42972.2. The carpet stewardship plan shall include quantifiable five-year goals and annual goals for how the recycling rate will be achieved and how the carpet stewardship organization or manufacturer plans to do the following:

- (A) Increase the weight of postconsumer carpet that is recycled and reduce the disposal of postconsumer carpet.
- (B) Increase the collection convenience for the recycling of postconsumer carpet and increase the collection of postconsumer carpet for recycling.
- (C) Expand and incentivize markets for products made from postconsumer carpet.
- (D) Increase processor capacity, including processor capacity in California.
- (E) Increase the recyclability of carpet.

**Second, 14 CCR 18943(a)(7)(F)** has been amended to include the new prohibition in, PRC Section 42972(c)(4)(C) (from Assembly Bill 1158) against the use of assessment funds for “engineered municipal solid waste conversion, as defined in PRC Section 40131.2, the use of cement kilns to burn carpet, or transformation, as defined in PRC Section 40201.” This prohibition was not stated in the Assembly Bill 2398.

Similarly, **14 CCR 18944(a)(7)(I)(b)** has also been amended to include this new prohibition.

**Third,** the reference to “continuous and meaningful improvement” has been removed from **14 CCR 18944(a)(5)(B)(3)** to be consistent with the removal of this requirement from PRC Section 42975(a).

**AB 2398 – PRC Section 42975(a)**

In order to achieve compliance with this chapter, a carpet stewardship organization shall, on or before July 1, 2013, and annually thereafter, demonstrate to the department that it has achieved **continuous meaningful improvement** in the rates of recycling and diversion of postconsumer carpet subject to its stewardship plan and in meeting the other goals included in the organization’s plan pursuant to paragraph (2) of subdivision (a) of Section 42972. In determining compliance, the department shall consider all of the following:

- (1) The baseline rate of compliance against which the demonstrated improvement is compared.
  - (2) The goals included in the CARE MOU.
  - (3) Information provided in the organization’s report to the department pursuant to Section 42976.
- (b) If more than one organization submits a carpet stewardship plan pursuant to this chapter, the department shall use information submitted by the organization in its annual report pursuant to Section 42976 to determine to what extent the recycling and diversion rates and the achievement of the other goals included in the plan are attributable to each organization and shall determine compliance with this chapter accordingly.

**AB 1158 – PRC Section 42975(a)**

In order to achieve compliance with this chapter, a carpet stewardship organization shall, on or before July 1, 2013, and annually thereafter, demonstrate to the department that it has achieved the amount and rates of recycling and a reduction in disposal of postconsumer carpet subject to its stewardship plan and the other goals included in the organization’s plan pursuant to paragraph (2) of subdivision (a) of Section 42972. In determining compliance, the department shall consider all of the following:

- (1) The baseline rate of compliance against which the demonstrated improvement is compared, including progress in achieving the goals outlined in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (a) of Section 42972.
  - (2) The quantifiable five-year goals and annual goals included in the carpet stewardship plan pursuant to paragraph (2) of subdivision (a) of Section 42972.
  - (3) Information provided in the organization’s report to the department pursuant to Section 42976.
- (b) If more than one organization submits a carpet stewardship plan pursuant to this chapter, the department shall use information submitted by the organization in its annual report pursuant to Section 42976 to determine to what extent the recycling rates, the reductions in disposal rates, and the achievement of the other goals included in the plan are attributable to each organization and shall determine compliance with this chapter accordingly.

**Finally,** the penalty chart in **14 CCR 18945.1(a)** has been amended to reflect the deletion in statute of the requirement for “continuous and meaningful improvement” described above.

If approved, these changes would make these regulatory provisions consistent with the changed California Statutes as noted above.