

INFORMAL DRAFT REGULATORY TEXT

Proposed Regulations for Used Mattress Recovery and Recycling Program

PROPOSED REGULATIONS

USED MATTRESS RECOVERY AND RECYCLING PROGRAM

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

§18959. Purpose.

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

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

§18960. Definitions.

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

(b) "Brand" means a name, term, symbol, design, type, or any other feature that attributes a mattress to the manufacturer of such mattress.

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1 (c) “Collection” means any method by which a service provider receives used
2 mattresses from a consumer.

3 (d) “Operational costs” means costs to operate a mattress recycling organization’s
4 mattress recycling program, including, but not limited to, collection, transportation,
5 processing, disposal, and education and outreach costs.

6 (e) “Recycling fee” or “fee” has the same meaning as “recycling charge” or “charge”,
7 as defined in subdivision (n) of section 42986 of the Public Resources Code.

8 (f) “Significant or material change” means any change in a required element of the
9 used mattress recovery and recycling plan.

10

11 Authority cited: Sections 40101 and 40502, Public Resources Code, Reference:
12 Sections 42985, 42985.1, 42986, 42987, 42987.1, 42987.2, 42987.3, 42987.4, 42987.5,
13 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2, 42989.2.1, 42989.3, 42990,
14 42990.1, 42990.2, 42991, 42992, 42993, 42993.1, 42993.2, 42993.3, 42993.4, 42994,
15 Public Resources Code..

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18 **§18961. Used Mattress Recovery and Recycling Plan Submittal.**

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

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

25 (A) Contact name

26 (B) Title

27 (C) Name of mattress recycling organization

28 (D) Mailing address

29 (E) Phone number

30 (F) E-mail address

31 (G) Web address, if applicable

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1 (2) Any changes to the information outlined in subsection (1) of subdivision (a) of
2 section 18961 shall be submitted to the department within 30 days.

3 (3) List and contact information for each manufacturer, renovator, and retailer
4 participating in the mattress recycling organization, including, but not limited
5 to:

6 (A) Name of Company

7 (B) Mailing or corporate address

8 (C) Individual Web address (if applicable), contact name, title, phone number,
9 and e-mail address of participating manufacturers, renovators, and
10 retailers shall be provided to the department upon request. The
11 requested information shall be submitted within 30 days of the request
12 unless extended as determined by the department.

13 (4) List of brands covered under the plan.

14 (5) A mattress recycling organization shall provide a list of manufacturers,
15 renovators, retailers, and brands participating in its program according to
16 instructions provided by the department. Any changes to the list of
17 manufacturers, renovators, retailers, and brands shall be submitted to the
18 department within 30 days according to instructions provided by the
19 department.

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

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

27 28 **§18962. Used Mattress Recovery and Recycling Plan.**

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

31 (1) Proof of Certification.

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- 1 (2) Program Goals, Methods, and Activities. Identify program objectives
2 consistent with the California's solid waste management hierarchy as required
3 by subdivision (a) of section 42987.1 of the Public Resources Code. Describe
4 how the program will meet the requirements of subdivisions (d), (g), (i), (j),(k),
5 (l), (m), (o), and (p) of section 42987.1 of the Public Resource Code. For
6 plans submitted after January 1, 2018, identify objectives and activities that
7 will comply with the state mattress recycling goals, pursuant to section
8 42987.5 of the Public Resources Code.
- 9 (3) Contact information per section 18961.
- 10 (4) Stakeholder Consultation Process per subdivision (c) of section 42987.1 and
11 42987.2 of the Public Resources Code.
- 12 (5) Performance Measurement. Include the requirements of subdivisions (f) and
13 (h) of section 42987.1 of the Public Resources Code.
- 14 (6) Financing Mechanism. Includes the requirements of subdivisions (e) of
15 section 42987.1 of the Public Resources Code, and audits per subdivision (b)
16 of section 42990 of the Public Resources Code. A mattress recycling
17 organization shall allocate revenues and expenses applicable to this program
18 in accordance with Generally Accepted Accounting Principles (GAAP).
- 19 (7) Education and Outreach. Describe the education and outreach efforts to
20 program participants, including but not limited to consumers, manufacturers,
21 distributors, renovators, and retailers to promote used mattress recycling and
22 options available to consumers for the free drop-off of used mattresses, as
23 required by subdivision (n) of section 42987.1 of the Public Resources Code.
24 The description shall include methods of distribution.
- 25 (8) Advisory Committee Report. Include the report by the mattress recycling
26 organization advisory committee as required by subdivision (q) of section
27 42987.1 of the Public Resources Code. Include a description of how the
28 mattress recycling organization addressed the points or recommendations
29 raised in the Advisory Committee Report.

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1 (b) The mattress recycling organization submitting the plan shall provide, upon
2 request, additional information to assist the department as may be necessary for the
3 approval of the plan.

4 (c) The department shall determine if the plan is complete and notify the submitting
5 mattress recycling organization within 30 days. If the department finds that the plan is
6 complete, the department's 90-day review period for consideration of approval of the
7 plan, set forth in section 42987.3 of the Public Resources Code, will commence upon
8 the original date of receipt. If the plan is incomplete, the department shall identify what
9 additional information shall be submitted to make it complete and the plan shall be
10 resubmitted within 30 days *(Is 30 days sufficient time?)*. If the department determines
11 upon resubmittal that the plan is complete, the department's 90-day review period for
12 consideration of approval of the plan will commence upon the original date of receipt of
13 the resubmittal.

14 (d) If the department conditionally approves a plan, the department shall identify the
15 deficiencies in the plan and the mattress recycling organization shall comply with the
16 conditions of approval within 60 days of the notice date. If the conditions are met, the
17 department shall approve the plan.

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

20 (f) If the department disapproves a plan, the department shall identify the deficiencies
21 in the plan and the mattress recycling organization shall resubmit a plan or provide
22 supplemental information requested within 60 days of the notice date.

23 (g) To the extent that any subsequent change to the plan by the mattress recycling
24 organization does not meet the requirements of subdivision (m) of section 42990.1 of
25 the Public Resources Code, the mattress recycling plan shall be submitted for re-
26 approval upon any significant or material change, as defined. The department shall
27 review the revised plan within 90 days of receipt. The department may approve,
28 disapprove, or conditionally approve the revised plan. The department may also require
29 the mattress recycling organization to resubmit a revised mattress recycling budget.

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1 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
2 Sections 42985, 42986, 42987, 42987.1, 42987.2, 42987.3, 42989.1, 42989.2,
3 42989.2.1, 42989.3, Public Resources Code.

4 5 **§18963. Mattress Recycling Charge and Annual Budget.**

- 6 (a) A corporate officer, acting on behalf of a mattress recycling organization, shall
7 submit a used mattress recycling program budget on or before July 1, 2015, and
8 on or before July 1 annually thereafter. The annual budget may be submitted
9 electronically according to instructions provided by the department. If the annual
10 budget is submitted electronically, a hard copy submittal letter referencing the
11 annual budget electronic document with the signature of a corporate officer of a
12 mattress recycling organization shall be submitted to the department.
- 13 (b) The information submitted in the used mattress recycling program budget shall
14 contain the following:
- 15 (1) Contact information. Identify the corporate officer of the mattress recycling
16 organization responsible for annual used mattress program budget submittal.
 - 17 (2) Anticipated revenues and costs. Describe anticipated revenues and costs of
18 implementing the program, including related programs, projects, contracts,
19 and administrative expenses.
 - 20 (3) Recommended funding level. Identify a recommended funding level sufficient
21 to cover the plan's budgeted costs and to operate the mattress recycling
22 program over a multiyear period in a prudent and responsible manner.
 - 23 (4) Mattress recycling charge and itemization. Identify the amount of the mattress
24 recycling charge, including an itemization of costs that each charge covers.
25 *(Feedback on this item?)*
 - 26 (5) For used mattress recycling program budgets submitted July 1, 2017 and
27 annually thereafter, previous two years of actual expenses shall be included.
28 *(Feedback on this item?)*

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1 Authority cited: section 40101 and 40502, Public Resources Code, Reference: Sections
2 42985, 42986, 42987, 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2, 42989.2.1,
3 42989.3, Public Resources Code.

4 5 **§18964. Mattress Recycling Organization Annual Report.**

6
7 (a) The mattress recycling organization annual report shall be submitted by a
8 corporate officer acting on behalf of a mattress recycling organization that is operating a
9 used mattress recycling program under a department-approved used mattress recovery
10 and recycling plan. The annual report may be submitted electronically according to
11 instructions provided by the department. If the annual report is submitted electronically,
12 a hard copy submittal letter referencing the annual report electronic document with the
13 signature of a corporate officer of a mattress recycling organization shall be submitted
14 to the department.

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

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

18 (2) Executive Summary. The purpose of the Executive Summary is to provide a
19 broad understanding of the mattress recycling organization's program as a
20 whole and to put into context the data and information that will follow. Provide
21 a brief description of the mattress recycling organization's used mattress
22 recovery efforts during the reporting period pursuant to section 18962.

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

25 (4) Include an updated list of participating manufacturers, renovators, and
26 retailers and any updates to their respective contact information per section
27 18961(a)(5) and an updated list of brands covered under the plan per section
28 18961(a)(4).

29 (5) Description of how each consumer of mattresses in California had an
30 opportunity to recycle and properly manage their used mattresses, including
31 the number, location, and type of collection points in the program.

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- 1 (6) Description of best management practices followed by service providers,
2 which may include any training that the mattress recycling organization
3 provided or required of service providers to ensure proper collection and
4 management of used mattresses.
- 5 (7) A description of methods used by the mattress recycling organization to
6 coordinate with existing used mattress collection and recycling programs with
7 regard to the proper management or recycling discarded or abandoned
8 mattresses.
- 9 (8) Description of objectives and activities based on the used mattress recovery
10 and recycling plan. State objectives from the approved plan and report on
11 achievement during the reporting period. Describe any adjustments to
12 objectives stated in the approved plan that may be made for the upcoming
13 reporting period and accompanying rationale for those changes. If any changes
14 are significant or material, as defined, the mattress recycling organization shall
15 amend and resubmit its plan for approval by the department. The annual report
16 shall include:
- 17 (A) Quantitative information on subdivisions (b), (c), (d), (e), (f), (g), and (j)
18 section 42990.1 of the Public Resources Code, including conversion
19 factor(s), if used.
- 20 (B) Qualitative and/or quantitative information on subdivisions (g), (l), and
21 (m) of section 42987.1 of the Public Resources Code.
- 22 (9) Financing Mechanism. Include the mattress recycling organization's total
23 expenses and revenues associated with the implementation of the used
24 mattress recycling program. Changes to the mattresses recycling charge shall
25 be reflected in the annual program budget for approval by the department. If a
26 mattress recycling organization changes the amount of the mattress recycling
27 charge in the first 12 months during which the mattress recycling charge is
28 being collected per subsection (1) of subdivision (c) of section 42989 of the
29 Public Resources Code, the mattress recycling organization shall provide the
30 department no less than 90 days' notice before the change in the amount of the
31 mattress recycling charge takes place. If a mattress recycling organization

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1 conducts activities that are separate from the implementation and management
2 of the California used mattress recycling program, then the annual report shall
3 include documentation on how the collection and use of funds from the
4 California mattress recycling charge were kept separate from other activities of
5 the mattress recycling organization, including the methodology for distribution
6 of shared costs. Consistent with subdivision (a) of section 42990.1 of the Public
7 Resources Code, the annual report shall include the following:

8 (A) Mattress recycling charge per mattress size

9 (B) Capital costs

10 (C) Education/Outreach costs

11 (D) End-of-life used mattress management costs with line items for
12 collection, transportation, recycling, renovating, reuse, and proper
13 disposal)

14 (E) Program administration costs including annual administrative fee for
15 service payments to the department and number of mattress recycling
16 organization full- and part-time staff paid from the program)

17 (F) Legal costs, including a description of amount per type of legal cost
18 including, but not limited to, contract negotiation, general counsel,
19 litigation, and any other type of legal cost incurred by the mattress
20 recycling organization.

21 (G) Surplus funds, if any, and detailed rationale for the specified level of
22 surplus.

23 (H) For the first 12 months during which the mattress recycling charge was
24 collected, include a description of any changes to the amount of the
25 mattress recycling charge, why the change was made, and how
26 implementation of the change complied with subsection (1) or (2) of
27 subdivision (c) of section 42989 of the Public Resources Code, if
28 applicable.

29 (10) Education and Outreach. Provide a description of educational materials that
30 were provided to program participants, including but not limited to, retailers,
31 consumers, and contractors during the reporting period, including electronic

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1 examples of these materials. Identify any method(s) used to determine the
2 effectiveness of educational and outreach efforts (e.g., surveys, hits on specific
3 web pages, number of participants at events, etc.), if applicable. Describe any
4 changes to those materials that are planned for subsequent years.

5 (11) Audits. The annual report shall include an independent financial audit of the
6 used mattress recovery and recycling program funded from the mattress
7 recycling charge. The audit shall be conducted in accordance with auditing
8 standards generally accepted in the United States of America, and standards
9 set forth in Government Auditing Standards issued by the Comptroller General
10 of the United States. The financial audit submitted to the department shall be
11 prepared by an Independent Certified Public Accountant (CPA). The CPA shall
12 not perform non-audit services for the mattress recycling organization that
13 would impair independence as defined in the Government Auditing Standards
14 issued by the Comptroller General of the United States (e.g., accounting
15 services, development of internal controls, management decisions). The
16 independent financial audit shall include:

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

18 (B) An opinion on the mattress recycling organization's compliance with the
19 financial aspects of Chapter 21 (commencing with section 42985), Part
20 3, Division 30 of the Public Resources Code and Title 14, Division 7,
21 Chapter 11, Article 3 of the California Code of Regulations.

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

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

26 (12) Advisory Committee Report. The annual report shall include the report of the
27 Advisory Committee required by subdivision (k) of section 42990.1 of the Public
28 Resources Code.

29 (13) Good faith effort. For annual reports submitted on and after April 1, 2020, a
30 demonstration of good faith effort with the state mattress recycling goals
31 established pursuant to section 42987.5 of the Public Resources Code.

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1 (c) The department shall determine if the annual report is complete and notify the
2 submitting mattress recycling organization within 30 days. If the department finds
3 that the plan is complete, the department's 60-day review period for
4 consideration of approval of the annual report will commence upon the original
5 date of receipt. If the annual report is incomplete, the department shall identify
6 what additional information shall be submitted to make it complete and the
7 annual report shall be resubmitted within 30 days. If the department determines
8 upon resubmittal that the annual report is complete, the department's 60-day
9 review period for consideration of approval of the annual report will commence
10 upon the original date of receipt of the resubmittal. The department may adopt a
11 determination of compliance or non-compliance by approving, disapproving, or
12 conditionally approving the annual report.

13 (A) If the department conditionally approves the annual report, the
14 department shall identify the deficiencies in the annual report and the
15 mattress recycling organization shall comply with the conditions of
16 approval within 60 days of the notice date. If the conditions are met, the
17 department shall approve the annual report.

18 (B) If the department disapproves the annual report, the department shall
19 identify the deficiencies in the annual report and the mattress recycling
20 organization shall resubmit an annual report or provide supplemental
21 information requested within 60 days of the notice date.

22 (C) If the department conditionally approves an annual report and the
23 conditions are not met, the department shall disapprove the annual
24 report.

25
26 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
27 Sections 42985, 42986, 42987.5, 42990, 42990.1, 42990.1, Public Resources Code.

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30 **§18965. Used Mattress Recycler Annual Report.**

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1 (a) An annual report shall be submitted by a person that is engaged in business as a
2 used mattress recycler. The annual report may be submitted electronically according to
3 instructions provided by the department. A hard copy, signed by a corporate officer of a
4 mattress recycler shall be submitted to the department upon request.

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

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

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

11 *(Feedback on this language? Rationale for language is that the total number of*
12 *California mattresses received to accurately establish baseline and set goals.)*

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

15 *(Feedback on this language? Rationale for language is that the total number of*
16 *California mattresses recycled to accurately establish baseline and set goals.)*

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

19
20 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
21 Sections 42985, 42986, 42987, 42991, Public Resources Code.

22 23 24 **§18966. Used Mattress Renovator Annual Report.**

25
26 (a) An annual report shall be submitted by a person that is engaged in business as a
27 used mattress renovator. The annual report may be submitted electronically according
28 to instructions provided by the department. A hard copy, signed by a corporate officer of
29 a mattress recycler shall be submitted to the department upon request.

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

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

3 (2) Quantitative information on the number of used mattresses received from
4 California sources and out of state sources and renovated in the state during
5 the preceding calendar year. Conversion factor(s), if used, shall also be
6 provided. *(Feedback on this language? Rationale for language is that the total
7 number of California mattresses received to accurately establish baseline and
8 set goals.)*

9 (3) Quantitative information on the number of used mattresses generated in
10 California and sent out of state for renovation or other method of disposition.
11 *(Feedback on this language? Rationale for language is that the total number of
12 California mattresses renovated to accurately establish baseline and set goals.)*

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

15
16 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:
17 Sections 42985, 42986, 42987, 42991, Public Resources Code.

20 **§18967. Solid Waste Facility Annual Report.**

21
22 (a) An annual report shall be submitted by a person that is engaged in business as an
23 operator of a solid waste facility upon request by the department. *(Feedback on this
24 item? CalRecycle would need this information annually in order to calculate compliance
25 with goals.)* The annual report may be submitted electronically according to instructions
26 provided by the department. A hard copy, signed by a corporate officer of a solid waste
27 facility shall be submitted to the department upon request.

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

29 (1) Contact information. Identify the corporate officer of the solid waste facility
30 responsible for annual report submittal.

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1 (2) Quantitative information on the number of used mattresses received by that
2 facility that were recycled, renovated, or disposed of within the state in the
3 preceding calendar year. Conversion factor(s), if used, shall also be provided.

4 *(Feedback on this item? Would solid waste facilities have access to this data?)*

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

10 **§18968. Mattress Recycling Organization Advisory Committee Annual Report.**

11
12 (a) An annual report shall be submitted by an officer acting on behalf a mattress
13 recycling organization advisory committee, established pursuant to subsection (3) of
14 subdivision (a) of section 42987 of the Public Resources Code to the mattress recycling
15 organization no later than 30 days prior to when the annual report is due to the
16 department. The annual report may be submitted electronically according to instructions
17 provided by the department. A hard copy, signed by a designated representative of the
18 advisory committee shall be submitted to the mattress recycling organization.

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

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

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

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

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§18969. Records.

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

(a) Maintain records to support the requirements in this Article. Mattress recycling organizations shall maintain records to support section 18962. Retailers and renovators shall provide access to existing records on all mattresses sold or offered for sale in the state including:

(1) The manufacturer of the mattress.

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

(3) The date(s) the retailer sold the mattress.

(4) Certification letter(s) from the department, if provided by a manufacturer, to demonstrate that mattress from the manufacturer is or was subject to a department-approved mattress recycling plan. A retailer shall provide access to a certification letter only if it is being used as proof of compliance, pursuant to subdivision (b) of section 42993 of the Public Resources Code, that a manufacturer not listed on the department's internet website is in compliance and may sell or offer for sale mattresses in California.

(b) Provide the department with reasonable and timely access, as determined by the department, to its facilities, operations, and any relevant records necessary to determine compliance with this Article, upon request. Manufacturers, renovators, and retailers will maintain and provide access to records required by this Article for 3 years. Mattress recycling organizations will maintain and provide access to records required by this Article for 3 years after submission of the annual report which relies upon those records.

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

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2 Note: Authority cited: Sections 40401 and 40502, Public Resources Code. Reference:
3 Sections 42985, 42986, 42990, 42993.2, 42993.3, Public Resources Code.

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5 **§18970. Criteria to Impose a Civil Penalty.**

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7 In assessing or reviewing the amount of civil penalty imposed for a violation of this
8 article, the department or the court shall consider the totality of the circumstances,
9 including, but not limited to, the following:

- 10 (a) The nature, circumstances, extent, and gravity of the violation(s).
11 (b) The number and severity of the violation(s).
12 (c) Evidence that the violation was intentional, knowing, or negligent.
13 (d) The size of the violator.
14 (e) History of violation(s) of the same or similar nature.
15 (f) The willfulness of the violator's misconduct.
16 (g) Whether the violator took good faith measures to comply with this chapter and the
17 period of time over which these measures were taken.
18 (h) Evidence of any financial gain resulting from the violation(s).
19 (i) The economic effect of the penalty on the violator.
20 (j) The deterrent effect that the imposition of the penalty would have on both the
21 violator and the regulated community.
22 (k) Any other factor that justice may require.

23

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

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27 **§18971. Procedure for Imposing Civil Penalties.**

28

29 (a) Civil penalties may be administratively imposed in accordance with the procedures
30 outlined in the Administrative Procedure Act at Chapter 5 (commencing with section

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1 11500) of Part 1 of Division 3 of Title 2 of the Government Code with the exception of
2 subdivision (c) of section 11505 of the Government Code.

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

5 (1) Personal service.

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

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

20 (c) Civil penalties may be imposed pursuant to the subdivision (f) of section 48704 of
21 the Public Resources Code in the discretion of the trier of fact in the civil proceeding.

22
23 Note: Authority cited: Sections 40401 and 40502, Public Resources Code. Reference:
24 Sections 42985, 42986, 42993, 42993.1, 42993.2, 42993.3, Public Resources Code;
25 and Section 11500, Government Code.

26 27 28 **§18972. Proprietary, Confidential, or Trade Secret Information.**

29
30 Records supplied to the department pursuant to this Article that are, at the time of
31 submission, claimed to be proprietary, confidential, or trade secret shall be subject to

INFORMAL DRAFT REGULATORY TEXT

1 the provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4
2 (commencing with section 17041), and in subdivision (c) of section 42987.3 of the
3 Public Resources Code.

4

5 Authority cited: Sections 40401 and 40502, Public Resources Code; and Section 6253,
6 Government Code. Reference: Sections 42985, 42986, 42987, 42987.1, 42987.2,
7 42987.3, 42987.4, 42987.5, 42988, 42988.1, 42988.2, 42990, 42990.1, 42990.2, 42991,
8 42993.2, 42993.3, Public Resources Code; and Sections 6250 et seq., Government
9 Code.

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