

## REVISED REQUEST FOR APPROVAL

**To:** Scott Smithline  
Director

**From:** Howard Levenson  
Deputy Director, Materials Management and Local Assistance Division

**Request Date:** January 26, 2016

**Decision Subject:** Consideration of Addendum #3 to the California Carpet Stewardship Plan

**Action By:** January 26, 2016

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### **Summary of Request:**

In September 2015, CalRecycle found Carpet America Recovery Effort (CARE) to be noncompliant based on the 2014 Annual Report and listed several key findings including that recycled output and other Program goals are not showing meaningful and continuous improvement. CalRecycle also directed CARE to submit a Plan Amendment and revised budget to address the key findings (see Attachment 1). CARE submitted the *California Carpet Stewardship Plan (Plan), Addendum #3* (hereafter referred to as “Addendum #3”; see Attachment 2) on November 30, 2015. In Addendum #3, CARE proposes to increase carpet assessments and recycling incentives, and to initiate a number of other programmatic changes in response to the noncompliance key findings. This item requests the Director’s decision with regard to Addendum #3. Note that this item does not change the noncompliance status of CARE’s 2014 Annual Report.

### **Options:**

1. **Approve Addendum #3:** CalRecycle approves Addendum #3 as submitted.
2. **Provisional Approval of Addendum #3:** CalRecycle provisionally approves Addendum #3, including the proposed assessment and incentive increases, procurement grant program, and budget, as long as the assessment and incentive levels remain sufficient to ensure the program will achieve continuous and meaningful improvement toward its goals as required by law and its Plan. The purpose of a provisional approval is to allow CARE to implement those portions of the addendum that it believes will improve the program, but to also make clear that CalRecycle will continue to evaluate the effectiveness of the program results separate and apart from whether those specific new actions have been implemented as described. Furthermore, this provisional approval requires CARE to modify specific elements of *Addendum #3* described in detail further below. Finally, while the plan is CARE’s to develop, CalRecycle also has included other suggested actions to improve the likelihood of success as CARE implements its plan. CARE should report on its response to these suggestions in the 2015 Annual Report and/or incorporate a response in the 2017 Plan; these are detailed in the staff analysis of each key finding.

- a. Provisional approval re: September 2015 Finding 1: Provisionally approve CARE's proposed budgetary changes and assessment and incentive modifications, as detailed in staff's analysis of CARE's responses to finding 1 below and each finding that follows. CARE must demonstrate that its actions are resulting in a continuous and meaningful improvement toward achieving the goals of the program.
- b. Provisional approval re: September 2015 Finding 3: Approve procurement grant program with provision of consultation with the Council on development of the program.
- c. Provisional approval re: September 2015 Finding 6: Approve increase in assessment, but CARE is not authorized to increase the assessment prior to April 1, 2016, to allow retailers time to prepare for the change.

**3. Disapprove Addendum #3:** CalRecycle disapproves Addendum #3 and directs the Waste Evaluation and Enforcement Branch to commence enforcement evaluation and, if warranted, consider action(s) including but not limited to imposition of civil penalties.

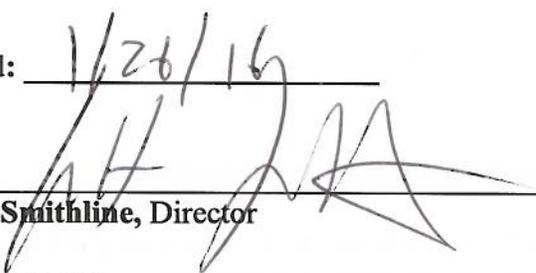
**Staff Recommendation:**

CalRecycle staff recommend Option 2. CARE has the responsibility to design the program that it believes will best achieve the goals of the program, most importantly a carpet recycling rate of 16 percent by 2016.

**Action:**

On the basis of the information, analysis, and findings in this Request for Approval, I hereby approve Addendum #3 as submitted. This approval of Addendum #3 does not change the non-compliance status of CARE's 2014 Annual Report.

Dated: 1/26/16

  
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Scott Smithline, Director

**Attachments:**

1. Public Notice of Final Decision of Carpet America Recovery Effort (CARE) 2014 Annual Report, September 17, 2015 (CalRecycle finding of non-compliance). Available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1595&aiid=1448>
2. California Carpet Stewardship Plan (Plan), Addendum #3 (Addendum #3), submitted November 30, 2015, available at the Public Notice: [www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx](http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx)
3. California Carpet Stewardship Plan Revised, January 2014, version 3.2.2. Available at: <http://www.calrecycle.ca.gov/Carpet/Plans/PlanJun2014.pdf>
4. California Carpet Stewardship Plan, Addendum #1, January 2015, available at: <http://www.calrecycle.ca.gov/Carpet/Plans/AddenDec2014.pdf>
5. California Carpet Stewardship Plan, Addendum #2, October 9, 2015, available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1616&aiid=1468>

6. October 2015 Conditional Approval of Addendum #2 RFA:  
<http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20152015%5c1468%5cSigned%20RFA.pdf>
  7. *Stakeholder Comment Letters on Addendum #3*, available at:  
[www.calrecycle.ca.gov/Carpet/Plans/Comments/default.htm](http://www.calrecycle.ca.gov/Carpet/Plans/Comments/default.htm)
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## BACKGROUND

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country. CalRecycle has responsibility to approve or disapprove carpet stewardship plans submitted by manufacturers or their designated product stewardship organization (Public Resources Code [PRC] section 42973); review annual reports to verify that the objectives of the plan are being met (PRC section 42975); and provide oversight and enforcement to ensure a level playing field among carpet manufacturers (PRC section 42974 and 42978). For manufacturers to be in compliance, they must have an approved plan (PRC section 42973 (b)) (or be part of a stewardship organization with an approved plan) and demonstrate achievement of continuous and meaningful improvement in the rates of recycling and other goals included in an approved stewardship plan (PRC section 42975(a)). The statute provides for CalRecycle to impose civil penalties on any person who violates any provision of the Product Stewardship for Carpet law (PRC 42970 et seq, and specifically section 42978). The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute.

Due to the Extended Producer Responsibility aspect of the carpet legislation, CalRecycle does not dictate specific design of the Program other than requirements mandated by statute, regulations, or the approved Plan. CARE is responsible for designing and implementing its California Carpet Stewardship Plan, titled *California Carpet Stewardship Plan Revised, version 3.2.2* (see Attachment 3), as modified by Addendum #1 (see Attachment 4) and the conditionally approved Addendum #2 (see Attachment 5); collectively, these three documents are hereafter referred to as the Plan.

In September 2015, the Director of CalRecycle found the *2014 Annual Report* submitted by CARE to be non-compliant because it did not demonstrate that the Program is making continuous and meaningful improvement toward achievement of the Program goals. CalRecycle directed CARE to submit an Amendment to the Plan to CalRecycle by November 30, 2015 that addressed a set of key issues identified in the non-compliance finding (see Attachment 1).

On October 9, 2015, CARE submitted an amendment to the Plan, referred to as *Addendum #2*, that proposed a grant and loan program. The Director of CalRecycle conditionally approved Addendum #2 on October 27, 2015, allowing CARE to initiate a new grant program (see Attachments 5 and 6).

On November 30, 2015, CARE submitted *Addendum #3* (see Attachment 2) to address the remaining key issues from CalRecycle's September 2015 non-compliance determination that were not addressed in Addendum #2.

## ANALYSIS

CARE has offered a number of changes to the carpet program in response to CalRecycle's September 2015 finding of non-compliance, notably increases to assessments on carpet sales and incentive payouts to program participants. Staff have analyzed these changes as presented in *Addendum #3* and are proposing provisional approval of certain elements in *Addendum #3*. In addition, staff are proposing recommendations for other elements in *Addendum #3* that may be inadequate or need further development to achieve the goals in the Plan. Staff recommend *Addendum #3* not be approved as proposed in its entirety but rather be approved provisionally as described in the shaded boxes below.

The discussion below presents staff's analysis of CARE's response to each of the findings identified in the September 2015 non-compliance determination, provisional approval explanations for certain elements in *Addendum #3*, and recommendations for further actions CARE should take to increase the likelihood of meeting program requirements. The totality of CARE's actions will be taken into consideration when CalRecycle evaluates program performance with submittal of the 2015 Annual Report along with 2016 quarterly data as well as CARE's 2017 draft Plan submission.

### 1) CALRECYCLE SEPTEMBER 2015 NON-COMPLIANCE FINDING 1: *The recycled output and other Program goals are not showing meaningful and continuous improvements.*

*Recommended Action Item(s):*

- a. *CARE should submit a Plan Amendment and revised budget with action items and associated funding designed to ensure that the Program shows continuous and meaningful improvement in achieving the requirements in statute, regulations, and the approved Plan. The action items must be designed to result in a meaningful increase in recycled output and other goals.*
- b. *CARE should consider establishing a California advisory committee that meets regularly and involves all key stakeholder groups, including retailers and installers, and provides input to CARE on design and implementation of the Program to help it achieve continuous and meaningful improvement.*

#### **CARE response to finding 1:**

CARE's specific responses to the Recommended Action Items for Key Finding #1 are summarized below.

- a. CARE submitted Addendum #3 by the November 30, 2015, deadline. Under the Addendum the proposed budget for 2016 would rise to \$23.7 million, an 88 percent increase over the current approved budget of \$12.6 million. Addendum #3 would result in additional revenue by increasing the assessment on carpet sales to \$0.20 per square yard, fund a 64% increase in incentive payouts (to \$17.4 million) and establish a \$2 million grant program. Addendum #3 identifies additional steps CARE is taking, including establishing protocols to back-stamp carpet for easier recyclability, increasing existing incentives and adding an incentive for reuse of carpet, and various outreach and market development activities.

- b. Addendum #2 proposed a new California Council on Carpet Recycling (“Council”), which CalRecycle approved in October 2015. CARE released a Call for Nominations on November 3, 2015, with nominations due December 1, 2015. The Call for Nominations outlines the goals, roles and timeline for meetings. The first meeting of the Council is anticipated to take place in January 2016.

**CalRecycle analysis of CARE’s response to finding 1:**

CARE has taken or is taking a variety of actions to address CalRecycle’s September 15, 2015, finding 1. For instance, the budget line item increases are substantial, and include funding for a new grant program. Formation of the Council is underway and CARE appears to be pursuing an aggressive timetable for using the Council to enhance stakeholder engagement. While CARE has proposed a number of substantial actions in response to finding 1, whether these will be sufficient or timely enough to achieve the recycled output and other goals in the Plan will need to be assessed on an on-going basis as the actions are implemented.

**PROVISIONAL APPROVAL OF CARE’S RESPONSE TO FINDING 1:**

As discussed in the following analyses of each of CARE’s responses to CalRecycle’s September 2015 findings, CalRecycle provisionally approves certain elements of CARE’s proposed activities in response to finding 1 and to the additional findings discussed below. These include approval of CARE’s proposed budgetary changes and assessment and incentive modifications. (See provisional approvals and recommendations 2-6 below for additional comments specific to each September 2015 finding). However, CARE must demonstrate that its actions are resulting in a continuous and meaningful improvement toward achieving the goals of the program, especially the 16 percent recycling rate by December 31, 2016, as required in its Plan.

**RECOMMENDED ADDITIONAL ACTIONS IN RESPONSE TO FINDING 1:**

- a. CARE should systematically monitor markets for postconsumer carpet materials and the effectiveness of incentives and other measures proposed in Addendum #3 to boost carpet recycling in California. This should include prioritization of new and existing actions as well as development of a plan and timeline for additional measures if CARE determines current efforts are insufficient to ensure continuous and meaningful improvement.
- b. CARE should closely monitor the increased incentives and other measures to assess whether they are sufficient to offset barriers to increased recycling and demand for postconsumer carpet.
- c. CARE should regularly engage the Council to solicit input on the impact of the implementation of the actions in Addendums 2 and 3 and development of the 2017 Plan, and to identify additional opportunities to make continuous and meaningful improvement toward achieving the program goals.

**2) CALRECYCLE SEPTEMBER 2015 NON-COMPLIANCE FINDING 2: *Consumers purchasing carpet do not have reasonable access to recycling services in all counties.***

*Recommended Action Item:*

- a. *CARE's Plan Amendment should list counties without viable recycling services, explain how viable collection for recycling services will be provided, and present a schedule for introducing services in counties that do not have them.*

**CARE response to finding 2:**

CARE acknowledges the lack of convenient access to recycling services statewide but believes the new incentives and other measures outlined in Addendum #3 will allow the program to be "better positioned" for continued expansion of collection sites. However, Addendum #3 also notes the worsening markets for recycled carpet materials and states all California processors and collectors have reduced operations.

CARE states that 21 counties are being served as of December 2015. The newly adopted timeline proposes all 58 counties will be served by at least one collection site by June 2017, "subject to county desire to participate." Addendum #3 states this will be accomplished through consultation with CalRecycle and rural county representatives as well as possible collaboration with the Mattress Recycling Council and the counties of Los Angeles and Sacramento. Additional Rural County "Plus" sites will be targeted based on population, geographic distribution and other factors. Addendum #3 proposes adding \$200,000 to expand the rural county program, bringing the total for 2016 to \$554,000.

**CalRecycle analysis of CARE's response to finding 2:**

While CARE has proposed a schedule for adding sites, it is unclear how additional viable collection opportunities will be established. CARE's focus seems to be more on the number of counties served rather than "reasonably convenient opportunities" for consumers. For instance, while the Addendum notes various factors that will be considered in establishing

new sites, it does not prioritize population density or present a strategy to address geographic impediments to consumer access.

Of the 25 sites listed statewide on the CARE website (as of December 10, 2015), only six are in southern California, although CARE notes it has “begun discussions” with Los Angeles County. CalRecycle staff acknowledge the market challenges facing carpet recycling, but it is unclear whether CARE has a viable, comprehensive strategy to add collection sites and ensure consumers have reasonable access to recycling services.

**RECOMMENDED ACTION IN RESPONSE TO FINDING 2:**

CARE should engage with the Council to prioritize factors such as population density to determine the number of collection sites needed in each county to provide consumers with reasonable access to recycling services. CARE should develop and include in its 2017 Plan, a targeted strategy, timeline, and resources by which it will provide consumers with convenient access to recycling services throughout the state.

**3) CALRECYCLE SEPTEMBER 2015 NON-COMPLIANCE FINDING 3: *Education and outreach are lacking. Key target audiences such as installers, retailers, and consumers remain unaware of CARE’s Carpet Stewardship Program, what recycling services are available, what assessment funds are used for, and what their respective roles are in making the Program successful.***

*Recommended Action Item(s):*

- a. *CARE’s Plan Amendment should clearly present which metrics (see 2014 Annual Report page 86-88) will be used in evaluating effectiveness of education, outreach, and marketing activities to retailers, consumers, carpet removers/installers, collectors, and processors.*
- b. *CARE’s Plan Amendment should present a list of education and outreach actions that it will complete, along with identifying a lead person, deliverables, due dates, and an associated approved budget.*
- c. *CARE’s Plan Amendment should provide timely and effective education and outreach to in-state processors that supports in-state recycling operations and balances increases in collection with increases in processing.*
- d. *CARE must carefully consider providing education and outreach and other market development approaches (e.g., grants, pilot studies) that encourage manufacturers to use processed carpet materials as raw materials in new products and encourage consumers to purchase recycled content products.*

**CARE response to finding 3:**

CARE is taking or has proposed a number of actions to address finding 3. These include:

- Identifying metrics for evaluating effectiveness.
- Developing a Marketing, Education and Outreach action plan (“Marketing Plan”).
- Doubling its California staffing to 2 full-time equivalents.
- Doubling its Marketing Plan budget from \$300,000 to \$600,000 in 2016.

- Establishing a goal for face-to-face contact with 50 percent of California retailers in 2016.
- Establishing a grant program to encourage use of and demand for processed carpet materials:
  - The Cycle 1A (capital improvements) pilot grant program was launched in November 2015, with \$2-3 million allocated for 2015-2016. Fifty percent of these funds have been reserved for California entities. CARE held a stakeholder workshop on the program on November 18, 2015.
  - Cycle 1B (market development and product testing) will be launched in Q4 2015; \$250,000 has been allocated.
  - Addendum 3 requests approval for Cycle 1C (procurement assistance to California public agencies; \$500,000 per year starting in mid-2016). This program will be modeled after CalRecycle's tire-derived product grants.
- Contracting with a university to develop an economic "tool" and analysis of market dynamics, with a report due in Q2 2016.

**CalRecycle analysis of CARE's response to finding 3:**

CARE's proposals and current activities appear to represent significantly increased efforts to reach key audiences to inform them about the program. However, CalRecycle staff note a number of unclear or incomplete details regarding CARE's Marketing Plan strategies. Therefore, CalRecycle staff do not recommend approval of the overall Marketing Plan effort as presented in Addendum #3.

The majority of activities in Addendum #3 relate to messaging (brochures, websites, etc.) rather than representing a comprehensive market development strategy for post-consumer carpet materials and increased demand for recycled-content products made with materials recovered through CARE's California program. While marketing is an essential element of the Plan, effective market development should include multiple actions, such as funding for physical infrastructure, effective incentives for using carpet-derived feedstock, job training, research and development, technology transfer, and related activities. While the grant program and other elements of Addendum 3 address some of these, a more robust market development strategy should include coordination with Recycling Market Development Zone Administrators and other local officials, working with the economic development community, identifying key technology needs, collaborating with the U.S. Small Business Administration, etc.

- a. While CARE has presented a list of metrics to assess its Marketing Plan actions, the list is not prioritized or weighted in a way that will ultimately assure an accurate evaluation of CARE's success or failure in reaching necessary stakeholders or in developing markets for post-consumer carpet. Also, targeted stakeholders do not appear to include haulers, recyclers, or material recovery facilities (MRFs), groups essential to the carpet collection and processing infrastructure.
- b. Addendum #3 identifies a plan for Marketing Plan actions, with due dates, lead organizations (i.e., CARE or its contractor Gigantic Idea Studio), budget and deliverables. However, the plan contains elements that raise significant questions or are not clear.

- Even though the Marketing Plan budget doubles to \$600,000 in 2016, it is unclear whether this is sufficient for a state the size of California. For instance, outreach to installers, a key stakeholder group, is budgeted for \$14,500. Most of the deliverables are limited to brochure, memo, and website development.
  - The face-to-face retailer contact goal may not be realistic. Retailer outreach is budgeted for \$245,000, but will require more than 1,500 visits in 2016<sup>1</sup>. Even if the 50 per cent goal is reached, many retailers still may be unaware of Program requirements. Alternative outreach, such as coordinated phone calls to individual retailers around the state, is not mentioned.
  - Market development activities do not appear to specifically encourage closed-loop recycling by carpet manufacturers (e.g., manufacturing new carpet with recycled content). Nor does the Addendum mention working with carpet manufacturers to ensure post-consumer carpet pad complies with warranties for use under new carpet, a significant potential impediment to recycled-content purchasing.
- c. It is not clear what additional support for processors (over current efforts) is proposed, or the timing of activities that will balance increases in collection with increases in processing. The Addendum does not appear to identify California-specific strategies for processors, other than \$2,000 budgeted for a survey in January, 2016 (see Addendum 3, Table 8, item 5).
- d. The Cycle 1A and 1B grant elements previously approved by CalRecycle are in their early stages but appear to be on track. CARE also has proposed to set aside \$500,000 for public agency procurement grants in 2016. While increased procurement of recycled-content products may stimulate markets for post-consumer carpet materials, the program may be premature if products likely to be purchased by public agencies are simply not available in the market. Also, it is unclear if the general public is targeted for recycled-content product purchasing outreach.

**PROVISIONAL APPROVAL OF CARE’S RESPONSE TO FINDING 3:**

- a. CARE’s proposed public agency procurement grant program is approved. CalRecycle directs CARE to consult with the Council on how best to structure this grant program to address market development needs and to increase demand for products made with postconsumer carpet materials.

<sup>1</sup> CARE’s Quarterly Report for Q3 2015 suggests this number may be lower, but even so, face-to-face meetings could be a challenge given CARE’s limited resources.

**RECOMMENDED ADDITIONAL ACTIONS IN RESPONSE TO FINDING 3:**

- a. CARE's Marketing, Education and Outreach plan should prioritize tasks and evaluation metrics, particularly the activities most likely to stimulate markets for post-consumer carpet materials.
- b. CARE's Marketing Plan should separate "marketing" activities from market development, and draft an in-depth strategic plan for increasing California manufacturers' use of recycled carpet materials and consumers' purchase of recycled-content post-consumer carpet products when they are available in the market.
- c. CARE should further develop assistance to processors, particularly those in California, and clearly identify new proposed activities beyond current efforts.
- d. CARE should consider further increases to the resources budgeted for retailer contacts and other outreach activities, as well as for implementing a more robust plan to develop markets for carpet-derived materials.

**4) CALRECYCLE SEPTEMBER 2015 NON-COMPLIANCE FINDING 4: *The definition of "processor" was modified from the approved Plan. This term is being used to evaluate performance and CARE should avoid changing definitions to make them contrary to the statute, regulations, or the approved Plan without good cause and clear explanation in the Annual Report.***

*Recommended Action Item(s):*

- a. *CARE must confirm if the use of "processor" in the 2014 Annual Report is a deliberate definitional change and if so, how the change impacts performance metrics. The Department recommends that CARE amend its Annual Report to provide clarity regarding use of the term "processor" in the 2014 Annual Report so it is clear if the context is a Tier 1 processor, or both Tier 1 processors and Tier 2 manufacturers.*
- b. *CARE must carefully consider implying or changing definitions that are contrary to statute, regulations, or the approved Plan and only make deliberate changes in definitions for good cause and with clear explanation on how to interpret the performance metrics within the context of the definitional change.*
- c. *CARE may add new definitions by defining them in an annual report and, once approved by CalRecycle, the new definition must be included as an amendment to the Program definitions in the approved Plan.*

**CARE response to finding 4:**

CARE acknowledges the requirement to conform to critical definitions in the Plan and commits to use consistent definitions.

**CalRecycle analysis of CARE's response to finding 4:**

CARE acknowledges the errors and addresses CalRecycle's recommended actions on pages 28-30 of Addendum #3. Expanding the definition of Fund Recipients to include Collector/Sorter Entrepreneurs and other potential recipients is a positive step for the implementation of the carpet stewardship program. CARE has corrected the confusion around the definition of "processor" and other terms, and has taken steps to ensure performance measures using such terms conform to legal requirements.

CalRecycle approves CARE's response to finding 4. No further action is required.

**5) CALRECYCLE SEPTEMBER 2015 NON-COMPLIANCE FINDING 5: *CARE is not responding to market changes in a timely manner with assessment and incentive adjustments that result in increased recycling output.***

*Recommended Action Item(s):*

*CARE should consider including in its Plan Amendment, the following:*

- a. Adjustments to its decision-making process and/or the Plan to enable timely decisions that support economically viable recycling and continuous and meaningful improvement. CARE could consider potential triggers that provide for decision-making meetings, adjustments or streamlined approvals.*
- b. Adjustments to the nylon incentive to compensate for existing market conditions.*
- c. Developing a methodology to assess market changes and provide timely responses. The methodology should provide for efficient identification of market changes and their associated impact on the effectiveness of incentives as well as a faster implementation of assessment/incentive adjustments that drives an economically viable recycling program. As part of the methodology, CARE could consider what time period or amount of change, e.g., a change in commodity price over a certain time period, would require an assessment/incentive adjustment within certain parameters. Given market fluctuations, there may a need for a mechanism to lower incentives as well.*

**CARE response finding 5:**

- a. CARE has taken several actions to improve timely decision making and responsiveness to market changes, including setting a lower reserve level to increase the funding available for program incentives; adopting a monthly reporting process; hiring a third-party accounting firm to streamline reporting and fiscal analysis; moving to monthly meetings for CARE's Sustainable Plan Committee; formation of the new California Council on Carpet Recycling; and has committed to holding additional stakeholder workshops and webinars.
- b. CARE considered mechanisms to adjust nylon incentives to compensate for existing market conditions and adopted a higher Type 1 base payout, to be "tied to economic indices." However, the Sustainable Plan Committee rejected offering a differential Type 1 base payout for lower ash content fiber, and did not adopt nylon end-user Tier 2 manufacturer incentives.
- c. CARE will contract for a "dynamic economic modeling tool" to aid in planning, projections, and improved decision-making processes. The model will be developed in Q1 2016 for use in the 2017 Plan development, and to help better understand and enhance assessment and incentive mechanisms.

**CalRecycle analysis of CARE's response to finding 5:**

- a. CARE has taken a number of actions (see Addendum 3, pages 30 and 31) to streamline its decision-making process.
- b. Since CARE is responsible for preparing and implementing its carpet stewardship plan, it is within its purview to adopt or reject specific adjustments to the nylon incentive, provided the program is able to achieve continuous and meaningful improvement toward achieving the program goals.

- c. The economic modeling tool to be developed may support a more robust methodology to assess market changes and enable CARE to respond to changing market conditions in a timelier manner.

#### **RECOMMENDED ACTIONS IN RESPONSE TO FINDING 5:**

CARE should include, as part of any payout changes, a process to evaluate and consider the current financial status of program participants in addition to the outputs of the economic model. Additionally, the 2017 Plan should include a detailed strategy to monitor the financial well-being of program participants. The strategy should include periodic Council input and establish criteria for evaluating the relative financial health of participants. CARE should regularly report its findings to the Council, allowing for timely consideration of actions to keep critical participants in business.

- a. CARE should ensure the economic study or “tool” CARE has contracted for will explicitly estimate price points for postconsumer carpet materials as compared to their virgin counterparts, to assist CARE in assessing whether the actions in Addendum #3 are sufficient and likely to result in the desired improvements toward achieving the goals. The study should also explicitly estimate the assessment and incentive levels likely to overcome the present lack of demand for post-consumer carpet-derived materials and to achieve the 16 per cent recycling rate goal. For instance, CARE is proposing to raise the range of subsidy payments to an upper limit of 35 cents per pound, but will that amount be adequate or will a different subsidy payment be needed to overcome recycling barriers?
- b. CARE should report to CalRecycle, in at least quarterly intervals during 2016, the financial status of key program participants, as well as initial and ongoing results of the economic study and tool. The 2017 Plan should provide for similar reports.

- 6) **CALRECYCLE SEPTEMBER 2015 NON-COMPLIANCE FINDING 6:** *The assessment is the same for all carpet types, while the cost to recycle different types varies considerably. In general, the assessment is a very low percentage of total product cost. Recommended Action Item(s):*

*CARE should consider including in its Plan Amendment, the following:*

- a. *Implementing a tiered assessment paid by consumers or manufacturers that places a higher assessment on carpets that are more costly to recycle.*
- b. *Setting the assessment at an adequate level to provide sustainable funding for a recycling program that meets the recycled output goals and continuous and meaningful improvement.*

#### **CARE response to finding 6:**

- a. The Sustainable Plan Committee debated the idea of a tiered assessment and rejected it at this time, noting the market for nylon, traditionally stronger than non-nylon post-consumer carpet, has contracted dramatically.

- b. Regarding a sustainable carpet sales assessment level, CARE is asking for CalRecycle approval to increase the assessment to 20 cents per square yard by April 1, 2016, and to allow an assessment range of 0-25 cents per square yard.
  - o CARE also has raised the Type 1 base payout from 6 cents to 10 cents per pound, and has initiated other incentive increases.
  - o In addition, CARE requests authority to raise incentive payments up to 35 cents per pound, and to modify, eliminate or add incentive categories based on market dynamics.

**CalRecycle analysis of CARE's response to finding 6:**

- a. CARE is responsible for preparing and implementing its plan. Although CalRecycle continues to believe a tiered assessment is warranted, rejecting tiered assessment is within CARE's purview provided the program is able to achieve continuous and meaningful improvement toward achieving the program goals.
- b. CARE's proposals to raise assessment and payout levels is consistent with CalRecycle's recommendation to provide for sustainable program funding. However, because retailers collect fees at retail point of sale, the timing of implementation of a change is of major importance to the retail industry. A minimum of 60 days' notice (90 days is preferred) of an assessment increase is needed to assure that retailers can become informed of the assessment level change, and make the necessary modifications to software at the point of sale. Changes to ancillary customer informational materials will also need to be made to reflect the new assessment amount.
- c. CARE'S proposals to allow a range of assessment and incentive levels is consistent with CalRecycle's recommendation to provide for sustainable program funding. CalRecycle agrees CARE must be able to respond to market fluctuations in a timely manner. However, staff are concerned that allowing the flexibility to significantly reduce or even eliminate assessments charged at the point of sale could jeopardize steady, reliable funding for essential program elements.

**PROVISIONAL APPROVAL OF CARE'S RESPONSE TO FINDING 6:**

- a. Staff recommend approving CARE's requests to increase the assessment to 20 cents per square yard, allow flexibility for CARE to vary the assessment between 0 and 25 cents, and to raise or modify incentive payments as described, as long as the assessment and incentive levels remain sufficient to ensure the program will achieve continuous and meaningful improvement toward the program goals as required by law and CARE's Plan.
- b. However, CARE is not authorized to increase the assessment prior to April 1, 2016, to allow retailers time to prepare for the change.

**RECOMMENDED ADDITIONAL ACTIONS IN RESPONSE TO FINDING 6:**

CARE notes its fraud prevention activities have evolved over time and “every effort is made to ensure fraud is not happening.” Nevertheless, CARE should address additional fraud prevention strategies in the development of its 2017 Plan. If subsidy payments reach 35 cents per pound, the potential for financial gain from fraud (such as a processor claiming payment for non-California carpet) is greater, and additional discussion and emphasis on fraud prevention efforts may be beneficial.

**STAKEHOLDER COMMENTS ON ADDENDUM #3 (SEE ATTACHMENT 7)**

CalRecycle received comments from two stakeholders. The first did not take a position on the assessment increase, but requested that the proposed assessment increase, if adopted by CalRecycle on January 26, become effective no earlier than April 1, 2016.

**CalRecycle analysis**

Staff concur with this request and have included the April 1, 2016, date in Provisional Approval 6.

The second stakeholder letter expressed support for the approval of Addendum #3 contingent upon CARE implementing a series of changes the stakeholder believes could positively impact the program. The bullets below summarize these suggestions.

- Establish an incentive premium for processing broadloom commercial nylon carpet, such as a minimum of fifty percent above the incentive paid for residential nylon. Processing broadloom commercial nylon carpet is difficult both technically and economically due to the lower face fiber yields and residual glue from installation. The vast majority of commercial broadloom postconsumer carpet is going to landfill or to waste-to-energy.
- Establish a Tier 2 End User Nylon Incentive. The market for recycled nylon fiber has been significantly reduced due to lower oil prices and the low cost of virgin nylon. This has caused a severe contraction of carpet collections, with nylon carpet being too often landfilled due to the lack of buyers. Therefore, similar to PET, secondary markets are needed for nylon recycled output, especially in California. This should be paid to end users who turn this material into a product (this would not include pellets).
- Higher incentives for low ash nylon recycled output. Currently Tier 1 payments are based on whether the recovered carpet has an ash content that is greater to or less than the twenty five percent ash content threshold in accordance with CARE’s protocol. A premium should be paid to high quality recycled fiber with less than five percent ash content.
- Incentive guarantees should be extended to at least three years to help support processor capital investments.

**CalRecycle analysis**

CARE is responsible for preparing and implementing its plan and is proposing several changes to its incentive structure. Although CalRecycle believes consideration of alternative incentive levels such as those suggested here is warranted, establishing specific incentives is within CARE's purview provided the program is able to achieve continuous and meaningful improvement toward achieving the program goals. In addition to the 2017 Plan, CARE will be submitting its 2015 Annual Report for CalRecycle review in 2016. Both documents will be essential for assessing compliance of the carpet stewardship program.

