

BEFORE THE
STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CAL RECYCLE

PUBLIC HEARING
PROPOSED REGULATIONS FOR THE USED MATTRESS
RECOVERY AND RECYCLING PROGRAM

THURSDAY, April 9, 2015

2:00 P.M.

CAL/EPA BUILDING, SIERRA HEARING ROOM

1001 I STREET

SACRAMENTO, CALIFORNIA

Reported By:

Peter Petty

APPEARANCES

Staff Present

Brenda Smyth, Branch Chief

Ashley Harley

Kate Nitta, Legal Counsel

Nikki Castagneto

Wendy Harmon

Clark Williams

Public Commenters

Chris Hudgins, International Sleep Products
Association

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1 P R O C E E D I N G S

2 April 9, 2015

2:00 P.M.

3 MS. SMYTH: Good afternoon, everyone.
4 Welcome to our public hearing for the Proposed
5 Used Mattress Recovery and Recycling Program
6 Regulations. Today concludes our 15-day comment
7 period on these proposed regulations. We are
8 accepting comments from attendees here and also
9 those submitted online, and we are only accepting
10 comments on the changes to the proposed regs as a
11 result of the 45-day comment period.

12 So before we get started, let me do the
13 usual housekeeping. In the event of a fire alarm,
14 we are required to evacuate immediately. There are
15 two exits in this room, and we'll go down the
16 stairs and across the street to Cesar Chavez. If
17 you don't know where that is, just follow us, and
18 don't use the elevators.

19 And then restrooms, as you probably all
20 know, are out the door and down the hall to the
21 left.

22 And then at this time I'd also like to
23 just remind everybody to silence your phones and
24 take your phone calls outside if they happen
25 during the meeting.

1 A little bit about our meeting format.
2 First of all, I'm Brenda Smyth, Branch Chief here
3 at CalRecycle, and I wanted to introduce some of
4 our team members as well.

5 Ashley Harley, right here, and Kate
6 Nitta, right here, she's our legal counsel, and
7 also Nicky Castaneda over here, and they are
8 backed up by Wendy Harmon and Clark Williams who
9 all do a fabulous job on getting this program up
10 and running.

11 So in providing oral comments, we also
12 would encourage you to submit your comments in
13 writing, and those can be sent to
14 mattresses@calrecycle.ca.gov.

15 So we're going to move through the
16 proposed regulations in order from the first
17 revision and on through the end of the
18 regulations, similar as we did in our 45-day
19 hearing. The text will be up on the screen and
20 Ashley is going to walk us through that.

21 When we've reached a section where you
22 wish to comment on the regs, please queue up
23 behind the microphone that are located on the
24 podium, then speak into the microphone so our
25 court reporter can hear you. There will be a

1 transcript of these proceedings afterwards. And
2 we'd like for you to state your name and
3 affiliation and then go ahead and make your
4 comment.

5 Written comments already submitted, and I
6 know we have at least a couple, are part of the
7 rulemaking record and it's not necessary to repeat
8 those comments here in this hearing.

9 Staff is available. We can answer
10 questions to improve understanding or provide
11 clarity, but it's really not our opportunity here
12 to get into debate about what should or shouldn't
13 be changed in the reg. We mostly want to hear
14 about your comments and response to what you see
15 in the edits in the reg right now.

16 And as I mentioned, we are recording and
17 there will be a transcript posted as well as all
18 the comments on our CalRecycle website.

19 So with that introduction, I'm going to
20 actually turn it over to Ashley and she's going to
21 walk us through the changes.

22 MS. HARLEY: All right. Thanks, Brenda.
23 Hello, everyone. Thanks for coming today. We'll do
24 a little bit of overview, it's old hat for most of
25 you.

1 We started our regulatory process last
2 March when we had an informal public workshop, and
3 after soliciting comments on the draft text, we
4 incorporated the public's feedback into the
5 language and sent the revised text to our director
6 for approval at the May public meeting.

7 Then with the passage of SB1274 in
8 September of last year, we incorporated the minor
9 changes prescribed by that cleanup legislation
10 into the draft text.

11 Then we, staff worked to complete an
12 economic analysis with the help of Department of
13 Finance, which later determined that the draft
14 text is not a major regulation pursuant to SB617.

15 So last December, the Office of
16 Administrative Law published the Notice of
17 Proposed Rulemaking in the December Notice
18 Register, which began the formal 45-day comment
19 period for the proposed regs.

20 And now after this 15-day comment period,
21 in response to the changes from that former
22 period, we're having this hearing today.

23 So please send your comments by 5:00
24 o'clock today to mattresses@calrecycle.ca.gov, and
25 please make sure they're original versions and not

1 copies.

2 Okay. So the outline of the proposed regs
3 is up on the screen now. The red sections are the
4 sections of the regulations that have been edited
5 thanks to comments received during the 45-day
6 comment period, so we'll go through those sections
7 now. And when we reach the section that you want
8 to comment on, please come up to the podium, state
9 your name, affiliation, and your comments clearly
10 for our court reporter, and please only refer to
11 the changes that are underlined and stricken
12 through in the reg text.

13 So we're going to post a transcript of
14 these proceedings with all the comments received,
15 like Brenda said, on our website.

16 So now we'll start moving through with
17 the reg text and the changes that we made.

18 So first up in Section 18960, Definition
19 section, we removed program participant from the
20 definition of collection because it was deemed
21 confusing, and we also it struck out in other
22 parts of the reg text that mentioned this phrase.
23 So if you have any comments on that change, please
24 come up now.

25 All right, I'm not seeing any comments,

1 so we'll move on to Section 18962, The Used
2 Mattress Recovery and Recycling Plan. This has the
3 majority of the changes that we incorporated
4 thanks to the 45-day comment period. So you'll see
5 Section C.18962(a) to (c), (d), (e), and (f) have
6 all been added.

7 So if you have any comments on those
8 sections, please come up now.

9 MR. HUDGINS: Do you need me to spell my
10 name, too?

11 COURT REPORTER: Please.

12 MR. HUDGINS: Chris Hudgins, H-u-d-g-i-n-
13 s, with the International Sleep Products
14 Association. We're the mattress trade association.
15 We also created the Mattress Recycling Council,
16 which has been certified by CalRecycle as a MRO to
17 a mattress recycling organization to implement the
18 law.

19 First comment is on proposed new Section
20 (c), Describe the proper end-of-life management of
21 used mattresses including but not limited to a
22 description of how the program will prevent cross-
23 contamination of mattresses by bed bugs.

24 We have some concerns with this proposed
25 change because the law does not authorize this

1 requirement to report on efforts to prevent cross-
2 contamination of bed bugs. We recognize it's a
3 nuisance problem. Used mattresses can often or at
4 times contain bed bugs, so it is something that
5 the MRC will be taking action on.

6 What we've done in other states and I
7 expect we will do here, or we plan to do here is,
8 as part of our contracts with recyclers and
9 transporters we have them have to meet certain
10 terms. One of those terms is describing and having
11 a program to mitigate bed bug cross-contamination.

12 So it is something we will address. We're
13 happy to report on that, but we would suggest
14 striking the section starting with "used
15 mattresses" after the comma, striking "including
16 but not limited to a description of how the
17 program will" and instead say, starting after the
18 comma, "which may include a description of
19 practices used by transporters and recyclers
20 contracted by the mattress recycling organization
21 to prevent cross-contamination of mattresses by
22 bed bugs."

23 And we've submitted written comments so
24 you'll be able to see those changes as well.

25 You want me to go through all three or

1 you want to do them -- keep going?

2 MS. HARLEY: Yes, please.

3 MR. HUDGINS: And the next proposed
4 change, Section (d). This change talks about
5 increasing the quality -- excuse me, the quantity
6 of materials recovered and recycled and market
7 development activities that will be conducted in
8 order to ensure these materials are used.

9 The first half of the statement, "methods
10 to increase the quantity of materials recovered
11 and recycled," that's contained in the law. We
12 believe that's a reasonable addition to the
13 program plan requirements.

14 However, the second section on market
15 development activities, that is not included in
16 the law. We believe that's out of CalRecycle's
17 jurisdiction on this, or authority.

18 However, again, this is something that I
19 think the program we plan on doing over time, in
20 the program plan that might be premature for us to
21 acknowledge what we're going to do throughout the
22 program. This could be better served as being a
23 part of the annual report reporting on any market
24 activities.

25 The law allows us to do research to

1 address different aspects of the program. One of
2 those that we anticipate doing research on is
3 market development so we can find new uses or
4 other uses for the recycled components.

5 So we would suggest with this provision
6 ending the first sentence, putting a period after
7 "the quantity of materials recycled and
8 recovered," period. Strike "and" and then say,
9 "The plan may describe market development
10 activities that may" -- strike "will" -- "be
11 conducted in order to" -- instead of ensure --
12 "increase the use of these materials."

13 And another concern with the second half
14 of that is that it will be virtually impossible
15 for us to develop a mechanism that will ensure
16 that the materials will be used. All we can do is
17 look at different opportunities for those
18 materials and creating new markets. We can't
19 ensure that they necessarily will be used, so we
20 would suggest making that a permissive requirement
21 in the plan.

22 Additionally, it might be good or even
23 better to add this to the annual report
24 requirements instead of having it in the plan, and
25 we have some suggested language on that, which I

1 can come back to. It's in a different section so
2 I'll come back to that.

3 Next proposed change, Subsection (e).
4 "Describe how the program will provide convenient
5 and efficient delivery of services without
6 unnecessary duplication of effort and expense,
7 including but not limited to contractual
8 agreements."

9 Some of this is contained in the law but
10 we thought this requirement was pretty vague and
11 somewhat confusing. Our understanding is that it
12 was intended to reply to comments that, you know,
13 what assurance do participants have that
14 collection will be occurring on regular intervals,
15 that there won't be stockpiling at sites and
16 things like that. So we suggest some wording to
17 clarify this requirement.

18 First off, reiterating what's in the law,
19 so after "describe" we would add "the methods --
20 describe the methods the MRO will use to
21 coordinate activities with existing used mattress
22 collecting and recycling programs as required by
23 Section 42987.1(i). The plan may describe how the
24 program will provide regular and convenient" --
25 strike "and efficient" -- "mattress collection and

1 drop-off services" and then strike "delivery of
2 services" through the end of the section.

3 So this reiterates our requirements under
4 the law, and then makes is permissive for us to
5 describe how we will provide regular and
6 convenient mattress collection and drop-off
7 services.

8 And again, as with the bed bug issue,
9 this is something that will be part of our
10 contracts. We'll make sure that all of our
11 contracted recyclers and transporters will provide
12 regular pickup on a timely basis. We're happy to
13 describe that, but again, we feel that it should
14 be a permissive act instead of a requirement.

15 And this is something that will be
16 reported on in the future in annual reports we
17 have requirements to include it there.

18 The next change, Subsection (f),
19 "Describe how consumers of mattresses in
20 California will have a convenient opportunity to
21 recycle and properly manage their used mattresses,
22 including the number, location, and type of
23 collection points in the program."

24 This requirement is partly described in
25 the law but we will also note that this

1 requirement appears in Section 18964(b)(5) of the
2 proposed regs almost word for word. We think it
3 makes more sense for it to be there, so we would
4 suggest deleting this revision from the program
5 plan and just leaving it in as part of the annual
6 report.

7 The number, location, type of collection
8 points in the program will be a continually
9 changing item. It certainly will grow between
10 today when the plan is submitted, when the plan
11 gets approved, and even in that period from plan
12 submittal to approval it's likely to change.

13 So this is kind of going to be a moving
14 target. It's something that we feel is important
15 to disclose and include, but our concern is by
16 including it as a program plan requirement, if we
17 submit that with that information, that
18 information certainly is going to change. It could
19 require us to resubmit the plan regularly for that
20 information to change, so we would suggest leaving
21 it as part of the annual reporting requirement.

22 And then we're happy, as part of some of
23 the other provisions in the regulations for the
24 program plan, we would certainly describe how we're
25 going to meet that kind of convenience standard and

1 things like that.

2 So that's it for my comments on this
3 section.

4 MS. HARLEY: Thank you, Chris.

5 Any comments in our mailbox? No. Okay.
6 Moving on.

7 There are very minor grammatical edits in
8 this section, but if there are no further comments
9 on Section 18962 we can move on.

10 Okay. So 18963, the Mattress Recycling
11 Charge and Annual Budget also has very minor
12 comments. Page 7, line 14, the words were inserted
13 "on or by July 1, 2017, all actual expenses
14 incurred to date shall be included" and the word
15 "the" was included later in that sentence.

16 If there are no comments on those changes
17 we can continue on.

18 All right. So in Section 18964 there were
19 some more edits. This is the Mattress Recycling
20 Organization Annual Report.

21 The first change is in Subsection (b)(8)
22 with the addition of the words "description of
23 objectives and activities based on the Used
24 Mattress Recovery and Recycling Plan per Section
25 18962(a)(2)," and this was inserted for clarity to

1 be consistent with what's required in the plan.

2 So if there are any comments on
3 Subsection (b)(8) you can come up now.

4 Okay. And then in Subsection (b)(8)(A),
5 another phrase was inserted after "quantitative
6 information, when describing the uses for the
7 recycled materials the annual report shall
8 identify the secondary markets and end uses of
9 those materials."

10 So if there are any comments on this
11 section please come up now.

12 MR. HUDGINS: Chris Hudgins,
13 International Sleep Products Association. We have
14 some concerns with the added language.

15 It's certainly possible to identify
16 secondary markets. That's something that will be
17 built into our system when the RFP, which has gone
18 out for transporters and recyclers of this program
19 and is open right now, part of the bid process is
20 disclosing who your end recyclers are and what
21 those secondary markets are.

22 Our concern is more with the end uses of
23 those materials. Oftentimes, when a recycler takes
24 the components, he or she may sell them to a
25 broker or other party who then may sell them for

1 different applications, so it's not always
2 possible to know what the exact end uses are.

3 I think we're comfortable disclosing what
4 we have been told by or what the information we're
5 getting from our contractors, our contracted
6 recyclers, disclosing what information they've
7 given us in terms of who their downstream recyclers
8 are, who we'll also be in touch with to verify that
9 they are getting the amount of material that we're
10 being billed for, so I think that's certainly not a
11 challenge.

12 The end use of those materials is more
13 problematic. In some cases it may not be disclosed
14 to us because of fear of its proprietary
15 information and recyclers are very concerned about
16 their competitors coming in and taking a
17 downstream recycler, so we have some concerns
18 there.

19 So we would suggest some changes to this
20 section. After the second sentence, "The annual
21 report shall identify," comma, we suggest adding
22 "based on the information provided by recyclers to
23 the mattress recycling organization, the types of
24 secondary markets" -- strike "end uses" -- "to
25 which those materials are sold and potential end

26 uses if known by the organization.”

1 So we would suggest that that change
2 allows us to disclose the information we have, the
3 information we’re able to verify. What we’re
4 not able to verify or could have trouble
5 verifying is what all of the end uses are, so
6 really describing the knowns and what’s happening
7 there.

8 We would also suggest adding a second
9 sentence to that section, or another sentence to
10 that section after the statement I just added at
11 the end, “The organization shall not be required
12 to provide any information that it, its contracted
13 recyclers or other service providers consider to
14 be proprietary business information including but
15 not limited to customer names, quantity, prices,
16 trade secrets, etcetera.”

17 Again, the concern is that if we were
18 required to list all the actual customers or
19 recyclers, that would provide other recyclers an
20 opportunity to go in, see the list, and try and
21 poach clients from each other, which could be
22 problematic.

23 That’s my only comment on this section. I
24 do have another comment as part of this section.

25 MS. HARLEY: Feel free to give it.

1 MR. HUDGINS: Okay. As discussed earlier
2 on the market development comment having to do
3 with description of market development activities
4 in the program plan, as we suggested, that might
5 be better off in the annual report, so we suggest
6 a new subsection in Section 18964 stating, "A
7 description of market activities, if any, that
8 have been undertaken during the period covered by
9 the annual report to increase the quantity of
10 materials recovered and recycled."

11 And again, we just feel it makes more
12 sense to report on those type of activities in the
13 annual report versus in the program plan.

14 I have no further comments.

15 MS. HARLEY: All right, thanks, Chris.

16 If we move on through Section 18964, the
17 next change we see is Subsection (b)(10), and this
18 is where I mentioned "program participants" was
19 stricken because it was deemed confusing.

20 Next subsection is (b)(12). Here we added
21 language stating that "The mattress recycling
22 organization's annual report may include a
23 description of how it addressed the points or
24 recommendations raised in the Advisory Committee

25 report."

1 So if there are any comments, feel free
2 to give them now. Are there any comments in the
3 mailbox? Okay. So if there are no further comments
4 we'll move on from Section 18964.

5 And we've already made it to the end. The
6 final change in the proposed regs is in 18966,
7 Used Mattress Renovator Annual Report, and here a
8 typo was corrected. This report refers to
9 renovators and we accidentally had "recyclers" in
10 the text.

11 So if there are no further comments on
12 the proposed regs, I think we're okay.

13 I did appear to miss a section that was
14 edited. Section 18964, the annual report, it's in
15 subsection (c), Page 11, line 22, there was
16 another typo. This section refers to the annual
17 report and not the plan.

18 So if there are no questions or comments
19 in the mailbox and there are no questions in the
20 room, I think we can close this hearing.

21 MS. SMYTH: Agreed. And as we had
22 mentioned earlier, we are looking for those
23 written comments at our
24 mattresses@calrecycle.ca.gov website, and

25 everything will be posted on our website in terms
1 of comments and transcripts from the hearing.

2 Thank you very much.

3 MS. HARLEY: Thanks, all.

4 (Hearing Adjourned at 2:27 p.m.)

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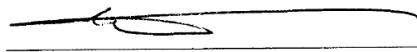
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of April, 2015.



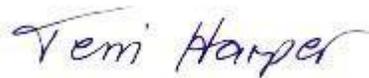
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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Terri Harper
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