

**CalRecycle Responses to 45-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	W05-01	International Sleep Products Association (ISPA)	Chris	Hudgins	<p>On February 20, 2014, CalRecycle released informal draft regulatory text of proposed regulations to implement the Act. ISPA submitted written comments on the informal draft and discussed potential changes to the draft during CalRecycle’s public workshop on March 13, 2014. Following the comment period, CalRecycle staff revised the informal draft, incorporating input from ISPA and other stakeholders. The proposed regulations issued on December 26, 2014, closely reflect the revised informal draft.</p> <p>As a result of this process, we believe the proposed regulations capture the legislature's intent when crafting and adopting the Act and provide clear direction to MRC on its obligations under the Act. Therefore, ISPA requests no changes to the proposed regulations at this time, and urges CalRecycle to adopt them in their current form.</p>	This is a general comment and does not suggest any specific changes to the proposed regulations.	None
General Comment	W07-01	Ortho Mattress and High Street Fabrication	Marvin	Pineda	Ortho’s concerns were addressed during the informal rulemaking process, and after reviewing the proposed regulations we have no comment. We thank staff at CalRecycle for being responsive and available and look forward to becoming a partner with the Department and the Mattress Recycling Council in the development of the program.	This is a general comment and does not suggest any specific changes to the proposed regulations.	None
General Comment	PH02-01	International Sleep Products Association (ISPA)	Chris	Hudgins	<p>We’re the trade association for the mattress industry. We were involved heavily in writing the law. We also created the Mattress Recycling Council which is the stewardship organization certified by CalRecycle to implement this law.</p> <p>We have worked with the department throughout this process. We gave a great deal of feedback during the informal draft session, and the staff was very helpful in working with us to address our concerns. So therefore we are comfortable with the draft and we urge you to adopt it as is.</p>	This is a general comment and does not suggest any specific changes to the proposed regulations.	None
§18959. Purpose.							
§18959	W08-01	St. Vincent de Paul	Susan	Palmer	Suggested revision: 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 <u>law in a manner that does not undermine existing operators</u> , providing 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.	PRC section 42985 (1) (b) states “It is the intent of the Legislature in enacting this chapter that consumers have the opportunity to drop off their used mattress free of charge and that this chapter will not undermine existing used mattress recycling, resale, refurbishing, and reuse operations that are in compliance with state and federal law.” CalRecycle staff believes this comment has been sufficiently addressed. The purpose of the proposed regulations is to clarify statute, as necessary; therefore, staff does not see a necessity to expand further in the proposed regulations.	None
§18960. Definitions.							
§18960	W02-01	Los Angeles County Solid Waste	Margaret	Clark	The Regulations do not define “program participant” in the definition of “collection.” The term should be defined and clearly specify whether it includes consumers, local jurisdictions, and/or other entities. In particular, the term, among other things, needs to include any means by which a local	CalRecycle staff agrees that the term “program participant” as used in this definition creates confusion. Therefore, it has been stricken from the proposed regulations.	Yes

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		Management Committee/ Integrated Waste Management Task Force and Mayor Pro Tem, City of Rosemead			government collects discarded or abandoned mattresses from public streets, highways, alleyways, and public right of ways.		
§18961. Used Mattress Recovery and Recycling Plan Submittal.							
No comments submitted on this section.							
§18962. Used Mattress Recovery and Recycling Plan.							
§18962	W01-01	Tinney Associates	Mike	Tinney	The mattress recovery and recycling plan should contain a section detailing the material fractions that result from the recycling process (steel, cotton shreds, etc.), a plan for using those material fractions as raw material for secondary products, and a plan for developing secondary products and markets to consume them.	The department agrees that information regarding downstream markets for recycled commodities are necessary, as stated in PRC section 42990.1 (f); thus, staff has revised the proposed regulations 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 diverted from landfills and used (see section 18962 (a) (2) (D) and section 18964 (b) (8) (A)).	Yes
§18962	W02-02	Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force and Mayor Pro Tem, City of Rosemead	Margaret	Clark	The Regulations should be revised to require that the plan substantially reduce public agency costs for end-of-life management of used mattresses. As indicated in Public Resources Code 42985 (a) (1), the intent of SB 254 is “to reduce illegal dumping, increase recycling, and <u>substantially reduce public agency costs</u> for end-of life management of used mattresses” (emphasis added).	CalRecycle staff believes PRC section 42987.1 sufficiently covers the used mattress recovery and recycling plan requirements, including how the plan will substantially reduce public agency costs for end-of-life management of used mattresses (see PRC section 42987.1 (i), (k), (l), and (o)). The purpose of the proposed regulations is to provide clarity to the statute, as necessary; therefore, staff does not see a necessity to expand further in the proposed regulations.	None
§18962	W02-04	Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force and Mayor Pro Tem, City of Rosemead	Margaret	Clark	For the purpose of ensuring that the program assists in advancing the Statewide goal established pursuant to Assembly Bill 341 (Chesbro, 2011), the Regulations should require that the baseline fully encapsulates mattresses generated, disposed, and recycled in the State.	PRC section 42987.1 (h) states “A program performance measurement that shall collect program data for the purpose of the annual report. The information shall include: (1) A methodology for estimating the amount of mattress sold in the state, used mattresses available for collection in the state, and for quantifying the number of used mattresses collected and recycled in the state. (2) A methodology for determining mattresses sold in the state by the manufacturers and renovators of the mattress recycling organization.” CalRecycle staff believes this section sufficiently addresses this comment; therefore, no changes have been made in the proposed regulations.	None
§18962	W02-05	Los Angeles County Solid Waste	Margaret	Clark	In order to help assure the mattress recovery and recycling program’s long term viability, methods and activities identified in the plan should include a protocol to address potential barriers to recycling. For instance, a	CalRecycle staff agrees with this comment and amended section 18962 (a) (2) (C) of the proposed regulations to include a description of proper end of life	Yes

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		Management Committee/ Integrated Waste Management Task Force and Mayor Pro Tem, City of Rosemead			description of handling and sanitation procedures should be included in the plan to ensure that bedbugs do not migrate to new mattresses during retailer take-back of used mattresses, avoiding potential bedbug infestation. The unfortunate result of leaving this problem unaddressed could be the collapse of the mattress recycling market and ultimately this program.	management, which would include, but is not limited to, preventing the spread of bed bugs.	
§18962	W03-01	Co-Chairs of the Mattress Recycling Council Advisory Committee	Frank Doug	Chin Kobold	Though the Proposed Regulations for the Used Mattress Recovery and Recycling Program did not expand on the methods or research in improving used mattress collection in the mattress recycling plan, the Advisory Committee feels that certain methods or research should be addressed and written into the Proposed Regulations. One item we feel strongly about is the handling of bed bug infested mattresses. Research should be conducted to determine how to quickly detect bed bugs in mattresses picked up at homes and along roadways. Research should include the separation of new mattresses and used mattresses on delivery trucks, proper hygiene in handling mattresses such as separate employee uniforms and onsite washer and dryer at recycling centers, downstream recycled material end products methods to eliminate bedbugs. Instead of leaving it completely open-ended, the method or research should have this addressed as a requirement and not something that can be overlooked by the mattress stewardship organization.	See response to W02-05, above.	Yes
§18962	W03-02	Co-Chairs of the Mattress Recycling Council Advisory Committee	Frank Doug	Chin Kobold	The mattress recycling plan leaves it up to the mattress stewardship organization to enter into contracts or agreements (Section 42987.1 (j)). What mechanisms and oversight will be in place to ensure a fair process takes place during the RFP phase for the transportation, transfer station participation, and recycling? Will it be as transparent as the governmental RFP process? What recourse do losing bidders have? CalRecycle should be involved.	CalRecycle does not have the authority to mediate contractual agreements between the mattress recycling organization and service providers, and therefore no change has been made to the proposed regulations in response to this comment.	None
§18962	W03-03	Co-Chairs of the Mattress Recycling Council Advisory Committee	Frank Doug	Chin Kobold	It is our assumption that the RFP will be region by region. If a vendor bids and is accepted for, say Alameda County, are transfer sites in Alameda required to use that vendor, even if another one, which did not win the County bid, comes in with same price and transportation cost, and is a recognized mattress recycler in say, Yolo County? There is nothing in the rule-making about holding current mattress recyclers harmless. So how does this rulemaking protect DR3 and similar long term mattress recyclers?	PRC section 42987.1 (i) requires "A description of methods used to coordinate activities with existing used mattress collecting and recycling programs, including existing nonprofit mattress recyclers..." CalRecycle staff believes this section sufficiently addresses this comment; therefore, no changes have been made in the proposed regulations.	None
§18962	W06-01	Bureau of Sanitation, city of Los Angeles	Nat	Isaac	Replace the word "may" with "SHALL" in Section 18962, (a) (8) to read as follows: Include the report by the mattress recycling organization advisory committee as required by subdivision (q) of section 42987.1 of the Public Resources Code. The mattress recycling organization SHALL include a	This comment would require a statutory change, and is therefore beyond the scope of this rulemaking. However, section 18962 (a) (8) and section 18964 (b) (12) of the proposed regulations have been modified to allow the mattress recycling organization's plan and annual report, respectively, to describe how the points or recommendations raised in the advisory committee's report were addressed.	Yes

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					description of how it addressed the points or recommendations raised in the Advisory Committee Report.		
§18962	W08-02	St. Vincent de Paul	Susan	Palmer	Suggested revision: The mattress recycling organization <u>shall</u> include a description of how it addressed the points or recommendations raised in the Advisory Committee Report.	See above response to comment W06-01.	Yes
§18962	PH01-01	Sacramento County	Doug	Kobold	Suggest replacing the usage of <u>a plan</u> with <u>the plan</u> , as follows: Subdivision (d) suggested revision: "If the department conditionally approves <u>the</u> plan, the department shall identify the deficiencies in the plan..." Subdivision (e) suggested revision: "If the department conditionally approves <u>the</u> plan and the conditions are not met, the department shall disapprove the plan." Subdivision (f) suggested revision: "If the department disapproves <u>the</u> plan, the department shall identify the deficiencies in the plan..."	In order to clarify, staff changed section 18962 (b) to read "A mattress recycling organization submitting <u>a</u> plan shall provide...". The Act allows more than one mattress recycling organization to submit a plan; however, subdivisions (d) (e) and (f) are addressing a specific plan. Therefore, CalRecycle staff believes these subdivisions are adequate and no changes have been made to these sections of the proposed regulations.	Yes
§18963. Mattress Recycling Charge and Annual Budget.							
§18963	W04-01	County Sanitation Districts of Los Angeles County	Glenn	Acosta	The proposed regulations do not set a time limit for the MRO to reimburse the solid waste facility operator. We suggest 60 days as a time limit for reimbursing the operator.	This would require a statutory change, and is therefore beyond the scope of this rulemaking. It is the responsibility of the solid waste facility to negotiate a contract with the mattress recycling organization that adequately covers the timeliness of reimbursement. CalRecycle does not have the authority to mediate contractual agreements between the mattress recycling organization and service providers, and therefore no change has been made to the proposed regulations in response to this comment.	None
§18963	W04-02	County Sanitation Districts of Los Angeles County	Glenn	Acosta	The MRO could reject the solid waste facility operator's reimbursement request if it disagrees with the amount. There is no administrative appeal process proposed to resolve this. We believe an appeal process needs to be included in the proposed regulations.	This would require a statutory change, and is therefore beyond the scope of this rulemaking. It is the responsibility of the solid waste facility to negotiate a contract with the mattress recycling organization that adequately addresses both parties' needs. CalRecycle does not have the authority to mediate contractual agreements between the mattress recycling organization and service providers, and therefore no change has been made to the regulations in response to this comment.	None
§18963	W04-03	County Sanitation Districts of Los Angeles County	Glenn	Acosta	A single, fixed reimbursement fee applied to all solid waste facilities in the state would not account for the widely varying hauling distances between the facility and the mattress recycler. If the solid waste facility is expected to transport the mattresses to the recyclers, then the reimbursement for transportation costs needs to be commensurate with the distance traveled.	It is the responsibility of the solid waste facility to negotiate a contract with the mattress recycling organization that adequately covers its own costs. PRC section 42987.1 (o) states that the mattress recycling organization must provide reasonable payment to permitted solid waste facilities. CalRecycle does not have the authority to mediate contractual agreements between the mattress recycling organization and service providers, and therefore no change has been made to the regulations in response to this comment.	None
§18963	PH01-02	Sacramento County	Doug	Kobold	Subdivision (b) (4) suggested revision: For used mattress recycling program budgets submitted <u>on/by</u> July 1, 2017"	CalRecycle staff agrees with this comment and edited subdivision (b) (4) of section 18963 to read "For used mattress program budgets submitted <u>on or by</u> July 1, 2017" in order to provide clarity.	Yes

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§18963	PH01-03	Sacramento County	Doug	Kobold	Subdivision (b) (4) suggested revision: Also “For annual reports submitted thereafter, <u>the</u> previous two years of actual expenses shall be included.”	CalRecycle staff agrees with this comment and edited subdivision (b) (4) of section 18963 as suggested for clarity: “For annual reports submitted thereafter, <u>the</u> previous two years of actual expenses shall be included.”	Yes
§18964. Mattress Recycling Organization Annual Report.							
§18964	W02-03	Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force and Mayor Pro Tem, City of Rosemead	Margaret	Clark	To enhance the success of the program, we believe that it is prudent for the Mattress Recycling Organization’s (MRO) Annual Reports to identify the points, and/or recommendations, raised in the Advisory Committee Report [Paragraph (8) of Subdivision (a)] that still need to be addressed by the MRO.	See response to comment W06-01.	Yes
§18964	W02-06	Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force and Mayor Pro Tem, City of Rosemead	Margaret	Clark	Subdivision (b), Paragraph (13), Page 10, Line 25 – To assist in the success of the program, the term “Good faith effort” needs to be clearly defined to avoid future confusions and misinterpretations by the involved entities.	PRC section 42986 (d) states that “‘Good faith effort’ means all reasonable and economically practical efforts by a mattress recycling organization to implement the components identified in its approved plan consistent with its annual budget.” CalRecycle staff does not concur that the sections of the regulations in which the term “good faith effort” is used need to be further defined. Therefore, no changes have been made to the proposed regulations based on this comment.	None
§18964	W02-07	Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force and Mayor Pro Tem, City of Rosemead	Margaret	Clark	Subdivision (c) – On Page 10 Line 30, there seems to be an incorrect reference to the “plan” when it should reference the “report” as the focus of this section is on the annual report.	CalRecycle staff concurs that there was incorrect usage of the word “plan” since section 18964 (c) describes the mattress recycling organization’s annual report. Staff has made the recommended change in response to this comment.	Yes
§18964	W03-04	Co-Chairs of the Mattress Recycling Council Advisory Committee	Frank Doug	Chin Kobold	The Advisory Committee is concerned that the California fee money go to the program of collecting and managing mattresses. Based on the experience of PaintCare using California fee payer money to sue CalRecycle claiming regulation overreach and then having to reimburse CalRecycle to defend it using the fee money, we would like to see that prohibited in the regulations if it is legal to do so. If the industry does not like the regulations, than the industry can pay for a lawsuit, but that should not be funded by	Section 18964 (b) (9) (E) clarifies that the annual report submitted by the mattress recycling organization must include program administration costs, including third party legal costs. There is no statutory basis to prohibit the use of the mattress recycling charge to fund lawsuits against the department. Since this comment requires a statutory change, it is beyond the scope of this rulemaking.	None

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					California fees for mattress recycling and goes beyond what is normal "administrative" costs. If this is not prohibited and continues, it only makes the case for internalization of costs and recycling as a cost of doing business.		
§18964	W03-05	Co-Chairs of the Mattress Recycling Council Advisory Committee	Frank Doug	Chin Kobold	Page 10, Line 30, "plan" should be "report" since the topic is the annual report not the mattress recycling plan.	See response to above comment W02-07.	Yes
§18964	W04-04	County Sanitation Districts of Los Angeles County	Glenn	Acosta	We believe the plan needs to address the availability of mattress recycling facilities near the solid waste facilities receiving the used mattresses. Additionally, these recycling facilities need to be open for business on a regular basis and during normal business hours. If, for example, the recycling facilities are only open one day per quarter, this will cause solid waste facilities to stockpile mattresses for an extended period of time until they are open for business. This would be an undue burden imposed on the solid waste facilities.	The department does not have the authority to require the mattress recycling organization to contract with recycling facilities near solid waste facilities, nor dictate the operational hours of the recycling facilities. However, staff agrees that convenient and efficient delivery of recycling services are required elements of the plan (see PRC section 42987.1 (i) and (o)). The proposed regulations now require a description of how services are provided to consumers and businesses in California (see section 18962 (a) (2) (E-F)).	Yes
§18964	W04-05	County Sanitation Districts of Los Angeles County	Glenn	Acosta	Lastly, given that the proposed regulations would impose new reporting and recordkeeping requirements on the solid waste facilities receiving used mattresses, the plan should provide for the reimbursement of such costs.	This would require a statutory change, and is therefore beyond the scope of this rulemaking. The proposed regulations do not impose reporting requirements beyond those prescribed by statute (PRC 42991 (b)). Staff believes no further changes are necessary.	None
§18964	PH01-04	Sacramento County	Doug	Kobold	Subdivision (b) (2) suggested revision: "Provide a brief description of the mattress recycling organization's used mattress recovery efforts during the <u>calendar year</u> pursuant to section 18962."	CalRecycle staff agrees and changed the section 18964 (b) (2) of the proposed regulations to read: "...Provide a brief description of the mattress recycling organization's used mattress recovery efforts during the <u>calendar year</u> pursuant to section 18962".	Yes
§18964	PH01-05	Sacramento County	Doug	Kobold	Subdivision (b) (8) is vague: "State objectives from the approved plan and report on achievement during the reporting period". Are the plan and report both considered approved?	CalRecycle staff agrees with this comment, and in order to avoid confusion section 18964 (b) (8) was reworded as follows: "...State objectives from the approved plan and <u>describe progress toward achieving those objectives</u> during the reporting period."	Yes
§18964	PH01-06	Sacramento County	Doug	Kobold	Suggested revision: Input the report due dates within each of the annual report sections; including §18964, §18965, §18966, §18967.	The proposed regulations are only meant to clarify statute, as necessary. The dates are clearly written in statute and CalRecycle staff believes adding them into the proposed regulations would be redundant.	None
§18965. Used Mattress Recycler Annual Report.							
No comments submitted on this section.							
§18966. Used Mattress Renovator Annual Report.							
§18966	W06-02	Bureau of Sanitation, city of Los Angeles	Nat	Isaac	Replace the word "recycler" with the word "renovator" in section 18966, (a) to read as follows: An annual report shall be submitted to the department and the mattress recycling organization by a person that is engaged in business as a used mattress renovator. The annual report may be submitted electronically according to instructions provided by the department. A hard copy, signed by a corporate officer of a mattress RENOVATOR shall be submitted to the department upon request.	CalRecycle staff concurs that there was incorrect usage of the word "recycler" when "renovator" should have been used, and section 18966 (a) of the proposed regulations has been revised in response to this comment.	Yes

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§18967. Solid Waste Facility Annual Report.							
§18967	W06-03	Bureau of Sanitation, city of Los Angeles	Nat	Isaac	Add the following words in section 18967, (a) to read as follows: An annual report shall be submitted by a person that is engaged in business as an operator of a solid waste facility <u>that elects to separate out mattress materials for recycling</u> to the department and the mattress recycling organization. The annual report may be submitted electronically according to instructions provided by the department. A hard copy, signed by a designated representative of a solid waste facility shall be submitted to the department upon request.	“Solid waste facility” is defined in PRC section 42986 (s) as “a solid waste facility as defined in Section 40194 that accepts, under its normal operating conditions, used mattresses from the public for collection, storing, and handling, whether for recycling or disposal.” The proposed regulations are only meant to clarify statute, as necessary; therefore, CalRecycle staff believes section 18967 (a) of the proposed regulations is adequate, and a modification is not required.	None
§18968. Mattress Recycling Organization Advisory Committee Annual Report.							
No comments submitted on this section.							
§18969. Records.							
§18969	PH03-01	Californians Against Waste	Teresa	Bui	Under Records, I was wondering if there is a potential to add how retailers provide take-back processes for consumers. It might help with enforcement.	Retailers must maintain records that demonstrate compliance with the Act. In order for a retailer to be in compliance with the Act, they must offer take-back of used mattresses when a new one is delivered. PRC section 42993.3 (a) (2) states: “Upon request, provide the department with relevant records necessary to determine compliance with this chapter.” CalRecycle staff believes this adequately addresses this comment and no change has been made to the proposed regulations.	None
§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.							