

REQUEST FOR APPROVAL

To: Caroll Mortensen
Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: May 9, 2014

Decision Subject: Approval to Formally Notice Proposed Used Mattress Recovery and Recycling Program Regulations

Action By: May 20, 2014 (revised October 2, 2014)

Summary of Request:

Staff requests approval to begin the formal rulemaking process and formally notice the Proposed Regulations needed to implement the Used Mattress Recovery and Recycling Act [Chapter 388, Statutes of 2013 (Hancock, Senate Bill 254)]¹, upon completion of the economic analysis required by Senate Bill 617 [Chapter 496, Statutes of 2011]².

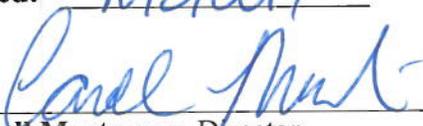
Recommendation:

Staff recommends that the Director approve the Proposed Regulations for the Used Mattress Recovery and Recycling Program and, upon completion of the economic analysis required by SB 617, direct staff to forward the regulations to the Office of Administrative Law (OAL) and the formal regulatory process can begin.

Action:

On the basis of the information and analysis in this Request for Approval, and contingent upon the completion of the economic analysis required by SB 617, I hereby approve the Proposed Regulations for the Used Mattress Recovery and Recycling Program and direct staff to forward the regulatory packet to the Office of Administrative Law so the formal regulatory process may begin.

Dated: 10/2/2014



Caroll Mortensen, Director

¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB254

² http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB617&search_keywords=

Attachment:

1. Proposed Regulations for the Used Mattress Recovery and Recycling Program, available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1221&aiid=1110>

Background Information, Analysis, and Findings:

Clean-up legislation signed by the governor in September 2014, SB 1274³, provides additional clarity regarding definitions, report submittals, and record keeping requirements. These amendments have been incorporated into the Proposed Regulations for the Used Mattress Recovery and Recycling Program.

The purpose of the Used Mattress Recovery and Recycling Act (Act) is to reduce illegal dumping, increase recycling, and substantially reduce public agency costs for the end-of-life management of used mattresses. The Act requires mattress manufacturers – via a mattress recycling organization (MRO) – to develop, finance, and implement a convenient and cost-effective program to recover and recycle used mattresses generated in California. A MRO must be certified by the Department and will be comprised of mattress manufacturers, renovators, and retailers. All manufacturers, renovators, and retailers must register with a MRO.

To implement the Act, the Department has the responsibility to review and approve, disapprove, or conditionally approve used mattress recycling plans (plans) submitted by a designated MRO; review and approve, disapprove, or conditionally approve annual reports from a MRO; review and approve or disapprove a MRO’s annual budget; and provide oversight and enforcement to ensure a level playing field among all mattress manufacturers, retailers, and renovators. The Department must post on its website a list of all manufacturers and renovators that are in compliance with the law. Enforcement is to be addressed through a combination of civil penalties for non-compliance, and transparency that allows all stakeholders and the public to evaluate progress. Additionally, the MRO is required to reimburse the Department quarterly for the Department’s direct costs of administering and enforcing the law, including direct costs associated with regulation development.

To carry out these responsibilities, the Department seeks to promulgate regulations that add clarity and establish administrative procedures covering: definitions; plan and annual report submittal instructions; plan components; the mattress recycling charge and annual budget; annual reports from the MRO, recyclers, renovators, solid waste landfills, and mattress recycling organization advisory committee; record keeping; enforcement provisions; and proprietary, confidential, or trade secret information.

Staff met with numerous stakeholders during an informal comment period (February 20 – March 27, 2014) and conducted a public workshop on March 13, 2014, to share and solicit feedback and guidance on the Department’s informal draft regulatory text. Comments received during this period were posted to the Department’s mattress product management webpages⁴. Staff have considered these comments from the public and incorporated appropriate changes into the Proposed Regulations for the Used Mattress Recovery and Recycling Program (Attachment 1).

³ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1274

⁴ <http://www.calrecycle.ca.gov/Laws/Rulemaking/Mattresses/RuleDocs/CommentInf/default.htm>

The primary concerns expressed by stakeholders regarding the draft informal regulatory text and staff's response to these concerns are briefly summarized here:

- **Definitions.** Stakeholders suggested modifications of some definitions to more accurately describe aspects of the program. Subsequently, staff has modified definitions for “brand” and “significant or material change”. The definition for “recycling fee” was deleted because “recycling charge” is used and defined in statute. The suggestion to delete the term “collection” was not incorporated, but rather the definition of “collection” was modified to include the more general term “program participant”. This definition for “collection” will allow the Department to identify all sources of used mattresses in the state. In addition to these definitions, a number of stakeholders pointed out the discrepancy in language between the statute and the draft text regarding the terms “solid waste landfill facility” and “solid waste facility,” respectively. Therefore staff corrected the aforementioned inconsistency and made the regulations consistent with the statutory language by using the term “solid waste landfill” in the proposed regulatory text.
- **Budget.** Several comments from stakeholders expressed concern that the MRO’s budget would not sufficiently address key components of the program, especially funds used for legal activities. The proposed regulatory text requires that all expenses and revenues associated with the implementation of the program be included in the budget, including any third party legal costs. Staff is acutely aware that a high level of detail and transparency are necessary to fully understand how program funds are being used, as well as the challenges that exist in realizing that detail and transparency. Staff will be working throughout the rulemaking process, and seeking input from stakeholders, to ensure the regulatory text serves this purpose while working within the bounds of statutory language.
- **False or misleading information from MRO members.** Stakeholders expressed concern that the Department would disapprove a plan or begin enforcement actions against the MRO if false or misleading information was provided by one or more of its members. Staff asserts that the statute protects the MRO from penalties in the event that false or misleading information was received [Public Resources Code §42993.1 (b)] and did not identify any needed changes to the proposed regulatory text.
- **Education and outreach.** Stakeholders expressed concern that the outreach and education efforts required of the MRO in the draft text extended beyond what is statutorily required. Staff revised the proposed regulatory text and made outreach and education efforts permissive for certain program participants, such as distributors and renovators.
- **Solid waste management hierarchy.** Staff received comments requesting changes to the proposed regulatory text to clarify that renovation should be emphasized over recycling of used mattresses, in accordance with the solid waste management hierarchy. Staff reviewed the proposed regulatory text and determined that additional changes were not needed to clarify that the program objectives need to be consistent with the solid waste management hierarchy.
- **Protection of proprietary information.** Stakeholders at the public workshop, and through the informal comment period ending March 27, 2014, expressed concern that the identification of best management practices in the annual report would threaten healthy competition or confidentiality agreements with contractors the MRO might hire. Therefore, staff made the inclusion of best management practices permissive.

- **Data collection and safety.** Staff received a comment regarding the feasibility and safety issues associated with data collection at solid waste landfills. Staff has addressed these concerns by revising the proposed regulatory text to recognize that mattresses could be accepted as an incidental part of a load at a solid waste landfill, and as such, it would not be feasible to count or observe these mattresses.
- **Plan submittal timeline.** Staff received a comment which suggested that 30 days was not sufficient to correct deficiencies in a plan found to be incomplete. To address this, staff has included a flexible timeline, as determined by the Department Director, for resubmittal of an incomplete plan.

Subsequent to the Director's approval of the Proposed Regulations and pending completion and approval of the economic assessment impact, staff will submit the complete regulatory package to the Office of Administrative Law (OAL). Once OAL approves the regulatory package, staff will initiate the formal rulemaking including an initial 45-day comment period.