

CALIFORNIA DEPARTMENT OF RESOURCES

RECYCLING AND RECOVERY

Public Hearing on Proposed Regulations for the
Used Mattress Recovery and Recycling Program

TRANSCRIPT OF PROCEEDINGS

Cal/EPA Building
Byron Sher Auditorium
1001 I Street
Sacramento, CA 95814

Wednesday, February 11, 2015

1:00 p.m.

Rebecca Hudson

APPEARANCES

Brenda Smyth, Facilitator

Ashley Harley

Kate Nitta, Staff Counsel

Jim Hill

Nicole Castagneto

Doug Kobold, Mattress Advisory Committee

Chris Hudgins, International Sleep Products Association

Teresa Bui, Californians Against Waste

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SACRAMENTO, CALIFORNIA

Wednesday, February 11, 2015

1:01 p.m.

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MS. SMYTH: Good afternoon. I'm Brenda Smyth and I'm going to be your facilitator for this meeting this afternoon. This is the public hearing for the proposed Used Mattress Recovery and Recycling proposed regulations. Today's hearing concludes our initial 45-day comment period on our draft text for these regs. We're accepting comments from attendees here. And also comments can be submitted online, as well.

Before we get started I just want to go through our usual announcements. In the event of a fire alarm, we are required to evacuate immediately. This room has two exits. We will exit down the stairs and relocate across the street to Cesar Chavez Park. And you can follow -- follow us out and we'll lead the way. Remember not to use the elevators in that event.

Restrooms are located out the back doors of the room and to the -- down the hall to your left.

And then we'll pretend we're in the movie theaters. Please silence your phones or take your urgent calls outside so we can continue with our public hearing.

And then, also, if you're providing oral comments,

1 we want to urge you that we also want you to submit your
2 comments in writing. And those can be submitted to
3 Mattresses@CalRecycle.ca.gov. That's the same address that
4 you can be submitting your online comments if you're listening
5 to this hearing remotely. And as we receive those this
6 afternoon I will -- I'll read through those to clarify that
7 we've received them.

8 We'll move through the draft regulations in the
9 order that they appear from the beginning. And we'll also
10 have the text visible on the screen so you can follow along.
11 And when we reach the section that you wish to comment on,
12 please queue up behind the microphones here or over there,
13 left and right. And at that time we -- we would like for you
14 to identify yourself. Speak into the microphone so the court
15 reporter can hear you. We have a reporter who is doing a
16 transcript of these proceedings. So we want to make sure you
17 speak clearly and she can catch everything you're saying.

18 Written comments that have already been submitted
19 are part of the rule-making record, and it's not necessary to
20 go over those comments again. To date we've received about a
21 half dozen comments. And we are in the process -- we either
22 have them posted or are in the process of getting that
23 completed.

24 We are here today and available to answer questions
25 to improve your understanding and to provide clarity, but

1 primarily we're here to just listen to your stakeholder
2 comments. And we're not here to debate reasons or whys or
3 wherefores for the text in the proposed regs; we want to hear
4 what your comments are. The comments and the transcripts will
5 be posted on our website.

6 And at this time I'd like to introduce our staff
7 here. Kate Nitta is our legal counsel. Ashley Harley will
8 walk us through the proposed regs in a moment. And Nikki
9 Castagneto. Jim Hill is going to be receiving our comments
10 online and keeping us updated on that. And Russ Carter, out
11 in the back, is who has been helping with the registration.
12 So I'd like to thank all the staff involved in this.

13 And at this time I'm going to turn it over to Ashley
14 and have her walk us through the proposed text.

15 MS. HARLEY: Okay. Thanks, everyone, for coming.
16 I'm looking to forward to hearing any comments you might have.
17 First I'll give a bit of background about what we've done thus
18 far, particularly last year which was very busy for us.

19 First, we had our informal public workshop in March,
20 and we received many comments at that time. We incorporated
21 that feedback into the language and sent the revised draft to
22 our director which -- who approved it at the May public
23 meeting. Then with the passage of SB 1274 in September, we
24 incorporated the minor changes prescribed by that clean-up
25 legislation into the draft text.

1 We also worked to complete an economic analysis with
2 the help of the Department of Finance which later determined
3 that the draft text is not a major reg, pursuant to SB 617.
4 And in December the Office of Administrative Law published the
5 notice of proposed rulemaking in the December notice register,
6 which began the formal 45-day comment period for our proposed
7 regulations.

8 So this public comment period ends today at
9 5:00 p.m. We'd greatly appreciate your comments by that time.

10 And we ask you to submit your original versions of your
11 comments, not copies, to Mattresses@CalRecycle.ca.gov., which
12 is the mailbox that Jim is going to be monitoring while we're
13 going through the slides.

14 Okay, let's -- so now we'll walk through the 13
15 sections of the proposed regulations. It's -- it might be a
16 little tedious, but when we reach the section you wish to
17 comment on please approach the microphone and clearly
18 state your name, affiliation, and comments for our court
19 reporter. We'll post a transcript of the proceedings, along
20 with all the comments received during the comment period, on
21 our website.

22 So without further ado, let's go through the reg
23 text.

24 So Section 18959 is the purpose of our regulations,
25 the regs' outline, our administrative procedures that we'll be

1 undertaking to approve the plan, and annual reports and the
2 information required therein.

3 So if there's any comments on this section, please
4 come forward now. All right, I'm not seeing any comments.

5 So Section 18960 are the definitions that we clarify
6 from statute. Such definitions, brand, collection,
7 operational costs, and significant or material change are
8 further described in our regs.

9 If there are any comments on the definitions, please
10 come forward now.

11 MS. SMYTH: And just again to state that we did
12 receive some comments. We don't have to have those
13 reiterated. So the written comments that we've already
14 received on definitions are fine. Thank you.

15 MS. HARLEY: All right, if there are no comments on
16 the definitions we can move on to Section 18961, Used Mattress
17 Recovery and Recycling Plan Submittal. This section outlines
18 instructions for a corporate officer acting on behalf of a
19 mattress recycling organization and the information that they
20 must include in the plan.

21 Does anyone have any comments on this section?

22 All right, now we'll move on to one of the longer
23 sections of the regulations, 18962. This section describes
24 the materials that must be provided in the plan, such as
25 education and outreach materials, and the Advisory Committee

1 report.

2 Are there any comments on this section?

3 Thanks, Doug.

4 MR. KOBOLD: Doug Kobold, Sacramento County. Also
5 co-chair of the Mattress Advisory Committee.

6 MS. HARLEY: Can you spell your name, please, first
7 and last?

8 MR. KOBOLD: Certainly. Last name,
9 K-O-B, as in boy, O-L-D, as in dog. First name, Doug,
10 D-O-U-G.

11 MS. HARLEY: Thank you.

12 MR. KOBOLD: Just a quick clar... -- actually, it's
13 not a clarification. Line 18, page 5, it would be subsection
14 (d) of 8, just there the majority of it refers to "the plan."
15 But here in this -- these next couple of paragraphs you have
16 "a plan." I just thought that might be a little different
17 than to have it actually say "the" instead of "a" so it's
18 consistent. That's it.

19 MS. SMYTH: Thank you.

20 MS. HARLEY: Thank you, Doug.

21 Are there any other comments on this section?

22 All right, moving on to Section 18963, the mattress
23 recycling charge and annual budget, are there any comments on
24 this section?

25 MR. KOBOLD: Doug Kobold, County of Sacramento.

1 Again, just more -- just minor typos. Section --
2 subsection (4), (b) (4), I think you want to have "the" or "on
3 or by." Here's the question for that one, so I'll state
4 the -- the paragraph. It's "For Used -- for Used Mattress
5 Recycling Program budgets submitted July 1, 2017, all our
6 financials," is it on or by? It's vague. And then also in
7 that same subsection, "submitted thereafter the previous two
8 years;" is that what you wanted to have in there?

9 Most of my comments will be just kind of editorial.
10 I don't know if you want me to continue to comment in that
11 form, then I have four more.

12 MS. SMYTH: Sure, yeah, if you want to submit them.

13 MR. KOBOLD: Yes.

14 MS. HARLEY: Thanks for being our spell checker.

15 Okay, if there's no further comments on that
16 section, we can move on.

17 18964, the Mattress Recycling Organization Annual
18 Report. It's also a lengthy section. It just outlines how
19 the annual report should look.

20 So if there are any questions on the annual report
21 submitted by the Mattress Recycling Organization, we can take
22 those now.

23 MR. KOBOLD: Doug Kobold, County of Sacramento. I
24 should just stay up here.

25 Under section -- section (b) -- or subsection (b),

1 number (2), you state the reporting period. But according to
2 Section 42990.1 of the -- of the legislation it should be
3 The -- the calendar year is what you used. And multiple times
4 within these -- this section, "reporting period" is used. So
5 it might -- it's vague since the legislation is very clear as
6 to calendar year, here it's used in a different terminology.

7 And then under subparagraph (8) the -- it starts
8 with the description of the objectives and activities based on
9 the Used Mattresses Recovery and Recycling Plan. "State
10 objectives of the approved plan and report on achievement."
11 By putting in approved plan and report, is it -- is it now
12 both -- are they both approved, and isn't the report based for
13 the plan, and so therefore should it -- should it have "plan"
14 in that sentence there at all? It may need some rewording
15 because the report is reporting on the prior year, but here
16 it's talking about -- well, actually stating the objectives of
17 the report. Well, I'm not sure if that's -- it just it -- it
18 was kind of confusing.

19 MS. HARLEY: Thanks, Doug.

20 Are there any other comments about this section
21 which regards the annual report? Okay, I'm seeing none.

22 Jim, are there any questions?

23 MR. HILL: Nothing here.

24 MS. HARLEY: Okay, we'll move on to Section 18965,
25 Used Mattress Recycler Annual Report. This section details

1 the requirements of the report to be submitted by recyclers in
2 the program.

3 Are there any comments on this section?

4 All right, we'll move on to Section 18966, the Used
5 Mattress Renovator Annual Report. Similar information is
6 required in this section, except for renovators participating
7 in the program.

8 Are there any comments on this section? Any
9 comments in the emails?

10 MR. HILL: Nope. I'm refreshing each time but, no,
11 there are not.

12 MS. HARLEY: Okay. Thanks, Jim.

13 All right, Section 18967, Solid Waste Facility
14 Annual Report. This section details report information
15 required from solid waste facilities participating in the
16 program.

17 Are there any comments on this section?

18 All right, moving on, Section 18968, Mattress
19 Recycling Organization Advisory Committee Annual Report. This
20 section details the information that the Advisory Committee
21 can include in their annual report to the mattress recycling
22 organization.

23 Are there any comments on this section? All right,
24 we're moving through this really quickly.

25 Section 18969, Records. This section details the

1 record-keeping requirements for certain program participants.

2
3 Are there any comments on this section?

4 Okay, Section 18970, Criteria to Impose a Civil
5 Penalty. This section describes the circumstances which may
6 include but are not limited to the following (a) through (k).

7 Are there any questions or -- sorry, are there any
8 comments on this section?

9 Okay, we made it to the last section, 18971,
10 Procedure for Imposing Civil Penalties.

11 Are there any comments on this final section?

12 MS. SMYTH: Okay. At this time I'm just going to
13 open it up to the entire draft text in case we missed anything
14 or someone came in a little bit late and wants to comment on
15 any of these sections we've already gone through. Okay, so --

16 MR. KOBOLD: Here we go. Thank you. Doug Kobold,
17 County of Sacramento.

18 My last comment actually covers the annual reports
19 in the legislative language. It speaks to dates of when the
20 reports are due. And in the earlier parts of the regulatory
21 text you do speak of dates. But in each of the annual report
22 sections, starting with 18964 and thereon, there are no dates
23 of when it's due. And I didn't know if there -- it would be
24 appropriate to have those dates in there so that people -
25 because otherwise you're going back to legislation in order to

1 see the dates.

2 So, for example, the first time that would appear
3 would be, again, in 18964. And that annual report is due on
4 July 1, 2017, and every year thereafter. So the other
5 sections that would apply to, just for clarity, 18965 for the
6 Used Mattress Recycler Annual Report, 18966 and 18967. And
7 those last three are May 1, 2017, and thereafter. Thank you.

8 MS. HARLEY: Thanks, Doug.

9 MR. HUDGINS: Hello. Chris Hudgins with the
10 International Sleep Products Association, C-H-R-I-S
11 H-U-D-G-I-N-S. We're the trade association for the mattress
12 industry. We were involved heavily in writing the law. We
13 also created the Mattress Recycling Council which is the
14 stewardship organization certified by CalRecycle to implement
15 this law.

16 We have worked with the department throughout this
17 process. We gave a great deal of feedback during the informal
18 draft session, and the staff was very helpful in working with
19 us to address our concerns. So therefore we are comfortable
20 with the draft and we urge you to adopt it as is.

21 MS. HARLEY: Thanks, Chris.

22 MS. SMYTH: Any other comments on any of the text?

23 Yes, Teresa.

24 MS. BUI: Good afternoon. Teresa Bui with
25 Californians Against Waste.

1 I'm not sure we have any retailers in the room--

2 MS. SMYTH: Could you spell your name for me, first
3 and last?

4 MS. BUI: First name? T-E-R-E-S-A.

5 MS. SMYTH: And last?

6 MS. BUI: B-U-I.

7 MS. SMYTH: B-U-I. Thank you.

8 MS. BUI: But under Records, I was wondering if
9 there - if there is a potential to add, you know, retailer
10 provides some kind of what -- what kind of a take-back process
11 that they provide to the consumers. It might just help with
12 enforcement. Thank you.

13 MS. SMYTH: Any other comments? And we aren't
14 receiving anything in our mailbox, no online comments at this
15 time.

16 So let's go to next steps.

17 MS. HARLEY: So after we compile all the comments
18 we've received, including those from today's hearing and those
19 written comments already posted on our website, we will
20 develop responses, and these responses will be posted on our
21 website. So I encourage everyone to monitor both that site
22 and to sign up for our Listserv if you haven't already done
23 so. Also, you may contact either Nikki or I with questions
24 regarding this rule making and submit comments to our shared
25 mailbox, which is posted above.

1 MS. SMYTH: So again, we are receiving comments on
2 this initial text -- or this draft text here until 5 o'clock
3 today. And at this time, pending no further comments in the
4 room, we will close our public hearing. Thank you.

5 (Whereupon the proceedings concluded at 1:22 p.m.)
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REPORTER'S CERTIFICATE

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 19th day of February, 2015.

Rebecca Hudson

CERTIFICATE OF TRANSCRIBER

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.

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.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

February 19, 2015