

REQUEST FOR APPROVAL

To: Rachel Machi Wagoner
Director

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

Request Date: December 15, 2021

Decision Subject: Consideration of CARE's Plan Amendment Regarding a
System of Differential Assessments

Action By: December 27, 2021

Summary of Request

Carpet America Recovery Effort (CARE) submitted its *Differential Assessment Approach, Revised October 26, 2021* (see Attachment 1) on October 26, 2021, as required by the Department of Resources Recycling and Recovery's (CalRecycle) August 27, 2021, conditional approval (see Attachment 2). This Request for Approval presents staff's analysis and recommendation regarding whether CARE's plan amendment regarding a system of differential assessments complies with the requirements contained in CalRecycle's August 27, 2021, conditional approval.

Staff Analysis

Condition 1

Requirement: CARE must revise the implementation date of the proposed system of differential assessments to on or before April 1, 2022.

Result: Additional actions by CARE are necessary.

CARE stated it will "utilize best efforts" to implement the system of differential assessments by no later than April 1, 2022. The addition of "utilize best efforts" does not demonstrate CARE's commitment to meeting this requirement by April 1, 2022. CARE described concerns with the implementation date and states that there is "a potential future need to approach CalRecycle to request and justify an extension." A potential extension request is not relevant to how CARE will address this requirement. CARE's response fails to demonstrate it will adhere to the requirement to implement the system of differential assessments on or before April 1, 2022.

Condition 2

Requirement: CARE must establish an annual (or more frequent) process to review and update, as needed, the differential assessment amounts as market conditions and subsidies change.

Result: Additional information and actions by CARE are necessary.

CARE committed to an annual (or more frequent, if necessary) process to review and update, as needed, the differential assessment amounts as market conditions and subsidies change. CARE stated that it will follow its schedule outlined in condition three, which shows annual reviews of a system of differential assessments that consider additional factors such as face fiber types will begin in the third quarter of 2025. However, CARE did not clearly state when it will conduct its first annual review of the current differential assessment amounts, which must begin in 2023 and occur each year thereafter.

CARE described that its annual review process will include conducting an analysis of lessons learned based on the first year of implementation, conducting annual reviews of the cost burden analysis, and will use CARE's Cost Conversion and Subsidy Justification Models, as well as inputs from Crowe's Economic Analysis. CARE did not describe how it intends to submit the results of its reviews to CalRecycle. However, CARE is required to include the results of its reviews of the differential assessments in its annual reports submitted to CalRecycle as part of CARE's requirement to include a description and evaluation of the program's financing mechanism pursuant to Title 14, California Code of Regulations (CCR) section 18944(a)(7).

CARE stated that it would present proposed changes to CalRecycle prior to implementation, but that it "does not view such adjustments as changes to the Plan." It is unclear if CARE is referring to changes to its annual process to review the differential assessments or changes to the actual differential assessment amounts. Pursuant to statute, when CARE determines that changes to the system of differential assessments are needed, CARE is required to submit a revised plan or plan amendment that are subject to review by the California Carpet Stewardship Program Advisory Committee and must be approved by CalRecycle pursuant to Public Resources Code section 42972(c).

Condition 3

Requirement: CARE must adopt a schedule to develop a revised system of differential assessments that is inclusive of additional factors, such as type of face fiber to more accurately align the assessment levels with the financial burden various carpet materials have on the program, for inclusion in its next plan.

Result: Additional information and actions by CARE are necessary.

CARE stated it will adopt a schedule to evaluate and update its system of differential assessments, considering additional factors such as face fiber types, to accurately align the assessment levels with the financial burden various carpet materials have on the program. CARE's proposed schedule includes the anticipated timing (quarter and year) of key steps CARE will take to perform analysis, develop an updated system of differential assessments, seek CalRecycle approval, and propose tentative implementation of an updated system of differential assessments starting in 2025. CARE's proposed schedule does not clearly explain some items (e.g., CARE states in item "i" that it will "seek approval by CalRecycle in Q2 2024," but does not specify what

CalRecycle will be asked to approve), which is necessary for CalRecycle to anticipate expected deliverables and confirm that CARE adheres to its schedule.

CARE committed to include its schedule in its next plan. However, CARE stated it “reserves the ability, in consultation with the Advisory Committee and CalRecycle, to modify the schedule as the work evolves.” CARE must provide a written request and justification to CalRecycle to request approval of modifications to its schedule.

Summary of Staff Analysis

CARE’s *Differential Assessment Approach, Revised October 26, 2021*, included discussion on the conditions specified in CalRecycle’s August 27, 2021, Request for Approval granting conditional approval of CARE’s system of differential assessments, but additional information and actions by CARE are necessary. In particular, CARE must address the following:

1. Regarding CARE’s response to CalRecycle’s August 27, 2021, condition 1: CARE stated it “will utilize best efforts to implement the system of differential assessments outlined herein by no later than April 1, 2022.” CARE also stated that it may request an extension. CARE did not fulfill condition 1 because it did not commit to implementing the system of differential assessments by April 1, 2022.
2. Regarding CARE’s response to CalRecycle’s August 27, 2021, condition 2: CARE stated its annual reviews will commence in 2025, which is three years after it implements the system of differential assessments. CARE did not commit to conduct annual reviews in 2023 or 2024. In addition, CARE stated it “does not view such adjustments as changes to the Plan, but rather routine adjustments, similar to the discards formula annual parameter updates of subsidy changes justified by market feedback.” It is unclear whether this sentence refers to updates to the system of differential assessments, which are plan amendments subject to CalRecycle approval, pursuant to PRC section 42972(c).
3. Regarding CARE’s response to CalRecycle’s August 27, 2021, condition 3: CARE must clearly explain items on its schedule, especially items that it will submit to CalRecycle for review and approval. CARE stated it “reserves the ability, in consultation with the Advisory Committee and CalRecycle, to modify the schedule as the work evolves.” CARE must provide a written request and justification to CalRecycle to request approval of modifications to its schedule.

CARE’s *Differential Assessment Approach, Revised October 26, 2021*, includes statements that indicate CARE’s ability to implement its system of differential assessments is contingent upon factors that may or may not be outside CARE’s control (e.g., “This schedule assumes approval of the new Plan for rollout in January 2023, a stable economy, and a return to normal operations as the pandemic abates. Any discontinuities may impact the timeline.”). Statute requires CARE to implement a system of differential assessments approved by CalRecycle. CalRecycle is required to enforce statutory requirements. Should CalRecycle find that CARE did not meet this statutory requirement in the future, CalRecycle, as part of its process to determine appropriate

enforcement actions, will consider all factors pursuant to 14 CCR section 18945.2, including, but not limited to, the circumstances of the violation and whether CARE took good faith measures to comply. CARE's responses to required conditions must include descriptions of how it will fulfill the conditions to implement CARE's system of differential assessments.

Options:

1. Find CARE did not meet the conditions of approval. CARE's proposed system of differential assessments remains "conditionally approved" until CalRecycle determines that CARE has met the conditions for approval. Require CARE to revise and resubmit to resolve the issues identified in the summary of staff analysis section above within 60 days of signature of this Request for Approval.
2. Find CARE did not meet the conditions of approval and refer CARE to the Waste Permitting, Compliance and Mitigation Division for potential enforcement pursuant to Title 14, California Code of Regulations section 18942(b)(2). CARE's proposed system of differential assessments remains "conditionally approved" until CalRecycle determines that CARE has met the conditions for approval. Require CARE to revise and resubmit to resolve the issues identified in the summary of staff analysis section above within 60 days of signature of this Request for Approval.

Action:

Based on CARE's *Differential Assessment Approach, Revised October 26, 2021*, and analysis in this Request for Approval, I hereby find that CARE did not meet the conditions for approval and refer CARE to the Waste Permitting, Compliance and Mitigation Division for potential enforcement. CARE must revise and resubmit its *Differential Assessment Approach, Revised October 26, 2021*, within 60 days to resolve the issues identified in the summary of staff analysis, above. If CARE resolves the issues within 60 days, the department may choose to exercise its discretion and not pursue enforcement at this time.

Dated: December 22, 2021

Signed by: Rachel Machi Wagoner, Director

Attachments:

Documents listed below are posted to CalRecycle's website.

1. [CARE's Differential Assessment Approach, Revised October 26, 2021](https://www2.calrecycle.ca.gov/Docs/Web/119826), <https://www2.calrecycle.ca.gov/Docs/Web/119826>
2. [CalRecycle August 27, 2021, Request for Approval](https://www2.calrecycle.ca.gov/PublicNotices/Details/4483) (Conditional approval), <https://www2.calrecycle.ca.gov/PublicNotices/Details/4483>