

**REQUEST FOR APPROVAL**

**To:** Caroll Mortensen  
Director

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

**Request Date:** May 19, 2015

**Decision Subject:** Adoption of Proposed Used Mattress Recovery and Recycling Program Regulations

**Action By:** May 22, 2015

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**Summary of Request:** Staff requests adoption of the Proposed Used Mattress Recovery and Recycling Program Regulations, which are needed to implement the Used Mattress Recovery and Recycling Act [Chapter 388, Statutes of 2013 (Hancock, Senate Bill 254)].

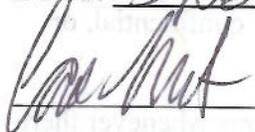
**Recommendation:** Staff recommends adoption of the Used Mattress Recovery and Recycling Program Regulations and direction to forward them to the Office of Administrative Law (OAL) for approval and publishing. Staff also recommends that the Department file a Notice of Exemption (NOE) with the State Clearinghouse as provided under the California Environmental Quality Act (CEQA).

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**Action:**

On the basis of the information and analysis in this Request for Approval and the findings set out above, I hereby approve the adoption of the Proposed Used Mattress Recovery and Recycling Program Regulations and direct staff to forward the regulatory packet to the Office of Administrative Law for approval and publishing. I also direct staff to file a Notice of Exemption with the State Clearinghouse as provided under the California Environmental Quality Act.

**Dated:** 5/22/2015

  
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Caroll Mortensen, Director

- Attachments:**
1. Proposed Used Mattress Recovery and Recycling Program Regulations
  2. Matrix of Comments and CalRecycle responses, First 45-Day Public Comment Period (December 26, 2014 – February 11, 2015)
  3. Matrix of Comments and CalRecycle responses, First 15-day Public Comment Period (March 18, 2015-April 9, 2015)

## **Background Information:**

Senate Bill (SB) 254 (Chapter 388, Statutes of 2013) established the Used Mattress Recovery and Recycling Act (Act). Subsequently, the governor signed clean-up legislation – SB 1274 (Chapter 371, Statutes of 2014) – which provided additional clarity regarding definitions, report submittals, and record keeping requirements under the Act.

The Act requires implementation of the Used Mattress Recovery and Recycling Program (Program) in order to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used mattresses. Mattress manufacturers, via a mattress recycling organization (MRO), are required to develop, finance, and implement a convenient and cost-effective program to recover and recycle used mattresses generated in California. A MRO must be certified by CalRecycle and submit a budget and plan that details the proposed mattress stewardship program to the department. The department has 90 days from receipt of the plan to review and approve, disapprove, or conditionally approve it. To date, CalRecycle has certified the Mattress Recycling Council, a non-profit organization created by the International Sleep Products Association, as a MRO.

CalRecycle is tasked with specific oversight and enforcement responsibilities pursuant to the Act. These include approving the members of the MRO Advisory Committee; reviewing and approving mattress stewardship plans submitted by a designated MRO; reviewing and approving annual reports required from a MRO, mattress recyclers and mattress renovators, and from solid waste facilities; reviewing and approving a MRO's annual budget and the mattress recycling charge; posting a list of compliant manufacturers and renovators on CalRecycle's website; and imposing an administrative fee sufficient to cover the department's full costs of administering and enforcing the Act. Additionally, based on information required in the plan and first annual report, CalRecycle must establish the state mattress recycling baseline amount and state mattress recycling goals on or before January 1, 2018. CalRecycle enforcement is to be addressed through a combination of activities including evaluating a MRO's progress in implementing its plan, performing audits, and, if necessary, imposing civil penalties for non-compliance. In evaluating MRO progress, CalRecycle would solicit stakeholder input via transparent, public discussions.

To carry out these responsibilities, CalRecycle seeks to promulgate regulations that add clarity and establish administrative procedures covering: definitions; plan and annual report submittal instructions; plan components; the mattress recycling charge and annual budget; annual reports from the MRO, recyclers, renovators, solid waste landfills, and mattress recycling organization advisory committee; record keeping; enforcement provisions; and proprietary, confidential, or trade secret information.

CalRecycle has been given authority by the legislature to promulgate regulations whenever there is substantial evidence that regulations are needed to implement, interpret, make specific, or to govern CalRecycle's procedure, to effectuate the purpose of the statute. This rulemaking seeks to add clarity and establish the necessary administrative procedures to fulfill CalRecycle's responsibilities under the Act.

## **Rulemaking Timeline:**

Staff met with numerous stakeholders during an informal comment period (February 20 – March 27, 2014) and conducted a public workshop on March 13, 2014, to share and solicit feedback and guidance on CalRecycle’s informal draft regulatory text. Comments received during this period were posted to the department’s mattress product management webpages. The proposed regulations were also updated to accommodate the minor clarifications enacted by the passage of SB 1274.

Formal rulemaking activities began in December 2014. A 45-day public comment period for the proposed Used Mattress Recovery and Recycling Program Regulations ran from December 26, 2014, through February 11, 2015. On February 11, 2015 staff held a public hearing on the proposed regulations. After considering comments received during the 45-day comment period and comments made at the public hearing (see Attachment 2), staff revised the proposed regulations. On March 18, 2015, CalRecycle initiated a 15-day comment period for the proposed changes, which ended on April 9, 2015.

On April 9, 2015, CalRecycle conducted a public hearing on the proposed revisions to the regulatory text and to accept comments on the proposed changes. After considering comments received during the 15-day comment period (see Attachment 3), staff edited the regulatory text where deemed appropriate. These additional revisions are shown in Attachment 1<sup>1</sup>, the Proposed Regulations for the Used Mattress Recovery and Recycling Program. CalRecycle determined these revisions to the proposed regulations to be non-substantive and clarifying in nature; thus, staff is recommending the Director adopt the Proposed Regulations for the Used Mattress Recovery and Recycling Program and direct staff to forward the regulatory packet to the Office of Administrative Law for approval and publishing.

With approval of the regulations, staff will prepare and submit the final rulemaking package to the Office of Administrative Law in late May. This tight schedule is necessary because the regulations clarify requirements of the mattress stewardship plan, which is due to CalRecycle on or before July 1, 2015.

## **Analysis:**

The complete list of all comments submitted by stakeholders regarding the proposed regulatory language and staff’s responses to these comments are available at:

<http://www.calrecycle.ca.gov/Laws/Rulemaking/Mattresses/default.htm>

- Public comments and CalRecycle responses, 45-day Public Comment Period (December 26, 2014 - February 11, 2015) (Attachment 2)
- Public comments and CalRecycle responses, 15-day Public Comment Period (March 18, 2015 - April 9, 2015) (Attachment 3)

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<sup>1</sup> Note: In Attachment 1, text shown in underline (addition) and ~~strikeout~~ (deletion) depict proposed changes made after the 45-day comment period. Text shown in double underline (addition) and double strikeout (deletion) depict proposed changes made after 15 day comment period.

## **Summary of Revisions Incorporated as a Result of Comments Received During the 45-day, and 15-day Comment Periods:**

After taking into consideration the totality of public comments submitted during the 45-day and 15-day comment periods, CalRecycle made the following changes to the initial draft proposed regulations:

### **§18960. Definitions.**

- Removed the term “program participant” used in the definition of “collection” in order to avoid confusion by limiting collection to just mattresses received by a “Program participant” instead of encompassing all mattresses received.

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

- Added language to clarify that a description of proper end-of-life management of used mattresses is required in the plan, including but not limited to, a description of how the program will prevent cross contamination of mattresses by bed bugs ;
- Revised language to require a description of how the program will increase the quantity of materials recovered and recycled, and what market development activities will be conducted in order to ensure these materials will be used;
- Added language that the plan require a description of how the program will provide convenient mattress collection and drop-off services without unnecessary duplication of effort and expense;
- Added language to clarify the plan must include a description of how consumers of mattresses in California will have a convenient opportunity to recycle and properly manage their used mattresses;
- Modified text to clarify the plan may include a description of how the MRO addressed the points or recommendations raised in the advisory committee’s report;
- Replaced “the” with “a” in reference to a mattress recycling organization’s plan submission in order to clarify there may be more than one MRO and more than one plan.

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

- Added the phrase “on or by” preceding “July 1, 2017” to better reflect that used mattress recycling program budgets submitted by that time must include all actual expenses incurred up to that date.
- Added the word “the” preceding “previous two years of actual expenses” in order to provide clarity and correct a grammatical error.

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

- Replaced “reporting period” with “calendar year” to clarify the period of time applicable to the MRO’s used mattress recovery efforts that will be described in the Executive Summary;
- Removed the term “program participant” to clarify that the annual report may include a description of all activities to ensure proper collection and management of used mattresses and not just activities conducted by a “program participant”;

- Added language citing the section in the regulations that pertain to the plan's required Program Goals, Methods, and Activities, in order to clarify the specific objectives the annual report must describe its progress toward achieving;
- Added text requiring the report to identify the secondary markets to which recycled materials are sold, and potential end uses;
- Removed the term "program participant" under education and outreach to clarify that a description of all educational materials should be included in the annual report, not just educational materials provided to "program participants";
- Modified text to allow the report to include a description of how it addressed the points or recommendations raised by the advisory committee's report;
- Replaced the word "plan" with "annual report" when discussing the report approval process.

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

- Replaced the word "recycler" with "renovator" to correctly reference the party who will submit a renovator's annual report.

**Compliance with the California Environmental Quality Act (CEQA):**

The adoption of the regulations is exempt from CEQA because it is not a "project," as that term is defined in the CEQA Guidelines. (Cal. Code of Regs, Title 14, §§ 15000 et seq.) A "project" is an activity "which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." (CEQA Guidelines, § 15378(a).) The regulations only establishes administrative procedures for CalRecycle, mattress manufacturers, renovators, and retailers, and other entities subject to the underlying statute. The adoption of the regulations will have no direct effect on the environment and no reasonably foreseeable indirect effect on the environment. Although the regulations allow the submission of used mattress recovery and recycling plans in the future, there are no plan requirements in the proposed regulations from which any environmental impacts, direct or indirect, can be discerned. There are no standards or targets set in the proposed regulations on which to base an objective analysis of any potential impacts. To impute any general or specific environmental effects from the regulations would be entirely speculative, and CEQA does not require a lead agency to speculate as to the potential impacts of a project. Accordingly, the adoption of the regulations is exempt from consideration under CEQA and a Notice of Exemption should be filed with the State Clearinghouse.

