



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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NOTICE OF PROPOSED RULEMAKING

Title 14: Natural Resources
Division 7: Department of Resources Recycling and Recovery
Chapter 11: Product Stewardship
Article 3: Used Mattress Recovery and Recycling Program
Sections: 18959-18971

PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (Department) proposes to amend California Code of Regulations, Title 14, Division 7, Chapter 11, Article 3.0, commencing with section 18959. The proposed regulation is intended to clarify processes for implementing the new Used Mattress Recovery and Recycling Act (Act) [Chapter 388, Statutes of 2013 (Hancock, SB 254)].

PUBLIC HEARING

A public hearing to receive public comments has been scheduled for **February 11, 2015**. The hearing will be held at the:

Joe Serna Jr., Cal EPA Building
Byron Sher Auditorium
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at **1:00 p.m. on February 11, 2015**, and will conclude after all testimony is given. CalRecycle requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheel chair accessible. If you have any questions, please contact mattresses@calrecycle.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation to the Department. **The written comment period for this**



rulemaking closes at 4:00 p.m. on February 11, 2015. The Department will also accept written comments during the public hearing described above. Please submit your written comments to:

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California Department of Resources Recycling and Recovery
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AUTHORITY AND REFERENCES

Public Resources Code Sections 40101, 40502, and 42985 through 42994 provide authority for this regulation. The purpose of the proposed actions is to implement, interpret, and make specific the law related to mattress stewardship. The following is a list of references cited in this proposed regulation: Public Resources Code: 42985, 42985.1, 42986, 42987, 42987.1, 42987.2, 42987.3, 42987.4, 42987.5, 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2, 42989.2.1, 42989.3, 42990, 42990.1, 42990.2, 42991, 42992, 42993, 42993.1, 42993.2, 42993.3, 42993.4, and 42994.

INFORMATIVE DIGEST

The California Integrated Waste Management Act (CIWMA), Public Resources Code (PRC) § 40000 et. seq., gives the Department authority to provide for the protection of public health, safety, and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC § 40502 requires the Department to adopt rules and regulations to implement the CIWMA.

The proposed regulation details CalRecycle's responsibilities for implementing the Act [Chapter 388, Statutes of 2013 (Hancock, SB 254)], and subsequent legislation [Chapter 371, Statutes of 2014 (Hancock, SB 1274)]. This rulemaking provides clarity to the existing legislation and has sections on the following topics: definitions; the used mattress recovery and recycling plan (plan) and submittal instructions; the mattress recycling charge and annual budget; the mattress recycling organization (MRO), used mattress recycler, used mattress renovator, solid waste landfill, and MRO advisory committee annual reports; record keeping requirements; criteria to impose a civil penalty; and procedures for imposing civil penalties.

More specifically, the subject regulation covers:

1. Definitions: brand, collection, operational costs, and significant or material change.
2. Submittal instructions for the plan, including:
 - a. Contact information of program participants
 - b. List of brands covered under the plan
 - c. Change of information requirements for the previous subsections
3. An outline of the contents of the plan, with the following components:
 - a. Proof of certification

- b. Program goals, methods, and activities
 - c. Contact information
 - d. Stakeholder consultation process
 - e. Performance measurement
 - f. Financing mechanism
 - g. Education and outreach
 - h. Advisory Committee report
 - i. Completeness and approval timeline
4. Submittal instructions for the mattress recycling charge and annual budget
 5. The MRO annual report outline, with some components listed below:
 - a. Contact information and executive summary
 - b. Updated list of compliant manufacturers and brands
 - c. Financing mechanism of the program
 - d. Education and outreach efforts and materials
 - e. Audit procedure
 - f. Advisory committee Report
 - g. Completeness and approval timeline
 6. Submittal instructions for used mattress recycler, renovator, solid waste facility, and MRO advisory committee annual reports
 7. Record keeping requirements
 8. Criteria to impose a civil penalty
 9. Procedure for imposing civil penalties

Staff met with numerous stakeholders and conducted a public workshop on March 13, 2014 to share and accept comments on the informal draft regulatory text. Thirty people participated in the workshop either in-person or via webinar. Comments from the public were incorporated into the Proposed Regulations for the Used Mattress Recovery and Recycling Program.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS

To implement the Act, the Department has responsibility to appoint an advisory committee to be part of a MRO; certify a MRO; review and approve, disapprove, or conditionally-approve a used mattress recycling plan; approve annual MRO budgets, including the mattress recycling charge; post lists of compliant brands, manufacturers, and renovators; establish a baseline recycling amount and recycling goals; review and update, as necessary, the baseline amount and Program goals; review annual reports from a MRO, mattress recyclers, mattress renovators, and solid waste facilities; conduct audits, as necessary; and enforce the law. For manufacturers, renovators, and retailers to be in compliance, they must have an approved plan; implement the corresponding used mattress recycling Program; pay the department an annual administrative fee for its services related to oversight and enforcement; and submit annual reports. Enforcement is addressed through civil penalties for non-compliance. Additional accountability is provided via a public, transparent process that allows all stakeholders and the public to track progress.

The proposed action will facilitate the implementation of the Act, which will significantly mitigate the current problems associated with the end-of-life management of used mattresses: taxpayer and local government costs will be reduced and redirected from cleaning up illegally

disposed mattresses; incentive payments provided by the Program will reduce illegal dumping, blight, and associated health hazards; mattresses will be kept out of landfills as the mattress recycling infrastructure mandated by the Act is developed, which serves the dual purpose of increasing recycling jobs and related businesses in California and dramatically boosting what is now a minor industry in the state; increased used mattress materials recycling (steel, wood, fibers) will reduce greenhouse gas emissions from landfilling and virgin resource use; and finally, removing bulky mattresses from landfill will assist California in achieving its goal of reducing, recycling, or composting 75% of all solid waste by January 1, 2020. Ultimately, the regulatory action will provide significant benefits to the environment and the protection of public health and safety.

PLAIN ENGLISH REQUIREMENTS

Department staff prepared the proposed regulation pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed regulation is considered non-technical and is written to be easily understood by those parties that will use them.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

CONSISTENCY WITH STATE REGULATIONS

After conducting an evaluation for any regulations relating to this area, the Department has found that these are the only regulations dealing with used mattress recycling. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

The department has determined the proposed regulations do not impose a mandate on local agencies or school districts.

The department has further determined the proposed regulations do not impact: 1) any costs to local government, which must be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of the Government Code; 2) any savings or other impacts such as revenue changes to state agencies; and 3) any additional federal funding or reduction in federal funding to the state. However, at the local government level some current expenditures at the city and county level may be reduced, to the extent that the recycling of used mattresses will reduce the number dumped illegally on alleys and rural roadways. Some public agencies currently expend significant sums to retrieve and properly dispose of illegally dumped mattresses.

Additionally, the department has determined the proposed regulations do not impose costs to local government which are not reimbursable under Section 6 of Article XIII B of the California Constitution but which will necessarily be incurred in reasonable compliance with the

regulations, and which could result in a revenue change(s). By design, the program shifts such costs from local government to mattress producers. The department itself will incur costs in reasonable compliance, administration, implementation, and/or enforcement of the regulations. However, these costs are required by statute to be reimbursed by the MRO.

Note: Based on Department of Finance’s analysis, the cost impact does not constitute a Major Regulation (Ms. Irena Asmundson, letter dated November 18, 2014.)¹

RESULTS OF THE STANDARDIZED REGULATORY IMPACT ASSESSMENT (SRIA)

Creation/Elimination of California Jobs

Jobs will be created through implementation of the program as the used mattress recovery and recycling infrastructure is developed over time. The majority of these jobs which will be at mattress recycling facilities, collection sites, and transportation companies. Job losses in other sectors are estimated to be negligible or nonexistent.

Creation/Elimination of California Businesses and Expansion of Businesses Currently doing Business within the State

No businesses are expected to be eliminated in California, and many are, in fact, predicted to be created or augmented (see section above). First, existing recyclers, collectors, and transporters will likely have an opportunity to participate in the program through a contracting process overseen by the MRO. Second, the Department estimates if half of the eligible used mattresses in the state are recycled, at least 45 new business locations as well as expansion of existing businesses would be needed to recycle them. The recycled material components derived from the mattresses would be further processed through existing commodities channels, and no new locations are expected.

Competitive Advantages or Disadvantages for Businesses Currently Doing Business within the State

No competitive advantages or disadvantages for businesses are expected as a result of the regulations because they apply equally to all manufacturers, renovators, and retailers within California or selling mattresses within California. In other words, out-of-state entities would be covered by the same requirements as those in California; therefore, the regulations would not impact the ability of California businesses to compete with those in other states to produce goods or services.

¹ In its initial analyses, the Department concluded that there was a possibility this regulation’s cost impact could reach the threshold of a major regulation; therefore, the Department conducted a Standardized Regulatory Impact Assessment (SRIA) as required for major regulations. However, after completion of the SRIA, the Department and the Department of Finance agreed the regulation’s impact does not constitute a major regulation. Nevertheless, because the SRIA had already been conducted, the Department determined that it would use the SRIA to satisfy the economic impact analysis requirements of the Administrative Procedures Act.

Increase or Decrease of Investment in the State

The results of the SRIA do not indicate whether the proposed regulatory action would either increase or decrease investment in the state. However, given the number of jobs increased and the expansion of mattress recycling business locations mentioned above, it is reasonable to assume an increase of investment in the state.

Incentives for Innovation in Products, Materials, or Processes

Current mattress recycling technology is rudimentary and consists of manual labor: cutting into the fabric ticking and separating the wood, steel, foam, and fabric. These recycled commodities are then sold (fabric, steel, and foam), or composted (wood). As the program encourages recyclers to participate more extensively and attempt to recover more used materials, innovative mattress processing technology may be developed, potentially leading to additional design and manufacturing jobs in the state. More broadly, the program will dramatically expand what is now only a fledgling industry in California – mattress recycling – creating an incentive for new businesses to profit from this market opportunity.

Benefits of the Regulations

The regulations, and program established by the MRO, will provide significant benefits to the environment, protection of public health, and safety. Specific benefits of the regulations and program include, but are not limited to the following:

- Local governments will be able to redirect staff to other priorities that have been neglected during recent years of budget shortfalls, since mattress producers will now be responsible for overseeing their products through end-of-life.
- Public agency costs for the end-of-life management of used mattresses will be reduced, including expenditures for solid waste management and remediation of illegal disposal.
- Incentive payments provided by the program will reduce illegal dumping, blight, and associated health hazards.
- Mattresses will be kept out of landfills as mandated recycling programs come on line, bringing recycling jobs and related businesses to California and dramatically boosting what is now a minor industry in the state.
- Increased recycling of metals, plastics, and other materials from used mattresses will reduce greenhouse gases, both by decreasing the need for energy-intensive virgin resources and by lowering methane-generating materials in landfills.
- Removing heavy, bulky mattresses from landfills will assist California in achieving its goal of reducing, recycling or composting 75% recycling of all solid waste by January 1, 2020.

Note: Based on Department of Finance’s analysis, the cost impact does not constitute a Major Regulation (Ms. Irena Asmundson, letter dated November 18, 2014.)

SUMMARY OF DEPARTMENT OF FINANCE COMMENTS

Pursuant to Government Code section 11346.3(f), the Department of Finance (DOF) shall comment on the extent to which the Department’s Standardized Regulatory Impact Assessment adheres to the regulations adopted pursuant to Government Code section 11346.36, and the Department shall summarize DOF’s comments and the Department’s responses to those comments. The following are the DOF’s comments received and the Department’s response to the comments:

DOF Comment #1:

First, the report should outline the expected method of operation for the MRO. This should include CalRecycle’s estimate of the timing of the formation of the MRO and their general structure, including how they will interact with consumers and what service level they will provide.

Department Response:

The Department has included additional information in the SRIA regarding potential program mechanics, to be developed and implemented by the MRO, which was certified by the department on November 5, 2014.

DOF Comment #2:

The report notes that two direct impacts of the regulation are infrastructure costs and labor costs for recyclers, which are omitted from the REMI model. Including these costs would necessitate higher fees for consumers. If fees increase above the current disposal fees due to the operation of the MRO, that would have to be modeled separately as an impact on consumers, and the benefits of the regulation may be overstated.

Department Response:

Infrastructure costs and labor costs were considered in the economic analysis, but not modeled in REMI. Given the ample surplus warehouse space, for example, CalRecycle believes that the ensuing impacts from these costs would be small.

DOF Comment #3:

Beneficiaries of the disposal fees would switch from landfills to mattress recyclers under the proposed regulations. Because both sectors reside in the same sector in the model that CalRecycle has used for the analysis, there should be no impact of the disposal fees on this sector, although there may be an increase in labor intensity from breaking down mattresses rather than dumping. It is also unclear whether the negative impacts to landfills are taken into account with respect to jobs and output. The overall output impacts may thus be overstated. Additional distributional impacts include how the MRO would implement a plan to bring used mattresses to recyclers to avoid illegal dumping when there is no new mattress purchase involved – the efficacy of these mechanisms would affect the recycling rate, and thus the economic impacts.

Department Response:

Depending on how the MRO designs and implements the program, fees could be higher than assumed in this economic assessment, which would result in additional economic impacts. There may be distributional impacts that are not accounted for in this analysis; however, the potential design features of the program are difficult to predict at this time.

DOF Comment #4:

The report could usefully expand the discussion on the fiscal impact to state and local government of the proposed regulations, which may extend beyond the required CalRecycle staffing costs for oversight, education, and outreach. CalRecycle should identify the impact of the regulations on other governments or agencies, such as the impact on correctional facilities, or the avoided clean-up costs of illegal dumping for local governments.

Department Response:

The SRIA identified cost benefits to state and local governments and cited a few examples, but CalRecycle does not have data for additional analysis. Correctional facilities are statutorily exempt from collecting the mattress recycling charge, and subsequent remittance of those monies to the MRO.

DOF Comment #5:

It is incorrect to assign increases in staffing costs to the REMI variable for increases in final demand for the office administrative services industry. Rather, the additional staff represents an increase in state employment that is to be paid for by the fees assessed.

Department Response:

CalRecycle agrees that the correct way of modeling staff increases is to put those in the state government, with the increases being paid for by mattress buyers via an assessment fee. While the suggested change in the input variables will change the resulting estimates slightly, altering the specific variables as suggested would likely have little overall impact.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

Based on the results of a Standardized Regulatory Impact Assessment prepared pursuant to Government Code section 11346.3(c)(1), the Department estimates the economic impact of this regulation (including the fiscal impact) does not exceed DOF's threshold of \$50 million for major regulations, nor do they exceed the \$10 million to which the Department is subject as part of the California Environmental Protection Agency. However, the implementation of the program by the MRO, as required by statute, could approach or exceed the CalEPA threshold depending on how the MRO chooses to design and implement the program. There are a range of representative businesses subject to this rulemaking action depending on the type of facility involved. Cost impacts on those representative private persons or businesses are fully discussed and analyzed in the Standardized Regulatory Impact Assessment. The complete Standardized Regulatory Impact Assessment is available as part of the Initial Statement of Reasons. See "Availability of Statement of Reasons and Text of Proposed Regulations" section.

FINDINGS ON NECESSITY OF REPORTS

Department staff found that the requirement for specific reports is necessary for the health, safety, and welfare of the people of the state because it will help to ensure that the law applies equally to covered entities.

EFFECT ON HOUSING COSTS

Department staff made a determination that the proposed regulation will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

Department staff made an initial determination that, although the proposed regulation would affect approximately 5,000 businesses in California, it would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulation clarifies existing law and imposes no new requirements that would result in adverse cost impacts. The types of businesses affected include solid waste facilities and mattress retailers.

EFFECT ON SMALL BUSINESSES

Department staff made an initial determination that, although that the proposed regulation could affect small businesses (those with less than 100 employees) in a similar manner as typical businesses (above), it will not have a significant statewide adverse economic impact, including the ability of California businesses to compete with businesses in other states, because the proposed regulation clarifies existing law and imposes no new requirements that would result in adverse cost impacts.

EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA

Department staff determined that the proposed regulatory action will increase the amount of jobs and businesses in the state, and that no competitive advantages or disadvantages for businesses will exist.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

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P.O. Box 4025
Sacramento, CA 95812-4025
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E-mail: mattresses@calrecycle.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

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California Department of Resources Recycling and Recovery
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AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department will have the entire rulemaking file, and all information that provides the basis for the proposed regulation, available for inspection and copying throughout the rulemaking process at the address below. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the economic and fiscal impact statement, and the initial statement of reasons. Copies may be obtained by contacting Ashley Harley or Nicole Castagneto at the address or e-mail address listed above. For more timely access to the proposed text of the regulation, and in the interest of waste prevention, interested parties are encouraged to access the Department's Internet webpage at <http://www.calrecycle.ca.gov/Laws/Rulemaking/Mattresses/default.htm>. Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may contact the people named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text – with changes clearly indicated – available to the public for at least 15 days before the Department adopts the regulation as revised. Requests for the modified text should be made to the contact person named above. The Department will transmit

any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; and all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. The Department will accept written comments on the modified regulation for 15 days after the date on which they are made available.