

# PROPOSED REGULATORY TEXT

## Proposed Regulations for the Used Mattress Recovery and Recycling Program

### PROPOSED REGULATIONS

#### USED MATTRESS RECOVERY AND RECYCLING PROGRAM

**TITLE 14: NATURAL RESOURCES**  
**DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**  
**CHAPTER 11. PRODUCT STEWARDSHIP**  
**ARTICLE 3. USED MATTRESS RECOVERY AND RECYCLING PROGRAM**

#### **§18959. Purpose.**

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 law and to provide 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.

Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections 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, 42994, Public Resources Code.

#### **§18960. Definitions.**

(a) Except as otherwise noted, the definitions of this Article supplement and are governed by the definitions set forth in Chapter 21 (commencing with section 42985), Part 3, Division 30 of the Public Resources Code:

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1 (b) "Brand" means a name, term, symbol, design, type, Universal Registry Number  
2 (URN) or any other feature that attributes a mattress to the manufacturer or renovator of  
3 such mattress.

4 (c) "Collection" means any method by which a service provider receives used  
5 mattresses from a program participant.

6 (d) "Operational costs" means costs to operate a mattress recycling organization's  
7 mattress recycling program, including, but not limited to, collection, transportation,  
8 processing, disposal, and education and outreach costs.

9 (e) "Significant or material change" includes a change in a required element of the  
10 used mattress recovery and recycling plan that affects the organization's costs or  
11 revenues, such as a change that results in a modification of the recycling charge, a  
12 change that requires a party other than the mattress recycling organization to make a  
13 major change in how it participates in the program, or a change that reduces the goals  
14 set for the organization in the existing approved recycling plan.

15  
16 Authority cited: Sections 40101 and 40502, Public Resources Code, Reference:  
17 Sections 42985, 42985.1, 42986, 42987, 42987.1, 42987.2, 42987.3, 42987.4, 42987.5,  
18 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2, 42989.2.1, 42989.3, 42990,  
19 42990.1, 42990.2, 42991, 42992, 42993, 42993.1, 42993.2, 42993.3, 42993.4, 42994,  
20 Public Resources Code..

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### 22 **§18961. Used Mattress Recovery and Recycling Plan Submittal.**

23

24 (a) A corporate officer, acting on behalf of a mattress recycling organization, shall  
25 submit as part of the used mattress recovery and recycling plan (plan) the following  
26 information:

27 (1) Contact information of the corporate officer responsible for submitting the  
28 plan to the department and for overseeing used mattress recycling program  
29 activities, including, but not limited to:

30 (A) Contact name

31 (B) Title

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1           (C) Name of mattress recycling organization

2           (D) Mailing address

3           (E) Phone number

4           (F) E-mail address

5           (G) Web address, if applicable

6       (2) List contact information for each manufacturer, renovator, and retailer the  
7       mattress recycling organization is composed of, including, but not limited to:

8           (A) Name of Company

9           (B) Mailing or corporate address

10          (C) Upon request by the department, the following information shall be  
11          provided, if available: individual Web address, contact name, title, phone  
12          number, and e-mail address of participating manufacturers, renovators,  
13          and retailers. The requested information shall be submitted within 30  
14          days of the request unless extended as determined by the department.

15       (3) List of brands covered under the plan.

16       (4) Any changes to the information in subsections (1), (2), and (3) of subdivision  
17       (a) of this section shall be submitted to the department quarterly, or more  
18       frequently as the mattress recycling organization desires, according to  
19       instructions provided by the department.

20       (b) The plan may be submitted electronically according to instructions provided by the  
21       department. If the plan is submitted electronically, the date of electronic submittal will be  
22       considered the date of receipt by the department, provided that the organization also  
23       submits to the department a hard copy submittal letter referencing the plan electronic  
24       document with the signature of a corporate officer of a mattress recycling organization.

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26       Authority cited: Sections 40101 and 40502, Public Resources Code, Reference: Section  
27       42985, 42986, 42987, 42987.1, 42987.2, 42987.3, Public Resources Code.

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### 1 **§18962. Used Mattress Recovery and Recycling Plan.**

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3 (a) A used mattress recovery and recycling plan (plan) shall follow the standard outline  
4 below and contain the following:

5 (1) Proof of Certification.

6 (2) Program Goals, Methods, and Activities. Identify program objectives  
7 consistent with California's solid waste management hierarchy as required by  
8 subdivision (a) of section 42987.1 of the Public Resources Code. Describe  
9 how the program will meet the requirements of subdivisions (d), (g), (i), (j), (k),  
10 (l), (m), (o), and (p) of section 42987.1 of the Public Resources Code. For  
11 plans submitted after January 1, 2018, identify objectives and activities that  
12 will comply with the state mattress recycling goals, pursuant to section  
13 42987.5 of the Public Resources Code.

14 (3) Contact information per section 18961.

15 (4) Stakeholder Consultation Process per subdivision (c) of section 42987.1 and  
16 42987.2 of the Public Resources Code.

17 (5) Performance Measurement. Include the requirements of subdivisions (f) and  
18 (h) of section 42987.1 of the Public Resources Code.

19 (6) Financing Mechanism. Includes the requirements of subdivisions (e) of  
20 section 42987.1 of the Public Resources Code, and audits per subdivision (b)  
21 of section 42990 of the Public Resources Code. A mattress recycling  
22 organization shall allocate revenues and expenses applicable to this program  
23 in accordance with Generally Accepted Accounting Principles (GAAP).

24 (7) Education and Outreach. Describe education and outreach efforts as  
25 required by subdivision (n) of section 42987.1 of the Public Resources Code,  
26 including methods of distribution. The plan may also include a description of  
27 education and outreach efforts to all parties affected by the program and may  
28 include additional options available for consumers to dispose of their used  
29 mattresses, such as mattress renovation.

30 (8) Advisory Committee Report. Include the report by the mattress recycling  
31 organization advisory committee as required by subdivision (q) of section

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1           42987.1 of the Public Resources Code. The mattress recycling organization  
2           may include a description of how it addressed the points or recommendations  
3           raised in the Advisory Committee Report.

4   **(b)** The mattress recycling organization submitting the plan shall provide, upon  
5   request, additional information that is reasonably related to compliance with the  
6   recycling plan and that the organization can reasonably compile to assist the  
7   department as may be necessary for the approval of the plan.

8   **(c)** The department shall determine if the plan is complete and notify the submitting  
9   mattress recycling organization within 30 days of receipt of the plan. If the department  
10   finds that the plan is complete, the department's 90-day review period for consideration  
11   of approval of the plan, set forth in section 42987.3 of the Public Resources Code, will  
12   commence upon the original date of receipt. If the plan is incomplete, the department  
13   shall identify what additional information shall be submitted to make it complete and the  
14   plan shall be resubmitted within not less than 30 days or as determined by the director.  
15   If the department determines upon resubmittal that the plan is complete, the  
16   department's 90-day review period for consideration of approval of the plan will  
17   commence upon the original date of receipt of the resubmittal.

18   **(d)** If the department conditionally approves a plan, the department shall identify the  
19   deficiencies in the plan and the mattress recycling organization shall comply with the  
20   conditions of approval within not less than 60 days or as determined by the director of  
21   the notice date. If the conditions are met, the department shall approve the plan.

22   **(e)** If the department conditionally approves a plan and the conditions are not met, the  
23   department shall disapprove the plan.

24   **(f)** If the department disapproves a plan, the department shall identify the deficiencies  
25   in the plan and the mattress recycling organization shall resubmit a plan or provide  
26   supplemental information requested within not less than 60 days of the notice date or as  
27   determined by the director.

28   **(g)** The mattress recycling plan shall be submitted for re-approval upon any significant  
29   or material change, as defined. The department shall review the revised plan within 90  
30   days of receipt. The department may approve, disapprove, or conditionally approve the  
31   revised plan. The department may also require the mattress recycling organization to

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1 resubmit a revised mattress recycling budget if there is a significant or material change,  
2 as defined.

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4 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:  
5 Sections 42985, 42986, 42987, 42987.1, 42987.2, 42987.3, 42989.1, 42989.2,  
6 42989.2.1, 42989.3, Public Resources Code.

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### 8 **§18963. Mattress Recycling Charge and Annual Budget.**

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10 (a) A corporate officer, acting on behalf of a mattress recycling organization, shall  
11 submit a used mattress recycling program budget on or before July 1, 2015, and  
12 on or before July 1 annually thereafter. The annual budget may be submitted  
13 electronically according to instructions provided by the department. If the annual  
14 budget is submitted electronically, the date of electronic submittal will be  
15 considered the date of receipt by the department, provided that the organization  
16 also submits to the department a hard copy submittal letter referencing the annual  
17 budget electronic document with the signature of a corporate officer of a mattress  
18 recycling organization.

19 (b) In addition to the requirements of subdivisions (a), (b), and (c) of section 42988 of  
20 the Public Resources Code, the information submitted in the used mattress  
21 recycling program budget shall contain the following:

- 22 (1) Contact information. Identify the corporate officer of the mattress recycling  
23 organization responsible for annual used mattress program budget submittal.
- 24 (2) Anticipated revenues and costs. Describe anticipated revenues and costs of  
25 implementing the program, including related programs, projects, contracts,  
26 and administrative expenses.
- 27 (3) Mattress recycling charge and itemization. Identify the amount of the mattress  
28 recycling charge, including an itemization of costs that each charge covers.
- 29 (4) For used mattress recycling program budgets submitted July 1, 2017 all  
30 actual expenses incurred to date shall be included. For annual reports  
31 submitted thereafter, previous two years of actual expenses shall be included.

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1 Authority cited: Sections 40101 and 40502, Public Resources Code, Reference:  
2 Sections 42985, 42986, 42987, 42988, 42988.1, 42988.2, 42989, 42989.1, 42989.2,  
3 42989.2.1, 42989.3, Public Resources Code.

### 4 5 **§18964. Mattress Recycling Organization Annual Report.**

6  
7 (a) The mattress recycling organization annual report shall be submitted by a  
8 corporate officer acting on behalf of a mattress recycling organization that is operating a  
9 used mattress recycling program under a department-approved used mattress recovery  
10 and recycling plan. The annual report may be submitted electronically according to  
11 instructions provided by the department. If the annual report is submitted electronically,  
12 the date of electronic submittal will be considered the date of receipt by the department,  
13 provided that the organization also submits to the department a hard copy submittal  
14 letter referencing the annual report electronic document with the signature of a  
15 corporate officer of a mattress recycling organization.

16 (b) The annual report shall follow the outline below and contain the following:

17 (1) Contact information. Identify the corporate officer of the mattress recycling  
18 organization responsible for annual report submittal.

19 (2) Executive Summary. The purpose of the Executive Summary is to provide a  
20 broad understanding of the mattress recycling organization's program as a  
21 whole and to put into context the data and information that will follow. Provide  
22 a brief description of the mattress recycling organization's used mattress  
23 recovery efforts during the reporting period pursuant to section 18962.

24 (3) A description of the methods used to collect, transport, and process used  
25 mattresses in California.

26 (4) Include an updated list of participating manufacturers, renovators, and  
27 retailers and any updates to their respective contact information per section  
28 18961(a)(2) and an updated list of brands covered under the plan per section  
29 18961(a)(3).

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- 1        (5) Description of how consumers of mattresses in California had an opportunity  
2            to recycle and properly manage their used mattresses, including the number,  
3            location, and type of collection points in the program.
- 4        (6) May include a description of activities followed by program participants to  
5            ensure proper collection and management of used mattresses.
- 6        (7) A description of methods used by the mattress recycling organization to  
7            coordinate with existing used mattress collection and recycling programs with  
8            regard to the proper management or recycling of discarded or abandoned  
9            mattresses.
- 10       (8) Description of objectives and activities based on the used mattress recovery  
11           and recycling plan. State objectives from the approved plan and report on  
12           achievement during the reporting period. Describe any adjustments to  
13           objectives stated in the approved plan that may be made for the upcoming  
14           reporting period and accompanying rationale for those changes. If any changes  
15           are significant or material, as defined, the mattress recycling organization shall  
16           amend and resubmit its plan for approval by the department. The annual report  
17           shall include:
- 18                (A) Quantitative information on subdivisions (b), (c), (d), (e), (f), (g), and (j)  
19                section 42990.1 of the Public Resources Code, including conversion  
20                factor(s), if used.
- 21                (B) Qualitative and/or quantitative information on subdivisions (g), (l), and  
22                (m) of section 42987.1 of the Public Resources Code.
- 23        (9) Financing Mechanism. Include the mattress recycling organization's total  
24           expenses and revenues associated with the implementation of the used  
25           mattress recycling program. Changes to the mattresses recycling charge shall  
26           be reflected in the annual program budget for approval by the department. If a  
27           mattress recycling organization changes the amount of the mattress recycling  
28           charge in the first 12 months during which the mattress recycling charge is  
29           being collected per subsection (1) of subdivision (c) of section 42989 of the  
30           Public Resources Code, the mattress recycling organization shall provide the  
31           department no less than 90 days' notice before the change in the amount of the



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1 mattress recycling charge takes place. If a mattress recycling organization  
2 conducts activities that are separate from the implementation and management  
3 of the California used mattress recycling program, then the annual report shall  
4 include documentation on how the collection and use of funds from the  
5 California mattress recycling charge were kept separate from other activities of  
6 the mattress recycling organization, including the methodology for distribution  
7 of shared costs. Consistent with subdivision (a) of section 42990.1 of the Public  
8 Resources Code, the annual report shall include the following:

9 (A) Mattress recycling charge per mattress size

10 (B) Capital costs

11 (C) Education/Outreach costs

12 (D) End-of-life used mattress management costs with line items, if  
13 applicable, for collection, transportation, recycling, renovating, reuse,  
14 and proper disposal

15 (E) Program administration costs including, but not limited to, the  
16 department's costs pursuant to subdivision (a) of section 42988.2 of the  
17 Public Resources Code, and third party legal costs. Surplus funds, if  
18 any, and detailed rationale for the specified level of surplus.

19 (F) For the first 12 months during which the mattress recycling charge was  
20 collected, include a description of any changes to the amount of the  
21 mattress recycling charge, and how implementation of the change  
22 complied with subsection (1) or (2) of subdivision (c) of section 42989 of  
23 the Public Resources Code, if applicable. The mattress recycling  
24 organization may also include a description of why the change was  
25 made.

26 (10) Education and Outreach. Provide a description of educational materials that  
27 were provided to program participants, including electronic examples of these  
28 materials. Identify any method(s) used to determine the effectiveness of  
29 educational and outreach efforts (e.g., surveys, hits on specific web pages,  
30 number of participants at events, etc.), if applicable. Describe any changes to  
31 those materials that are planned for subsequent years, if applicable.

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1       (11) Audits. The annual report shall include an independent financial audit of the  
2       used mattress recovery and recycling program funded from the mattress  
3       recycling charge. The audit shall be conducted in accordance with auditing  
4       standards generally accepted in the United States of America, and standards  
5       set forth in Government Auditing Standards issued by the Controller General of  
6       the United States. The financial audit submitted to the department shall be  
7       prepared by an Independent Certified Public Accountant (CPA). The CPA shall  
8       not perform non-audit services for the mattress recycling organization that  
9       would impair independence as defined in the Government Auditing Standards  
10      issued by the Controller General of the United States (e.g., accounting  
11      services, development of internal controls, management decisions). The  
12      independent financial audit shall include:

13      (A) Mattress recycling program financial statements, as required by GAAP.

14      (B) An opinion on the mattress recycling organization's compliance with the  
15      financial aspects of Chapter 21 (commencing with section 42985), Part  
16      3, Division 30 of the Public Resources Code and Title 14, Division 7,  
17      Chapter 11, Article 3 of the California Code of Regulations.

18      (C) Findings and recommendations as they relate to the financial aspects of  
19      the program.

20      (D) Management Letter, if issued, by the mattress recycling organization's  
21      CPA.

22      (12) Advisory Committee Report. The annual report shall include the report of the  
23      Advisory Committee required by subdivision (k) of section 42990.1 of the Public  
24      Resources Code.

25      (13) Good faith effort. For annual reports submitted on and after July 1, 2019, a  
26      demonstration of good faith effort with the state mattress recycling goals  
27      established pursuant to section 42987.5 (b) of the Public Resources Code.

28      (c) The department shall determine if the annual report is complete and notify the  
29      submitting mattress recycling organization within 30 days. If the department finds  
30      that the plan is complete, the department's 60-day review period for consideration of  
31      approval of the annual report will commence upon the original date of receipt. If the

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1 annual report is incomplete, the department shall identify what additional information  
2 shall be submitted to make it complete and the annual report shall be resubmitted  
3 within not less than 60 days or as determined by the director. If the department  
4 determines upon resubmittal that the annual report is complete, the department's 60-  
5 day review period for consideration of approval of the annual report will commence  
6 upon the original date of receipt of the resubmittal. The department may adopt a  
7 determination of compliance or non-compliance by approving, disapproving, or  
8 conditionally approving the annual report.

9 (1) If the department conditionally approves the annual report, the department  
10 shall identify the deficiencies in the annual report and the mattress recycling  
11 organization shall comply with the conditions of approval within not less than  
12 60 days of the notice date or as determined by the director. If the conditions  
13 are met, the department shall approve the annual report.

14 (2) If the department disapproves the annual report, the department shall identify  
15 the deficiencies in the annual report and the mattress recycling organization  
16 shall resubmit an annual report or provide supplemental information  
17 requested within not less than 60 days of the notice date or as determined by  
18 the director.

19 (3) If the department conditionally approves an annual report and the conditions  
20 are not met, the department shall disapprove the annual report.

21  
22 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:  
23 Sections 42985, 42986, 42987.5, 42990, 42990.1, 42990.1, Public Resources Code.

### 24 25 **§18965. Used Mattress Recycler Annual Report.**

26  
27 (a) An annual report shall be submitted to the department and the mattress recycling  
28 organization by a person that is engaged in business as a used mattress recycler. The  
29 annual report may be submitted electronically according to instructions provided by the  
30 department. A hard copy, signed by a corporate officer of a mattress recycler shall be  
31 submitted to the department upon request.

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1 (b) The annual report shall contain the following:

2 (1) Contact information. Identify the corporate officer of the mattress recycler  
3 responsible for annual report submittal.

4 (2) Quantitative information on the number of used mattresses received from  
5 California sources and out of state sources and recycled in the state during the  
6 preceding calendar year. Conversion factor(s), if used, shall also be provided.

7 (3) Quantitative information on the number of used mattresses from California  
8 sources and sent out of state for recycling or other method of disposition.

9 (4) Other information deemed necessary by the department that is reasonably  
10 related to compliance with this chapter and that can be reasonably compiled.

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12 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:  
13 Sections 42985, 42986, 42987, 42991, Public Resources Code.

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### 15 **§18966. Used Mattress Renovator Annual Report.**

16

17 (a) An annual report shall be submitted to the department and the mattress recycling  
18 organization by a person that is engaged in business as a used mattress renovator. The  
19 annual report may be submitted electronically according to instructions provided by the  
20 department. A hard copy, signed by a corporate officer of a mattress recycler shall be  
21 submitted to the department upon request.

22 (b) The annual report shall contain the following:

23 (1) Contact information. Identify the corporate officer of the mattress renovator  
24 responsible for annual report submittal.

25 (2) Quantitative information on the number of used mattresses received from  
26 California sources and out of state sources and renovated in the state during  
27 the preceding calendar year. Conversion factor(s), if used, shall also be  
28 provided.

29 (3) Quantitative information on the number of used mattresses generated in  
30 California and sent out of state for renovation or other method of disposition.

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1        (4) Other information deemed necessary by the department that is reasonably  
2                related to compliance with this chapter and that can be reasonably compiled.

3  
4 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:  
5 Sections 42985, 42986, 42987, 42991, Public Resources Code.

### 6 7 **§18967. Solid Waste Facility Annual Report.**

8  
9 (a) An annual report shall be submitted by a person that is engaged in business as an  
10 operator of a solid waste facility to the department and the mattress recycling  
11 organization. The annual report may be submitted electronically according to  
12 instructions provided by the department. A hard copy, signed by a designated  
13 representative of a solid waste facility shall be submitted to the department upon  
14 request.

15 (b) The annual report shall contain the following:

16        (1) Contact information. Identify the designated representative of the solid waste  
17                facility responsible for annual report submittal.

18        (2) The number of used mattresses disposed of at the site in the preceding  
19                calendar year and the number of mattresses the facility recycled, renovated, or  
20                sent away to be recycled or renovated in the preceding calendar year. Facility  
21                operators are required to count, track, and report on each mattress they  
22                observed during the normal operation of the facility. Facility operators are not  
23                required to do additional sorting or processing to find a mattress that was an  
24                incidental part of a load, or that could not be counted or observed upon receipt.

25  
26 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:  
27 Sections 42985, 42986, 42987, 42991, Public Resources Code.

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### 1 **§18968. Mattress Recycling Organization Advisory Committee Annual Report.**

2  
3 (a) An annual report shall be submitted by a designee of the mattress recycling  
4 organization advisory committee, established pursuant to subsection (3) of subdivision  
5 (a) of section 42987 of the Public Resources Code to the mattress recycling  
6 organization no later than 30 days prior to when the annual report is due to the  
7 department. The annual report may be submitted electronically according to instructions  
8 provided by the department. A hard copy, signed by a designated representative of the  
9 advisory committee shall be submitted to the mattress recycling organization.

10 (b) The annual report shall contain the following:

11 (1) Contact information. Identify the designated representative of the advisory  
12 committee responsible for annual report submittal and each member of the  
13 advisory committee, including member name and company/affiliation.

14 (2) A summary of the consultative process between the advisory committee and  
15 the mattress recycling organization relating to the ongoing implementation of  
16 the plan, as well as any other information deemed pertinent by the advisory  
17 committee to maximize the recovery and recycling of used mattresses in the  
18 state, per subdivision (k) of section 42990.1 the Public Resources Code.

19  
20 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference:  
21 Sections 42985, 42986, 42987, 42990.1, Public Resources Code.

### 22 23 **§18969. Records.**

24  
25 Each mattress recycling organization, manufacturer, renovator, retailer, recycler, and  
26 distributor required to comply with Chapter 21 (commencing with section 42985), Part 3,  
27 Division 30 of the Public Resources Code shall:

28 (a) Maintain records to support the requirements in this Article.

29 (1) Mattress recycling organizations shall maintain records to support section  
30 18962.

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1        (2) Retailers, renovators, recyclers and distributors shall provide access to existing  
2 records on all mattresses sold or offered for sale in the state including:

3            (A) The manufacturer of the mattress.

4            (B) The date(s) the retailer purchased the mattress from the manufacturer.

5            (C) The date(s) the retailer sold the mattress.

6            (D) Certification letter(s) from the department, if provided by a manufacturer,  
7 to demonstrate that the mattress from the manufacturer is or was subject  
8 to a department-approved mattress recycling plan. A retailer shall  
9 provide access to a certification letter only if it is being used as proof of  
10 compliance, pursuant to subdivision (b) of section 42993 of the Public  
11 Resources Code that a manufacturer not listed on the department's  
12 internet website is in compliance and may sell or offer for sale  
13 mattresses in California.

14 (b) Provide the department with reasonable and timely access, as determined by the  
15 department, to its facilities, operations, and any relevant records necessary to  
16 determine compliance with this Article, upon request.

17            (1) Manufacturers, renovators, retailers, distributors, and recyclers will maintain  
18 and provide access to records required by this Article for 3 years.

19            (2) Mattress recycling organizations will maintain and provide access to records  
20 required by this Article for 3 years after submission of the annual report which  
21 relies upon those records.

22 (c) The department may take enforcement action against any mattress recycling  
23 organization, manufacturer, renovator, retailer, recycler, or distributor who fails to  
24 provide the department with access pursuant to this section and subdivision (c) of  
25 section 42993.3 of the Public Resources Code.

26 (d) In addition to the provisions in subdivision (c) of section 42987.3 of the Public  
27 Resources Code, records supplied to the department pursuant to this Article that are, at  
28 the time of submission, claimed to be proprietary, confidential, or trade secret shall be  
29 subject to the provisions in Title 14, California Code of Regulations, Division 7, Chapter  
30 1, Article 4 (commencing with section 17041).

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## PROPOSED REGULATORY TEXT

1 Note: Authority cited: Sections 40401 and 40502, Public Resources Code; and Section  
2 6253, Government Code. Reference: Sections 42985, 42986, 42987. 42987.1, 42987.2,  
3 42987.3, 42987.4, 42987.5, 42988, 42988.1, 42988.2, 42990, 42990.1, 42990.2, 42991,  
4 42993.2, 42993.3, Public Resources Code and Sections 6250 et seq., Government  
5 Code.

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### 7 **§18970. Criteria to Impose a Civil Penalty.**

8

9 In assessing or reviewing the amount of civil penalty imposed for a violation of this  
10 article, the department or the court shall consider the totality of the circumstances,  
11 which may include, but is not limited to, the following:

12 (a) The nature, circumstances, extent, and gravity of the violation(s).

13 (b) The number and severity of the violation(s).

14 (c) Evidence that the violation was intentional, knowing, or negligent.

15 (d) The size of the violator.

16 (e) History of violation(s) of the same or similar nature.

17 (f) The willfulness of the violator's misconduct.

18 (g) Whether the violator took good faith measures to comply with this chapter and the  
19 period of time over which these measures were taken.

20 (h) Evidence of any financial gain resulting from the violation(s).

21 (i) The economic effect of the penalty on the violator.

22 (j) The deterrent effect that the imposition of the penalty would have on both the  
23 violator and the regulated community.

24 (k) Any other factor that justice may require.

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26 Note: Authority cited: Sections 40401 and 40502, Public Resources Code. Reference:  
27 Sections 42985, 42986, 42993, 42993.1, 42993.2, 42993.3, Public Resources Code.

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## PROPOSED REGULATORY TEXT

### 1 **§18971. Procedure for Imposing Civil Penalties.**

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3 (a) Civil penalties may be administratively imposed in accordance with the procedures  
4 outlined in the Administrative Procedure Act at Article 10 of Chapter 4.5 (commencing  
5 with section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code.

6 (b) The accusation or complaint and all accompanying documents may be served on  
7 the respondent by the following means:

8 (1) Personal service.

9 (2) Substitute service by using the same service procedures as described in  
10 section 415.20 of the Code of Civil Procedure.

11 (3) Certified Mail: For respondents who have submitted a mattress recycling plan,  
12 certified mail or registered mail if the letter containing the accusation or  
13 complaint and accompanying material is mailed, addressed to the respondent  
14 at the latest facility or mailing address(es) on file with the department. Proof of  
15 service of the accusation or complaint shall be the certified mail receipts or  
16 registered mail receipts proving the accusation or complaint and  
17 accompanying materials were sent to respondent by certified mail or  
18 registered mail. For respondents who have not submitted or are not required  
19 to submit a mattress recycling plan to the department, certified mail or  
20 registered mail pursuant to the procedures indicated in the Administrative  
21 Procedure Act at subdivision (c) of section 11505 of the Government Code  
22 applies.

23 (c) Civil penalties may be imposed pursuant to subdivision (a) of section 42993.1 of  
24 the Public Resources Code.

25  
26 Note: Authority cited: Sections 40401 and 40502, Public Resources Code. Reference:  
27 Sections 42985, 42986, 42993, 42993.1, 42993.2, 42993.3, Public Resources Code;  
28 and Section 11500, Government Code.