

## **V. Enforcement, and VI. Record Retention**

*Note: This document comprises two sections of a set of discussion documents concerning an upcoming proposed rulemaking for carpet stewardship. The final proposed regulations will include other sections on other topics as noted in the outline below. These will eventually be combined into one document.*

### **I. Definitions**

### **II. Stewardship Submittal Instructions**

### **III. Criteria for Plan Approval**

### **IV. Criteria for Evaluating Annual Reports**

### **V. Enforcement**

#### **§ XXXX1. Civil Penalties.**

*Note: The following section generally describes the scope of the proposed enforcement regulations and the parties who may be held liable for violations under the applicable sections of the Public Resources Code and CalRecycle regulations.*

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

(a) Any manufacturer offering carpet for sale or for promotional purposes in California or a manufacturer or stewardship organization submitting a plan or report to the Department is subject to enforcement under this Article. Manufacturers are subject to penalties as a result of the failure of their designated stewardship organization to comply with this Article on their behalf.

(b) Notwithstanding paragraph (a), a product manufacturer is not subject to any penalty for failing to comply if that product manufacturer can demonstrate that it provided true and accurate information to the stewardship organization and the stewardship organization failed to properly report this on behalf of the manufacturer.

(c) A stewardship organization is not subject to a penalty for failure to comply as a result of submitting false or misleading information if it can demonstrate that it received false or misleading information from a manufacturer that was the direct cause of its failure to comply with this Article.

(d) Any wholesaler or retailer that offers carpet for sale in the state, or who offers carpet for promotional purposes in the state, is subject to enforcement under this Article.

Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference: Section 42974 and 42978, Public Resources Code.

**§ XXXX2. Amount of Civil Penalties and Administrative Penalty Schedule.**

*Note: The following section explains that Enforcement Tables I and II are used with criteria from § XXXX3 when the department uses its discretion to assess penalties. It also identifies the monetary penalty ranges associated with the three severity classifications identified in Tables I and II.*

- (a) Civil penalties may be imposed administratively in accordance with the following penalty tables:
  - (1) Base Penalty Table I is to be used for stewardship organizations and manufacturers.
    - (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).

<b>Base Penalty Table I: For Stewardship Organizations and Manufacturers</b>		
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
PRC 42973(b)	Failure to obtain Department approval of a stewardship plan	Level 3
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 XXXXX		

- (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).

<b>Base Penalty Table II: For Wholesalers and Retailers</b>		
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 XXXXX		
14 CCR XXXXX		
14 CCR XXXXX		

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

- (1) For a violation classified as Level 1, the amount of the base penalty may be up to \$1,000 per day.
- (2) For a violation classified as Level 2, the amount of the base penalty may be up to \$5,000 per day.
- (3) For a violation classified as Level 3, the amount of the base penalty may be up to \$10,000 per day.

(c) The Department will set the final penalty amount after considering the criteria set forth in Section XXXX3. The Department may increase the final penalty beyond the penalty range established pursuant to paragraphs (a) and (b), if it determines, after considering the criteria set forth in Section XXXX3, that such an increase is warranted and appropriate.

*Note: AB2398 states that penalties can't exceed \$1,000 per day or \$10,000 per day if the violation is intentional, knowing, or negligent. A rulemaking document called the Statement of Reasons will also provide clarity on how this section is implemented.*

Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference: Sections 42972, 42973, 42974, 42975, 42976, and 42977, Public Resources Code; and Section 11506, Government Code.

**§ XXXX3. Criteria to Impose a Civil Penalty.**

*Note: The following section lists the criteria used by the department in order to determine the appropriate monetary penalty, within the possible range of monetary penalties, for a particular violation. This section should be reviewed alongside Enforcement Tables I and II which identify the severity of the violation and § XXXX2 which describes the applicable penalty range.*

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

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

Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference: Section 42978, Public Resources Code.

**§ XXXX4. Procedure for Imposing Civil Penalties.**

*Note: The following section explains the due process rights of individuals who are assessed a penalty by CalRecycle and identifies other code where procedural rights are explained in greater detail.*

- (a) Civil penalties may be administratively imposed in accordance with the procedures outlined in the Administrative Procedure Act at Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government Code Section 11505(c).
- (b) The accusation or complaint and all accompanying documents may be served on the respondent by the following means:
  - (1) Personal service.
  - (2) Substitute service by using the same service procedures as described in Section 415.20 of the Code of Civil Procedure.
  - (3) Certified Mail: For respondents who have submitted a stewardship plan, certified mail or registered mail if the letter containing the accusation or complaint and accompanying material is mailed, addressed to the respondent at the latest facility or mailing address(es) provided in the stewardship plan on file with the Department. Any address provided in the

stewardship plan may be used for service of process. Proof of service of the accusation or complaint shall be the certified mail receipts or registered mail receipts proving the accusation or complaint and accompanying materials were sent to respondent by certified mail or registered mail. For respondents who have not submitted or are not required to submit a stewardship plan to the Department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at Section 11505(c) of the Government Code applies.

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

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

## **V. Record Retention**

*Note: The following section explains who must keep records, generally what records must be kept, and how long records must be retained by parties subject to these Articles.*

### **§ XXXX5 Record Keeping Requirements.**

Each [stewardship organization/manufacture/wholesaler/retailer] shall:

- (a) Maintain records of [ ] in a form and manner approved by the Department. Such records shall be adequate for overall planning and control purposes, and be as current and accurate as practicable;
- (b) Keep all records required by this Article in one location and accessible for three (3) years;
- (c) Make all records required by this Article available for inspection by the department, or its agent and other duly authorized regulatory agencies during normal working hours;
- (d) Submit copies of specified records to the Department upon request or at a frequency approved by the department.

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

## **VI. Proprietary, Confidential, or Trade Secret Information**

## **VII. Service Payments to CalRecycle**