

**CalRecycle Responses to 15-day Comments, Proposed Regulations for the Used Mattress Recovery and Recycling Program
Sorted by Proposed Regulation Section Number**

Section/ Area	Comment Number	Commenter Affiliation	First name	Last name	Summary of Comment	CalRecycle Response	Revisions Needed
General Comment	W01	County of Santa Cruz	Tim	Goncharoff	<p>Local governments operating recycling and solid waste facilities are a critical link in all of these programs. While we are pleased to see new approaches to keeping these materials out of the landfill, we still have significant costs for handling these materials under the new EPR programs. But in every case, what we are offered to cover our costs has been inadequate. Because these are statewide programs, the compensation to local government has been presented to us as a fait accompli – take it or leave it. We have no leverage, no standing to negotiate, and no option but to take a loss on every gallon of paint, every roll of carpet, and as things stand, every mattress.</p> <p>We need a process for establishing fair compensation for local governments that is overseen by CalRecycle, not by the manufacturers. To them, we are just another cost, to be kept as low as possible by any means possible. And once in place, there is no mechanism to evaluate or ever increase this amount.</p>	These are general comments and do not suggest any specific changes to the proposed regulations. Statute requires the mattress recycling organization to work with relevant parties to negotiate contractual arrangements. Additionally, this comment is outside the scope of the proposed 15-day changes.	None
General Comment	W02-01	ISPA	Ryan	Trainer	<p>ISPA notes there are several provisions in the Proposed Changes that exceed the authority granted to CalRecycle by the Act. By operation of provisions in the proposed regulations, if CalRecycle deems the MRO's plan to be incomplete because it lacks non-statutory data, or the description provided does not meet with the agency's satisfaction, CalRecycle must consider the MRO's plan ineligible for approval. Without an approved plan, the MRO has not complied with the law. Thus, by mandating that the MRO's plan include something for which it has no legal authority to require, CalRecycle could well refuse to approve the MRO's plan for reasons not permitted by the Act, thereby subjecting the organization to possible penalties, fines, and other corrective action for having violated the Act.</p> <p>But the underlying statute and general principles of California administrative law do not permit such a result. The Act allows CalRecycle to disapprove a plan submitted by an MRO only if "the plan does not comply with this chapter." Cal. Pub. Res. Code, § 42987.3(b).</p>	CalRecycle disagrees that it has exceeded its statutory authority to promulgate any of the provisions contained within the proposed regulations. Public Resources Code section 40502(a) gives CalRecycle the explicit authority to adopt any rules and regulations necessary to carry out Division 30 of the Public Resources Code (which includes the Used Mattress Recycling and Recovery Act). In promulgating these regulations, CalRecycle must act in compliance with the Administrative Procedures Act (APA) (Cal. Gov. Code § 11340 et seq.) The APA at section 11342.2 requires regulations be consistent and not in conflict with the statute they are implementing and that they be reasonably necessary to effectuate the purpose of the statute. The California Supreme Court has added clarity to what this means by stating that "[a]n administrative agency is not limited to the exact provisions of a statute in adopting regulations to enforce its mandate. '[T]he absence of any specific [statutory] provisions regarding the regulation of [an issue] does not mean that such a regulation exceeds statutory authority' [internal citations omitted]." (Ford Dealers Assn. v. Dept. of Motor Vehicles (1982) 32 Cal.3d 347, 362.) In other words, an agency is authorized to "fill up the details" of a statutory scheme. (Kugler v. Yocum (1968) 69 Cal.2d 371, 376.)	None
General Comment	W03-01	L.A. Sanitation	Enrique	Zaldivar	<p>The City of L.A. Sanitation indicates there is a conflict between their municipal codes (SECTIONS 66.01 - SOLID WASTE COLLECTION and 66.28 LAMC) and the proposed regulations and state the following:</p> <p>"The proposed regulations related to mattress recycling, directly violate the City of Los Angeles Municipal Code (LAMC)."</p>	State law supersedes municipal codes, unless otherwise noted in California statutes. These are general comments and are outside the scope of the proposed 15-day changes.	None

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					<p>“Used mattresses that are not part of Municipal Collection are considered Solid Waste and subject to Solid Waste Hauler Permit requirements set forth in Article 6 of Chapter VI of the Los Angeles Municipal Code....”</p> <p>“Municipalities have the responsibility for solid waste management and its enforcement. It is therefore crucial that local municipal codes regarding recycling and solid waste collection be honored by the State and the MRC, and that proposed regulations not encourage scavengers to violate these local codes.”</p> <p>“LSAN is available to work closely with CalRecycle and the Mattress Recycling Council to help improve the plan and address conflict with the City’s municipal code which may subject unpermitted haulers, and scavengers to local enforcement and/or fines.”</p>		
General Comment	W03-02	L.A. Sanitation	Enrique	Zaldivar	<p>The plan in its current format reimburses the cost to MRC members and the State to manage the program.</p> <p>The cost of the program for municipalities to provide collection of illegally abandoned mattresses via street clean-up and recycling programs needs to be addressed in the plan.</p>	<p>This is a general comment and does not suggest a specific change to the proposed regulations.</p> <p>Related Public Resources Code section 42987.1(l) requires a mattress recycling organization to address the following in a plan: “Ensuring, to the maximum extent possible, that urban and rural local governments and participating permitted solid waste facilities and authorized solid waste operations that accept mattresses are provided with a mechanism for the recovery of illegally disposed used mattresses that is funded at no additional cost to the local government, solid waste facility, or solid waste operation.”</p>	None
General Comment	W03-03	L.A. Sanitation	Enrique	Zaldivar	<p>Bounties for scavengers: This has to be eliminated. Under the City’s present citation process scavengers are subject to criminal conviction with penalties that may include probation, fines, and jail.</p>	<p>This comment would require a statutory change, and is therefore beyond the scope of this rulemaking.</p> <p>PRC section 42987.1(k) requires the mattress recycling organization to establish “a financial incentive to encourage parties to collect for recycling used mattresses discarded or illegally dumped in the state.”</p>	None
General Comment	W03-04	L.A. Sanitation	Enrique	Zaldivar	<p>Financial grants should be set-up for municipalities to implement and improve mattress collection programs and recycling inefficiencies.</p>	<p>This comment would require a statutory change, and is therefore beyond the scope of this rulemaking.</p>	None
General Comment	W03-05	L.A. Sanitation	Enrique	Zaldivar	<p>The plan should include block grants to cities in the State based on population.</p>	<p>This comment would require a statutory change, and is therefore beyond the scope of this rulemaking.</p>	None
General Comment	W03-06	L.A. Sanitation	Enrique	Zaldivar	<p>The Used Mattress Recovery and Recycling Plan shall be made available for viewing on the MRC website upon submission of the Plan to CalRecycle and open to public comment.</p>	<p>This is a general comment and does not suggest a specific change to the proposed regulations, and is beyond the scope of this rulemaking.</p>	None

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						CalRecycle will post any plans submitted by a mattress recycling organization on its website and provide an opportunity for public comment.	
General Comment	W03-07	L.A. Sanitation	Enrique	Zaldivar	Public Education: A comprehensive education and outreach effort in coordination with local municipalities should be implemented. This will eliminate confusion and mixed messaging.	<p>This is a general comment and outside the scope of the proposed 15-day changes.</p> <p>CalRecycle staff notes that public education is a requirement of the mattress recycling program and addressed in existing statute. Public Resources Code section 42987.1(n) requires a mattress recycling organization to include the following element in its plan: “Providing outreach efforts and education to consumers, manufacturers, and retailers, for the purpose of promoting the recycling of used mattresses and options available to consumers.</p>	None
§18959. Purpose.							
No comments submitted on this section.							
§18960. Definitions.							
No comments submitted on this section.							
§18961. Used Mattress Recovery and Recycling Plan Submittal.							
No comments submitted on this section.							
§18962. Used Mattress Recovery and Recycling Plan.							
§18962 (a) (2) (C)	W02-02	International Sleep Products Association	Ryan	Trainer	<p>The Proposed Changes [section 18962 (a) (2) (C)] add the following to the goals, methods, and activities that the mattress recycling plan “shall ... contain”:</p> <p>(C) Describe proper end of life management of used mattresses, including but not limited to, a description of how the program will prevent cross contamination of mattresses by bed bugs.</p> <p>MRC objects to this Proposed Change because it exceeds the bounds of the Act. The Act requires neither the MRO nor the program to address the topic of bed bugs.</p> <p>MRC recognizes that end-of-life management practices are important to the mattress recycling process, and that bed bugs can be a nuisance and are sometimes found in used mattresses. Therefore, MRC intends to require that all parties that handle discarded mattresses under the program, and that are under contract with MRC, to follow best practices with regard to end-of-life product management, including the prevention of bed bug cross contamination.</p> <p>Therefore, we urge CalRecycle to modify this Proposed Change to read as follows:</p> <p>(C) Describe proper end of life management of used mattresses, <u>which may include a description of practices used by transporters and recyclers contracted by the mattress recycling organization to, including but not limited to, a description of how the program</u></p>	<p>CalRecycle staff has determined that preventing cross-contamination of mattresses by bed bugs is a critical component of end of life management and is appropriate to address in the plan. CalRecycle has certified one mattress recycling organization to date, the Mattress Recycling Council, who has acknowledged the importance of addressing bed bugs by requiring request for proposals respondents – bidding for services to implement the program – to describe what measures respondents will take to prevent the spread of bed bugs. No changes were made to the proposed regulations in response to this comment.</p> <p>As to the comment that this proposed change exceeds the bounds of the Act, please see CalRecycle response to comment W02-01 above. While the Act does not explicitly direct CalRecycle to include in its regulations a provision requiring the plan to address end of life management issues such as bed bugs, the Act does require the plan include goals or elements that, among other things, increase the number of used mattresses diverted from landfills (Pub. Resources Code § 42987.1(d)),</p>	None

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					will prevent cross contamination of mattresses by bed bugs.	increase the quantity of materials recovered and recycled (id.), conduct research as needed to improve mattress collection, dismantling, and recycling operations (id. At 42987.1(g)), and methods used to coordinate with existing mattress collection and recycling operations for proper management or recycling of discarded or abandoned mattresses (id. At 42987.1(i)). As stated in CalRecycle’s response to comment W02-01, simply because the statute does not specifically mention bed bugs does not mean CalRecycle does not have the authority to include bed bugs in its proposed regulations. Many components of the plan explicitly and implicitly concern the proper management of used mattresses, and, as stakeholders raised during the 45-day comment period, bed bugs are a common concern in end of life management of used mattresses. Accordingly, by requiring the plan to include a description of proper end of life management of used mattresses, CalRecycle is implementing, interpreting, and making more specific provisions of the statute in a way that is consistent with the Act and necessary for its implementation.	
§18962 (a) (2) <u>(D)</u>	W02-03	International Sleep Products Association	Ryan	Trainer	<p>The Proposed Change reads as follows: (D) Describe how the program will increase the quantity of materials recovered and recycled, and market development activities that will be conducted in order to ensure these materials will be used.</p> <p>The Act authorizes the first part of this Proposed Change, which requires the plan to describe “how the program will increase the quantity of materials recovered and recycled.” However, the balance of the Proposed Change, which requires the plan to describe the MRO’s “market development activities that will be conducted in order to ensure these materials will be used,” exceeds the bounds of the Act.</p> <p>In this regard, Cal. Pub. Res. Code, § 42987.1(d) provides that the plan include: (d) <i>Methods to increase the number of used mattresses diverted from landfills, reduce the number of illegally dumped used mattresses, and increase the quantity of used materials recovered through this process and recycled for other uses.</i> (Emphasis added.)</p> <p>However, no provision in the Act requires the MRO to include in the plan any information regarding market development activities, let alone such activities that will ensure that the recycled materials will be used. As a practical matter, it would be impossible for the MRO to guarantee such a result.</p> <p>The program at the outset must rely exclusively on existing scrap markets purchasing the</p>	<p>CalRecycle staff have determined that viable end-use markets are necessary to ensure mattresses recovered through the program will be recycled for other uses. Therefore, a description in the plan of what type of market development activities will be conducted if the materials recovered are not being used is imperative for program success. Therefore, no changes are necessary in the proposed regulations.</p> <p>As to the comment that this proposed change exceeds the bounds of the Act, please see CalRecycle response to comment W02-01 above. While the Act does not explicitly direct CalRecycle to include in its regulations a provision requiring the plan to address market development activities, the Act does require the plan include goals or elements that, among other things, increase the number of used mattresses diverted from landfills (Pub. Resources Code § 42987.1(d)), increase the quantity of materials recovered and recycled for other uses (id.), and conduct research as needed to improve mattress collection, dismantling, and recycling operations, including pilot programs to test new processes, methods, or equipment (id. at 42987.1(g)). As stated in CalRecycle’s response to comment W02-01, simply because the statute does not specifically mention market development does not mean CalRecycle does</p>	None

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					<p>recycled materials therefore it will be difficult to discuss market development activities at that time. In the future, the MRO may voluntarily undertake research or other programs to promote market development.</p> <p>Since CalRecycle lacks the authority to require the MRO to include this information in the plan, we urge the agency to revise the Proposed Change to read as follows: (D) Describe how the program will increase the quantity of materials recovered and recycled, and <u>The plan may describe</u> market development activities that will <u>may</u> be conducted in order to ensure <u>increase the use of</u> these materials will be used.</p> <p>In addition, CalRecycle could add this concept to the annual report requirements set forth in §18964 of the proposed regulations (see comment #5).</p>	<p>not have the authority to include market development in its proposed regulations. Many components of the plan explicitly and implicitly concern increasing recycling used mattresses for other uses, and, as stakeholders raised during the 45-day comment period, having markets for materials recovered from recycled mattresses is integral to increasing used mattress recycling. Accordingly, by requiring the plan to include a description of market development activities planned or needed for used mattresses, CalRecycle is implementing, interpreting, and making more specific provisions of the statute in a way that is consistent with the Act and necessary for its implementation.</p>	
§18962 (a) (2) (E)	W02-04	International Sleep Products Association	Ryan	Trainer	<p>The Proposed Change reads as follows: (E) Describe how the program will provide convenient and efficient delivery of services without unnecessary duplication of effort and expense, including, but not limited to, contractual agreements. This provision appears to be based on Cal. Pub. Res. Code, § 42987.1(i), which reads as follows: (i) A description of methods used to coordinate activities with existing used mattress collecting and recycling programs, including existing nonprofit mattress recyclers, and with other relevant parties as appropriate, with regard to the proper management or recycling of discarded or abandoned mattresses, for purposes of providing the efficient delivery of services and avoiding unnecessary duplication of effort and expense.</p> <p>The exact purpose of this Proposed Change is not clear. However, we understand that this change is intended to respond to public comments seeking information in the plan regarding convenient drop off and collection opportunities for various parties that may wish to participate in the program. Since the requirements above are already included in the Act we suggest adding the following language to provide further clarity and address the concerns raised in public comments: (E) Describe <u>the methods the MRO will use to coordinate activities with existing used mattress collecting and recycling programs, as required by § 42987.1(i). The plan may describe how the program will provide regular and convenient and efficient mattress collection and drop-off services. delivery of services without unnecessary duplication of effort and expense, including, but not limited to, contractual agreements.</u></p>	<p>The proposed change ensures that the plan and annual report submitted by the mattress recycling organization detail the same information, and that PRC section 42987.1(j) is addressed. It is the department’s experience that contractual agreements are a challenging aspect of designing and implementing a stewardship program, yet information about mattress collection and drop off services is critical for staff to assess the success of the program via the used mattress recovery and recycling plan and mattress recycling organization’s annual reports.</p> <p>Therefore, the proposed regulations have been revised as follows, beginning at section 18962 (a) (2) (E): (E) Describe how the program will provide convenient and efficient mattress collection and drop-off services. delivery of services without unnecessary duplication of effort and expense, including, but not limited to, contractual agreements.</p> <p>This change makes it clear that “services” mean mattress collection and drop-off services. Additionally, “efficient” was struck because it was deemed unnecessarily repetitive of what is in statute and the proposed regulations. These changes are not substantive because they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. Statute, at PRC section 42987.1(i), refers to delivery services in the context of mattress collection and recycling programs. Adding “mattress collection and drop-off” before services clarifies that these services are what are contemplated in statute. Striking “efficient” is also a non-substantive change because “efficient”</p>	Yes (non-substantive)

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						already appears in statute; striking it in regulations does not alter any meanings or requirements stated in the statute.	
§18962 (a) (2) (F)	W02-05	International Sleep Products Association	Ryan	Trainer	<p>This Proposed Change reads as follows: (F) Describe how consumers of mattresses in California will have a convenient opportunity to recycle and properly manage their used mattresses, including the number, location, and type of collection points in the program.</p> <p>We note that the Act requires the plan to include information about how the MRO intends to inform consumers about drop off options. Specifically, as noted above, Cal. Pub. Res. Code, § 42987.1(n) provides: (n) Providing outreach efforts and education to consumers, manufacturers, and retailers, for the purpose of promoting the recycling of used mattresses and options available to consumers for the free drop off of used mattresses.</p> <p>We also note that virtually the same requirement set forth in Proposed Change (F) is already included in §18964 (b)(5) of the proposed regulations, which details requirements for the MRO's annual report. This is a much more logical point at which to require the MRO to report such information. Once the program is implemented and as it develops, the amount, location and types of collection points in the program will change.</p> <p>This information will undoubtedly evolve after the plan is submitted, as the program implementation date approaches and thereafter. Additionally, by adding this requirement to the plan requirements, the MRO could be required to submit an updated plan every time this information changes. Therefore, we urge CalRecycle to delete this provision and instead rely on the virtually identical obligation in the annual reporting requirements. Should CalRecycle nevertheless decide not to delete this provision in favor of covering the subject in §18962, we urge the agency to modify (F) to read as follows: (F) Describe how consumers of mattresses in California will have a convenient opportunity to recycle and properly manage <u>In addition to describing how the MRO will inform California consumers about mattress drop off options as required by § 42987.1(n), the plan may describe consumers' options for conveniently dropping off their used mattresses for recycling, including the number, location, and type of collection points in the program.</u></p>	The proposed regulations require the mattress recycling organization to describe, in the plan, the general framework for program implementation, and to ensure that the submitted annual reports provide updates on progress toward achieving the objectives laid out in the plan. CalRecycle staff do not expect that each and every location will be listed in the plan, and agree that the annual report will contain exact listings of the number and location of the facilities. Therefore, no changes are necessary in the proposed regulations.	None
§18963. Mattress Recycling Charge and Annual Budget.							
No comments submitted on this section.							
§18964. Mattress Recycling Organization Annual Report.							
§18964	W02-06	International Sleep Products Association	Ryan	Trainer	<p>As discussed above in comment #2, we suggest adding text on market development activities to the annual report section. We suggest a new provision be added to section §18964 worded as follows: <u>A description of market development activities, if any, that have been undertaken during the period covered by the annual report to increase the quantity of materials recovered and recycled.</u></p>	CalRecycle staff has determined that a description of market development activities undertaken by the mattress recycling organization is a critical part of the plan. See response to comment W02-03 for further detail. Because the annual report describes the progress toward achieving the objectives of the plan, and informs the department about the efficacy of the	None

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						program, no changes are necessary in the proposed regulations. PRC section 42990.1(n) requires the mattress recycling organization to submit other information relevant to compliance with the plan, which would include a description of market development activities.	
§18964 (b) (8) (A)	W02-07	International Sleep Products Association	Ryan	Trainer	<p>The Proposed Change to this provision includes the addition of the following sentence: When describing the uses for the recycled materials, the annual report shall identify the secondary markets and end uses of those materials.</p> <p>MRC anticipates that in most cases, it will be possible to identify the secondary markets for recycled mattress materials. But identifying all of the end uses of those materials may prove difficult, if not impossible, because the materials may change hands several times before their final end use is known. For example, recycled fabric, foam, steel and wood sold to scrap dealers could be used in a number of different applications that are not known when the goods leave the recycler’s premises.</p> <p>MRC will require its contracted recyclers to disclose who is purchasing these materials and how they are processed. MRC will then include such information in its annual report. Therefore, it is reasonable only to require the MRC to provide information to which it has ready and convenient access from its contracted recyclers, and not to require it to include in its annual report information that it cannot readily obtain, compile, or verify.</p> <p>In addition, the Proposed Change should make clear that the MRO is not being required to disclose in the annual report any data that a recycler might consider to be proprietary business information including, but not limited to, customer names, quantities, prices, trade secrets, etc.</p> <p>Based on these considerations, we urge CalRecycle to modify the Proposed Change as follows: (A) Quantitative information on subdivisions (b), (c), (d), (e), (f), (g), and (j) section 42990.1 of the Public Resources Code, including conversion factor(s), if used. When describing the uses for the recycled materials, the annual report shall identify, <u>based on information provided by recyclers to the mattress recycling organization, the types of secondary markets and end uses of to which those materials are sold, and their potential end uses, if known by the organization. The organization shall not be required to provide any information that it, its contracted recyclers or other service providers considers to be proprietary business information including but not limited to customer names, quantities, prices, trade secrets, etc.</u></p>	<p>CalRecycle staff has determined that a description of market development activities undertaken by the mattress recycling organization is a critical part of the annual report (see response to W02-03, above). However, CalRecycle also understands that it will be difficult for the mattress recycling organization to identify all end uses. CalRecycle’s intention is that the mattress recycling organization report this information to the best of its ability given the information available to the mattress recycling organization. Thus, the proposed regulations have been revised as follows, beginning at section 18964 (b) (8) (A):</p> <p>(A) Quantitative information on subdivisions (b), (c), (d), (e), (f), (g), and (j) section 42990.1 of the Public Resources Code, including conversion factor(s), if used. When describing the uses for the recycled materials, the annual report shall identify, the secondary markets and end uses of <u>to which those materials are sold, and potential</u> end uses of those materials.</p> <p>This change makes it clear that the annual report only needs to identify the “potential” end uses of the materials sold into secondary markets. This section is not intended to require the mattress recycling organization to provide information that they don’t have. These changes are not substantive because they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. Statute, at PRC section 42987.1(i), refers to delivery of services in the context of mattress collection and recycling programs. Adding “are sold” after secondary markets clarifies that the mattress recycling organization is required to include information in its annual report on the actual secondary markets materials are sold to. Adding “potential” before “end uses” clarifies that the mattress recycling organization is not required to report end uses that may not be known, but rather to identify the potential end uses which are known. Accordingly, by requiring the annual report to identify secondary markets that materials are sold to and potential end uses, CalRecycle is</p>	Yes (non-substantive)

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						<p>implementing, interpreting, and making more specific provisions of the statute in a way that is consistent with the Act and necessary for its implementation.</p> <p>CalRecycle appreciates the importance of ensuring proprietary information provided to the mattress recycling organization and CalRecycle is not made available to the public. Section 18969(d) of the proposed regulations provides general protections for any such information provided pursuant to a requirement in the proposed regulations. Accordingly, any information provided pursuant to this proposed change that is properly marked as proprietary, confidential, or a trade secret shall be granted the protections from public disclosure stated fully in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with section 17041).</p>	
§18965. Used Mattress Recycler Annual Report.							
No comments submitted on this section.							
§18966. Used Mattress Renovator Annual Report.							
No comments submitted on this section.							
§18967. Solid Waste Facility Annual Report.							
No comments submitted on this section.							
§18968. Mattress Recycling Organization Advisory Committee Annual Report.							
No comments submitted on this section.							
§18969. Records.							
No comments submitted on this section.							
§18970. Criteria to Impose a Civil Penalty.							
No comments submitted on this section.							
§18971. Procedure for Imposing Civil Penalties.							
No comments submitted on this section.							