

1 **Proposed Regulations for the Used Mattress Recovery and Recycling Program**

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4 **PROPOSED REGULATIONS**

5 **USED MATTRESS RECOVERY AND RECYCLING PROGRAM**

6 **TITLE 14: NATURAL RESOURCES**
7 **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**
8 **CHAPTER 11. PRODUCT STEWARDSHIP**
9 **ARTICLE 3. USED MATTRESS RECOVERY AND RECYCLING PROGRAM**

10 **§18959. Purpose.**

11 The purpose of this Article is to clarify existing statute and establish administrative
12 procedures to efficiently and effectively implement the department's responsibilities
13 under the law and to provide a uniform competitive business environment to all mattress
14 manufacturers, renovators, distributors, recyclers, and retailers pursuant to Chapter 21
15 (commencing with section 42985), Part 3, Division 30 of the Public Resources Code.

16 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
17 Sections 42985, 42985.1, 42986, 42987, 42987.1, 42987.2, 42987.3, 42987.4, 42987.5,
18 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2, 42989.2.1, 42989.3, 42990,
19 42990.1, 42990.2, 42991, 42992, 42993, 42993.1, 42993.2, 42993.3, 42993.4, 42994,
20 Public Resources Code.

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22 **§18960. Definitions.**

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24 (a) Except as otherwise noted, the definitions of this Article supplement and are
25 governed by the definitions set forth in Chapter 21 (commencing with section 42985),
26 Part 3, Division 30 of the Public Resources Code:

1 (b) "Brand" means a name, term, symbol, design, type, Universal Registry Number
2 (URN) or any other feature that attributes a mattress to the manufacturer or renovator of
3 such mattress.

4 (c) "Collection" means any method by which a service provider receives used
5 mattresses ~~from a program participant~~.

6 (d) "Operational costs" means costs to operate a mattress recycling organization's
7 mattress recycling program, including, but not limited to, collection, transportation,
8 processing, disposal, and education and outreach costs.

9 (e) "Significant or material change" includes a change in a required element of the
10 used mattress recovery and recycling plan that affects the organization's costs or
11 revenues, such as a change that results in a modification of the recycling charge, a
12 change that requires a party other than the mattress recycling organization to make a
13 major change in how it participates in the program, or a change that reduces the goals
14 set for the organization in the existing approved recycling plan.

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16 Authority cited: Sections 40101 and 40502, Public Resources Code, Reference:
17 Sections 42985, 42985.1, 42986, 42987, 42987.1, 42987.2, 42987.3, 42987.4, 42987.5,
18 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2, 42989.2.1, 42989.3, 42990,
19 42990.1, 42990.2, 42991, 42992, 42993, 42993.1, 42993.2, 42993.3, 42993.4, 42994,
20 Public Resources Code.

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22 **§18961. Used Mattress Recovery and Recycling Plan Submittal.**

23

24 (a) A corporate officer, acting on behalf of a mattress recycling organization, shall
25 submit as part of the used mattress recovery and recycling plan (plan) the following
26 information:

27 (1) Contact information of the corporate officer responsible for submitting the
28 plan to the department and for overseeing used mattress recycling program
29 activities, including, but not limited to:

30 (A) Contact name

31 (B) Title

1 (C) Name of mattress recycling organization

2 (D) Mailing address

3 (E) Phone number

4 (F) E-mail address

5 (G) Web address, if applicable

6 (2) List contact information for each manufacturer, renovator, and retailer the
7 mattress recycling organization is composed of, including, but not limited to:

8 (A) Name of Company

9 (B) Mailing or corporate address

10 (C) Upon request by the department, the following information shall be
11 provided, if available: individual Web address, contact name, title, phone
12 number, and e-mail address of participating manufacturers, renovators,
13 and retailers. The requested information shall be submitted within 30
14 days of the request unless extended as determined by the department.

15 (3) List of brands covered under the plan.

16 (4) Any changes to the information in subsections (1), (2), and (3) of subdivision
17 (a) of this section shall be submitted to the department quarterly, or more
18 frequently as the mattress recycling organization desires, according to
19 instructions provided by the department.

20 (b) The plan may be submitted electronically according to instructions provided by the
21 department. If the plan is submitted electronically, the date of electronic submittal will be
22 considered the date of receipt by the department, provided that the organization also
23 submits to the department a hard copy submittal letter referencing the plan electronic
24 document with the signature of a corporate officer of a mattress recycling organization.

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26 Authority cited: Sections 40101 and 40502, Public Resources Code, Reference: Section
27 42985, 42986, 42987, 42987.1, 42987.2, 42987.3, Public Resources Code.

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1 **§18962. Used Mattress Recovery and Recycling Plan.**

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3 (a) A used mattress recovery and recycling plan (plan) shall follow the standard outline
4 below and contain the following:

5 (1) Proof of Certification.

6 (2) Program Goals, Methods, and Activities.

7 (A) Identify program objectives consistent with California's solid waste
8 management hierarchy as required by subdivision (a) of section 42987.1
9 of the Public Resources Code.

10 (B) Describe how the program will meet the requirements of subdivisions (d),
11 (g), (i), (j), (k), (l), (m), (o), and (p) of section 42987.1 of the Public
12 Resources Code.

13 (C) Describe proper end of life management of used mattresses, including but
14 not limited to, a description of how the program will prevent cross
15 contamination of mattresses by bed bugs.

16 (D) Describe how the program will increase the quantity of materials
17 recovered and recycled, and market development activities that will be
18 conducted in order to ensure these materials will be used.

19 (E) Describe how the program will provide convenient and efficient mattress
20 collection and drop-off services, ~~delivery of services~~ without unnecessary
21 duplication of effort and expense, including, but not limited to, contractual
22 agreements.

23 (F) Describe how consumers of mattresses in California will have a
24 convenient opportunity to recycle and properly manage their used
25 mattresses, including the number, location, and type of collection points in
26 the program.

27 (G) For plans submitted after January 1, 2018, identify objectives and
28 activities that will comply with the state mattress recycling goals, pursuant
29 to section 42987.5 of the Public Resources Code.

30 (3) Contact information per section 18961.

- 1 (4) Stakeholder Consultation Process per subdivision (c) of section 42987.1 and
2 42987.2 of the Public Resources Code.
- 3 (5) Performance Measurement. Include the requirements of subdivisions (f) and
4 (h) of section 42987.1 of the Public Resources Code.
- 5 (6) Financing Mechanism. Includes the requirements of subdivisions (e) of
6 section 42987.1 of the Public Resources Code, and audits per subdivision (b)
7 of section 42990 of the Public Resources Code. A mattress recycling
8 organization shall allocate revenues and expenses applicable to this program
9 in accordance with Generally Accepted Accounting Principles (GAAP).
- 10 (7) Education and Outreach. Describe education and outreach efforts as
11 required by subdivision (n) of section 42987.1 of the Public Resources Code,
12 including methods of distribution. The plan may also include a description of
13 education and outreach efforts to all parties affected by the program and may
14 include additional options available for consumers to dispose of their used
15 mattresses, such as mattress renovation.
- 16 (8) Advisory Committee Report. Include the report by the mattress recycling
17 organization advisory committee as required by subdivision (q) of section
18 42987.1 of the Public Resources Code. The mattress recycling organization's
19 plan may include a description of how it addressed the points or
20 recommendations raised in the advisory committee report.
- 21 (b) ~~A~~ The mattress recycling organization submitting ~~the~~ a plan shall provide, upon
22 request, additional information that is reasonably related to compliance with the
23 recycling plan and that the organization can reasonably compile to assist the
24 department as may be necessary for the approval of the plan.
- 25 (c) The department shall determine if the plan is complete and notify the submitting
26 mattress recycling organization within 30 days of receipt of the plan. If the department
27 finds that the plan is complete, the department's 90-day review period for consideration
28 of approval of the plan, set forth in section 42987.3 of the Public Resources Code, will
29 commence upon the original date of receipt. If the plan is incomplete, the department
30 shall identify what additional information shall be submitted to make it complete and the
31 plan shall be resubmitted within not less than 30 days or as determined by the director.

1 If the department determines upon resubmittal that the plan is complete, the
2 department's 90-day review period for consideration of approval of the plan will
3 commence upon the original date of receipt of the resubmittal.

4 (d) If the department conditionally approves a plan, the department shall identify the
5 deficiencies in the plan and the mattress recycling organization shall comply with the
6 conditions of approval within not less than 60 days or as determined by the director of
7 the notice date. If the conditions are met, the department shall approve the plan.

8 (e) If the department conditionally approves a plan and the conditions are not met, the
9 department shall disapprove the plan.

10 (f) If the department disapproves a plan, the department shall identify the deficiencies
11 in the plan and the mattress recycling organization shall resubmit a plan or provide
12 supplemental information requested within not less than 60 days of the notice date or as
13 determined by the director.

14 (g) The mattress recycling plan shall be submitted for re-approval upon any significant
15 or material change, as defined. The department shall review the revised plan within 90
16 days of receipt. The department may approve, disapprove, or conditionally approve the
17 revised plan. The department may also require the mattress recycling organization to
18 resubmit a revised mattress recycling budget if there is a significant or material change,
19 as defined.

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21 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
22 Sections 42985, 42986, 42987, 42987.1, 42987.2, 42987.3, 42989.1, 42989.2,
23 42989.2.1, 42989.3, Public Resources Code.

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25 **§18963. Mattress Recycling Charge and Annual Budget.**

26

27 (a) A corporate officer, acting on behalf of a mattress recycling organization, shall
28 submit a used mattress recycling program budget on or before July 1, 2015, and
29 on or before July 1 annually thereafter. The annual budget may be submitted
30 electronically according to instructions provided by the department. If the annual
31 budget is submitted electronically, the date of electronic submittal will be

1 considered the date of receipt by the department, provided that the organization
2 also submits to the department a hard copy submittal letter referencing the annual
3 budget electronic document with the signature of a corporate officer of a mattress
4 recycling organization.

5 (b) In addition to the requirements of subdivisions (a), (b), and (c) of section 42988 of
6 the Public Resources Code, the information submitted in the used mattress
7 recycling program budget shall contain the following:

- 8 (1) Contact information. Identify the corporate officer of the mattress recycling
9 organization responsible for annual used mattress program budget submittal.
- 10 (2) Anticipated revenues and costs. Describe anticipated revenues and costs of
11 implementing the program, including related programs, projects, contracts,
12 and administrative expenses.
- 13 (3) Mattress recycling charge and itemization. Identify the amount of the mattress
14 recycling charge, including an itemization of costs that each charge covers.
- 15 (4) For used mattress recycling program budgets submitted on or by July 1, 2017
16 all actual expenses incurred to date shall be included. For annual reports
17 submitted thereafter, the previous two years of actual expenses shall be
18 included.

19 Authority cited: Sections 40101 and 40502, Public Resources Code, Reference:
20 Sections 42985, 42986, 42987, 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2,
21 42989.2.1, 42989.3, Public Resources Code.

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23 **§18964. Mattress Recycling Organization Annual Report.**

24
25 (a) The mattress recycling organization annual report shall be submitted by a
26 corporate officer acting on behalf of a mattress recycling organization that is operating a
27 used mattress recycling program under a department-approved used mattress recovery
28 and recycling plan. The annual report may be submitted electronically according to
29 instructions provided by the department. If the annual report is submitted electronically,
30 the date of electronic submittal will be considered the date of receipt by the department,
31 provided that the organization also submits to the department a hard copy submittal

1 letter referencing the annual report electronic document with the signature of a
2 corporate officer of a mattress recycling organization.

3 (b) The annual report shall follow the outline below and contain the following:

4 (1) Contact information. Identify the corporate officer of the mattress recycling
5 organization responsible for annual report submittal.

6 (2) Executive Summary. The purpose of the Executive Summary is to provide a
7 broad understanding of the mattress recycling organization's program as a
8 whole and to put into context the data and information that will follow. Provide
9 a brief description of the mattress recycling organization's used mattress
10 recovery efforts during the ~~reporting period~~ calendar year pursuant to section
11 18962.

12 (3) A description of the methods used to collect, transport, and process used
13 mattresses in California.

14 (4) Include an updated list of participating manufacturers, renovators, and
15 retailers and any updates to their respective contact information per section
16 18961(a)(2) and an updated list of brands covered under the plan per section
17 18961(a)(3).

18 (5) Description of how consumers of mattresses in California had an opportunity
19 to recycle and properly manage their used mattresses, including the number,
20 location, and type of collection points in the program.

21 (6) May include a description of activities ~~followed by program participants~~ to
22 ensure proper collection and management of used mattresses.

23 (7) A description of methods used by the mattress recycling organization to
24 coordinate with existing used mattress collection and recycling programs with
25 regard to the proper management or recycling of discarded or abandoned
26 mattresses.

27 (8) Description of objectives and activities based on the used mattress recovery
28 and recycling plan, per section 18962(a)(2). State objectives from the approved
29 plan and describe report on achievement progress toward achieving those
30 objectives during the reporting period. Describe any adjustments to objectives
31 stated in the approved plan that may be made for the upcoming reporting

1 period and accompanying rationale for those changes. If any changes are
2 significant or material, as defined, the mattress recycling organization shall
3 amend and resubmit its plan for approval by the department. The annual report
4 shall include:

5 (A) Quantitative information on subdivisions (b), (c), (d), (e), (f), (g), and (j) of
6 section 42990.1 of the Public Resources Code, including conversion
7 factor(s), if used. When describing the uses for the recycled materials,
8 the annual report shall identify the secondary markets and end uses of to
9 which those materials are sold, and potential end uses of those
10 materials.

11 (B) Qualitative and/or quantitative information on subdivisions (g), (l), and
12 (m) of section 42987.1 of the Public Resources Code.

13 (9) Financing Mechanism. Include the mattress recycling organization's total
14 expenses and revenues associated with the implementation of the used
15 mattress recycling program. Changes to the mattresses recycling charge shall
16 be reflected in the annual program budget for approval by the department. If a
17 mattress recycling organization changes the amount of the mattress recycling
18 charge in the first 12 months during which the mattress recycling charge is
19 being collected per subsection (1) of subdivision (c) of section 42989 of the
20 Public Resources Code, the mattress recycling organization shall provide the
21 department no less than 90 days' notice before the change in the amount of the
22 mattress recycling charge takes place. If a mattress recycling organization
23 conducts activities that are separate from the implementation and management
24 of the California used mattress recycling program, then the annual report shall
25 include documentation on how the collection and use of funds from the
26 California mattress recycling charge were kept separate from other activities of
27 the mattress recycling organization, including the methodology for distribution
28 of shared costs. Consistent with subdivision (a) of section 42990.1 of the Public
29 Resources Code, the annual report shall include the following:

30 (A) Mattress recycling charge per mattress size

31 (B) Capital costs

- 1 (C) Education/Outreach costs
- 2 (D) End-of-life used mattress management costs with line items, if
- 3 applicable, for collection, transportation, recycling, renovating, reuse,
- 4 and proper disposal
- 5 (E) Program administration costs including, but not limited to, the
- 6 department's costs pursuant to subdivision (a) of section 42988.2 of the
- 7 Public Resources Code, and third party legal costs. Surplus funds, if
- 8 any, and detailed rationale for the specified level of surplus.
- 9 (F) For the first 12 months during which the mattress recycling charge was
- 10 collected, include a description of any changes to the amount of the
- 11 mattress recycling charge, and how implementation of the change
- 12 complied with subsection (1) or (2) of subdivision (c) of section 42989 of
- 13 the Public Resources Code, if applicable. The mattress recycling
- 14 organization may also include a description of why the change was
- 15 made.
- 16 (10) Education and Outreach. Provide a description of educational materials that
- 17 were provided to ~~program participants~~, including electronic examples of these
- 18 materials. Identify any method(s) used to determine the effectiveness of
- 19 educational and outreach efforts (e.g., surveys, hits on specific web pages,
- 20 number of participants at events, etc.), if applicable. Describe any changes to
- 21 those materials that are planned for subsequent years, if applicable.
- 22 (11) Audits. The annual report shall include an independent financial audit of the
- 23 used mattress recovery and recycling program funded from the mattress
- 24 recycling charge. The audit shall be conducted in accordance with auditing
- 25 standards generally accepted in the United States of America, and standards
- 26 set forth in Government Auditing Standards issued by the Controller General of
- 27 the United States. The financial audit submitted to the department shall be
- 28 prepared by an Independent Certified Public Accountant (CPA). The CPA shall
- 29 not perform non-audit services for the mattress recycling organization that
- 30 would impair independence as defined in the Government Auditing Standards
- 31 issued by the Controller General of the United States (e.g., accounting

1 services, development of internal controls, management decisions). The
2 independent financial audit shall include:

3 (A) Mattress recycling program financial statements, as required by GAAP.

4 (B) An opinion on the mattress recycling organization's compliance with the
5 financial aspects of Chapter 21 (commencing with section 42985), Part
6 3, Division 30 of the Public Resources Code and Title 14, Division 7,
7 Chapter 11, Article 3 of the California Code of Regulations.

8 (C) Findings and recommendations as they relate to the financial aspects of
9 the program.

10 (D) Management Letter, if issued, by the mattress recycling organization's
11 CPA.

12 (12) Advisory Committee Report. The annual report shall include the report of the
13 advisory committee required by subdivision (k) of section 42990.1 of the Public
14 Resources Code. The mattress recycling organization's annual report may
15 include a description of how it addressed the points or recommendations raised
16 in the advisory committee report.

17 (13) Good faith effort. For annual reports submitted on and after July 1, 2019, a
18 demonstration of good faith effort with the state mattress recycling goals
19 established pursuant to section 42987.5 (b) of the Public Resources Code.

20 (c) The department shall determine if the annual report is complete and notify the
21 submitting mattress recycling organization within 30 days. If the department finds
22 that the ~~plan~~ annual report is complete, the department's 60-day review period for
23 consideration of approval of the annual report will commence upon the original date
24 of receipt. If the annual report is incomplete, the department shall identify what
25 additional information shall be submitted to make it complete and the annual report
26 shall be resubmitted within not less than 60 days or as determined by the director. If
27 the department determines upon resubmittal that the annual report is complete, the
28 department's 60-day review period for consideration of approval of the annual report
29 will commence upon the original date of receipt of the resubmittal. The department
30 may adopt a determination of compliance or non-compliance by approving,
31 disapproving, or conditionally approving the annual report.

1 (1) If the department conditionally approves the annual report, the department
2 shall identify the deficiencies in the annual report and the mattress recycling
3 organization shall comply with the conditions of approval within not less than
4 60 days of the notice date or as determined by the director. If the conditions
5 are met, the department shall approve the annual report.

6 (2) If the department disapproves the annual report, the department shall identify
7 the deficiencies in the annual report and the mattress recycling organization
8 shall resubmit an annual report or provide supplemental information
9 requested within not less than 60 days of the notice date or as determined by
10 the director.

11 (3) If the department conditionally approves an annual report and the conditions
12 are not met, the department shall disapprove the annual report.

13
14 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
15 Sections 42985, 42986, 42987.5, 42990, 42990.1, 42990.1, Public Resources Code.

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17 **§18965. Used Mattress Recycler Annual Report.**

18
19 (a) An annual report shall be submitted to the department and the mattress recycling
20 organization by a person that is engaged in business as a used mattress recycler. The
21 annual report may be submitted electronically according to instructions provided by the
22 department. A hard copy, signed by a corporate officer of a mattress recycler shall be
23 submitted to the department upon request.

24 (b) The annual report shall contain the following:

25 (1) Contact information. Identify the corporate officer of the mattress recycler
26 responsible for annual report submittal.

27 (2) Quantitative information on the number of used mattresses received from
28 California sources and out of state sources and recycled in the state during the
29 preceding calendar year. Conversion factor(s), if used, shall also be provided.

30 (3) Quantitative information on the number of used mattresses from California
31 sources and sent out of state for recycling or other method of disposition.

1 (4) Other information deemed necessary by the department that is reasonably
2 related to compliance with this chapter and that can be reasonably compiled.

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4 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
5 Sections 42985, 42986, 42987, 42991, Public Resources Code.

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7 **§18966. Used Mattress Renovator Annual Report.**

8
9 (a) An annual report shall be submitted to the department and the mattress recycling
10 organization by a person that is engaged in business as a used mattress renovator. The
11 annual report may be submitted electronically according to instructions provided by the
12 department. A hard copy, signed by a corporate officer of a mattress renovator ~~recycler~~
13 shall be submitted to the department upon request.

14 (b) The annual report shall contain the following:

15 (1) Contact information. Identify the corporate officer of the mattress renovator
16 responsible for annual report submittal.

17 (2) Quantitative information on the number of used mattresses received from
18 California sources and out of state sources and renovated in the state during
19 the preceding calendar year. Conversion factor(s), if used, shall also be
20 provided.

21 (3) Quantitative information on the number of used mattresses generated in
22 California and sent out of state for renovation or other method of disposition.

23 (4) Other information deemed necessary by the department that is reasonably
24 related to compliance with this chapter and that can be reasonably compiled.

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26 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
27 Sections 42985, 42986, 42987, 42991, Public Resources Code.

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1 **§18967. Solid Waste Facility Annual Report.**

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3 (a) An annual report shall be submitted by a person that is engaged in business as an
4 operator of a solid waste facility to the department and the mattress recycling
5 organization. The annual report may be submitted electronically according to
6 instructions provided by the department. A hard copy, signed by a designated
7 representative of a solid waste facility shall be submitted to the department upon
8 request.

9 (b) The annual report shall contain the following:

10 (1) Contact information. Identify the designated representative of the solid waste
11 facility responsible for annual report submittal.

12 (2) The number of used mattresses disposed of at the site in the preceding
13 calendar year and the number of mattresses the facility recycled, renovated, or
14 sent away to be recycled or renovated in the preceding calendar year. Facility
15 operators are required to count, track, and report on each mattress they
16 observed during the normal operation of the facility. Facility operators are not
17 required to do additional sorting or processing to find a mattress that was an
18 incidental part of a load, or that could not be counted or observed upon receipt.

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20 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
21 Sections 42985, 42986, 42987, 42991, Public Resources Code.

22
23 **§18968. Mattress Recycling Organization Advisory Committee Annual Report.**

24
25 (a) An annual report shall be submitted by a designee of the mattress recycling
26 organization advisory committee, established pursuant to subsection (3) of subdivision
27 (a) of section 42987 of the Public Resources Code to the mattress recycling
28 organization no later than 30 days prior to when the annual report is due to the
29 department. The annual report may be submitted electronically according to instructions
30 provided by the department. A hard copy, signed by a designated representative of the
31 advisory committee shall be submitted to the mattress recycling organization.

1 (b) The annual report shall contain the following:

2 (1) Contact information. Identify the designated representative of the advisory
3 committee responsible for annual report submittal and each member of the
4 advisory committee, including member name and company/affiliation.

5 (2) A summary of the consultative process between the advisory committee and
6 the mattress recycling organization relating to the ongoing implementation of
7 the plan, as well as any other information deemed pertinent by the advisory
8 committee to maximize the recovery and recycling of used mattresses in the
9 state, per subdivision (k) of section 42990.1 the Public Resources Code.

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11 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
12 Sections 42985, 42986, 42987, 42990.1, Public Resources Code.

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14 **§18969. Records.**

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16 Each mattress recycling organization, manufacturer, renovator, retailer, recycler, and
17 distributor required to comply with Chapter 21 (commencing with section 42985), Part 3,
18 Division 30 of the Public Resources Code shall:

19 (a) Maintain records to support the requirements in this Article.

20 (1) Mattress recycling organizations shall maintain records to support section
21 18962.

22 (2) Retailers, renovators, recyclers and distributors shall provide access to existing
23 records on all mattresses sold or offered for sale in the state including:

24 (A) The manufacturer of the mattress.

25 (B) The date(s) the retailer purchased the mattress from the manufacturer.

26 (C) The date(s) the retailer sold the mattress.

27 (D) Certification letter(s) from the department, if provided by a manufacturer,
28 to demonstrate that the mattress from the manufacturer is or was subject
29 to a department-approved mattress recycling plan. A retailer shall
30 provide access to a certification letter only if it is being used as proof of
31 compliance, pursuant to subdivision (b) of section 42993 of the Public

1 Resources Code that a manufacturer not listed on the department's
2 internet website is in compliance and may sell or offer for sale
3 mattresses in California.

4 (b) Provide the department with reasonable and timely access, as determined by the
5 department, to its facilities, operations, and any relevant records necessary to
6 determine compliance with this Article, upon request.

7 (1) Manufacturers, renovators, retailers, distributors, and recyclers will maintain
8 and provide access to records required by this Article for 3 years.

9 (2) Mattress recycling organizations will maintain and provide access to records
10 required by this Article for 3 years after submission of the annual report which
11 relies upon those records.

12 (c) The department may take enforcement action against any mattress recycling
13 organization, manufacturer, renovator, retailer, recycler, or distributor who fails to
14 provide the department with access pursuant to this section and subdivision (c) of
15 section 42993.3 of the Public Resources Code.

16 (d) In addition to the provisions in subdivision (c) of section 42987.3 of the Public
17 Resources Code, records supplied to the department pursuant to this Article that are, at
18 the time of submission, claimed to be proprietary, confidential, or trade secret shall be
19 subject to the provisions in Title 14, California Code of Regulations, Division 7, Chapter
20 1, Article 4 (commencing with section 17041).

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22 Note: Authority cited: Sections 40401 and 40502, Public Resources Code; and Section
23 6253, Government Code. Reference: Sections 42985, 42986, 42987. 42987.1, 42987.2,
24 42987.3, 42987.4, 42987.5, 42988, 42988.1, 42988.2, 42990, 42990.1, 42990.2, 42991,
25 42993.2, 42993.3, Public Resources Code and Sections 6250 et seq., Government
26 Code.

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1 **§18970. Criteria to Impose a Civil Penalty.**

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3 In assessing or reviewing the amount of civil penalty imposed for a violation of this
4 article, the department or the court shall consider the totality of the circumstances,
5 which may include, but is not limited to, the following:

6 (a) The nature, circumstances, extent, and gravity of the violation(s).

7 (b) The number and severity of the violation(s).

8 (c) Evidence that the violation was intentional, knowing, or negligent.

9 (d) The size of the violator.

10 (e) History of violation(s) of the same or similar nature.

11 (f) The willfulness of the violator's misconduct.

12 (g) Whether the violator took good faith measures to comply with this chapter and the
13 period of time over which these measures were taken.

14 (h) Evidence of any financial gain resulting from the violation(s).

15 (i) The economic effect of the penalty on the violator.

16 (j) The deterrent effect that the imposition of the penalty would have on both the
17 violator and the regulated community.

18 (k) Any other factor that justice may require.

19

20 Note: Authority cited: Sections 40401 and 40502, Public Resources Code. Reference:
21 Sections 42985, 42986, 42993, 42993.1, 42993.2, 42993.3, Public Resources Code.

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23 **§18971. Procedure for Imposing Civil Penalties.**

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25 (a) Civil penalties may be administratively imposed in accordance with the procedures
26 outlined in the Administrative Procedure Act at Article 10 of Chapter 4.5 (commencing
27 with section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code.

28 (b) The accusation or complaint and all accompanying documents may be served on
29 the respondent by the following means:

30 (1) Personal service.

1 (2) Substitute service by using the same service procedures as described in
2 section 415.20 of the Code of Civil Procedure.

3 (3) Certified Mail: For respondents who have submitted a mattress recycling plan,
4 certified mail or registered mail if the letter containing the accusation or
5 complaint and accompanying material is mailed, addressed to the respondent
6 at the latest facility or mailing address(es) on file with the department. Proof of
7 service of the accusation or complaint shall be the certified mail receipts or
8 registered mail receipts proving the accusation or complaint and
9 accompanying materials were sent to respondent by certified mail or
10 registered mail. For respondents who have not submitted or are not required
11 to submit a mattress recycling plan to the department, certified mail or
12 registered mail pursuant to the procedures indicated in the Administrative
13 Procedure Act at subdivision (c) of section 11505 of the Government Code
14 applies.

15 (c) Civil penalties may be imposed pursuant to subdivision (a) of section 42993.1 of
16 the Public Resources Code.

17
18 Note: Authority cited: Sections 40401 and 40502, Public Resources Code. Reference:
19 Sections 42985, 42986, 42993, 42993.1, 42993.2, 42993.3, Public Resources Code;
20 and Section 11500, Government Code.

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