



Rulemaking Archives

Mandatory Commercial Recycling Regulation

The Office of Administrative Law (OAL) approved the mandatory commercial regulation on May 7, 2012 and it became effective immediately. On June 27, 2012 the Governor signed Senate Bill 1018 which included an amendment that requires a business that generates **4 cubic yards or more** of commercial solid waste per week to arrange for recycling services.

Description

New regulation to clarify the responsibilities in implementing mandatory commercial recycling as required by Assembly Bill 341 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]) and Senate Bill 1018. This regulation addresses recycling requirements for businesses that generate 4 or more cubic yards of commercial solid waste per week and multifamily residential dwellings with 5 or more units, regardless of the amount of waste generated; local jurisdiction requirements for education, outreach, monitoring and reporting; and CalRecycle review. Please refer to the [FAQs](#) for additional guidance.

Affected Regulatory Code Sections

California Code of Regulations, Title 14, Division 7, Chapter 9.1, commencing with Section 18835.

Stakeholder Input

- **January 17, 2012 Public Hearing:** CalRecycle held a public hearing to receive comments before adopting the proposed Mandatory Commercial Recycling Regulation. The Regulation was adopted at the January monthly public meeting.
- **December 13, 2011 Public Hearing:** CalRecycle held a public hearing to receive comments for the proposed regulation following the 45-day comment period.
- **October 28, 2011:** CalRecycle began the [45-day comment period](#) for the proposed regulation, extending through December 12, 2011.

Rulemaking Documents

- Senate Bill 1018 documents for the Mandatory Commercial Recycling Regulation:
 - [Notice Publication/Regulations Submission](#). Form 400 Nonsubstantive change. For an accessible version of this document, contact the person listed in the footer below.
 - [Statement of Explanation](#). Explanation of the nonsubstantive change
 - [OAL Approval](#). OAL approved the Nonsubstantive change
 - [Regulation Text](#). Final text of the regulation reflecting SB 1018.
- OAL approved documents for the Mandatory Commercial Recycling Regulation:
 - [Approved Regulation Text](#). OAL approved the final text of the regulation on May 7, 2012.
 - [Final Statement of Reasons](#). Explains the purpose and intent of the regulations.
 - [Updated Informative Digest](#). Updated summary of the preceding laws and regulations relating to the regulations and the effect of the regulations.
 - [Final Statement of Reasons Addendum #1](#), Nonduplication.
 - [Revised Comment List](#).
 - [Notice Publication/Regulations Submission](#) Form 400 Copy of submission approved by OAL. For an accessible version of this document, contact the person listed in the footer below.
- Documents for the Adoption of Proposed Mandatory Commercial Recycling Regulation at the January 17, 2012 CalRecycle public meeting:
 - [Request for Approval](#)
 - [Proposed Regulation for Public Meeting](#)
 - [Summary of Comments From 45-Day Comment Period](#)

→ [Proposed Regulation as Adopted by CalRecycle After Stakeholder Comments at Meeting](#)

- Documents for the October 28, 2011 CalRecycle public meeting:
 - [Notice of Proposed Rulemaking](#), Public notice of the initial 45-day comment period.
 - [Initial Statement of Reasons](#), A statement of the specific purpose and rationale for the program regulation.
 - [Proposed Regulation](#), Proposed regulatory text for 45-day comment period.

Rulemaking History

- May 7, 2012: The Office of Administrative Law (OAL) approved the mandatory commercial regulation and it became effective immediately.
- January 17, 2012: The Mandatory Commercial Recycling Regulation was adopted at the Department of Resources Recycling and Recovery (CalRecycle) Monthly Public Meeting.
- December 13, 2011: CalRecycle held a public hearing to receive additional comments on the proposed regulation.
- October 28 to December 12, 2011: [45-day comment period](#) for the proposed regulation.
- October 28, 2011: Office of Administrative Law approved the publication of the regulatory packet and the 45-day comment period started.
- October 18, 2011: CalRecycle approved the [Proposed Mandatory Commercial Recycling Regulations](#) and directed staff to forward the regulatory packet to the Office of Administrative Law at the CalRecycle Public Meeting.

Rulemaking History Prior to AB 341

Prior to the passage AB 341, CalRecycle and the ARB worked together to establish a rulemaking process for the Mandatory Commercial Recycling Measure required in the AB 32 Scoping Plan. Under a Memorandum of Understanding between the two, CalRecycle was responsible for developing, implementing, and enforcing the regulations, while ARB was responsible for adopting the regulations and providing additional enforcement if needed. To build the basis for the rulemaking, CalRecycle and the ARB hosted eight (8) informal workshops to solicit stakeholder feedback regarding the measure and associated draft regulations. These workshops offered an informal opportunity to talk about design and implementation issues of this measure.

While there are some distinctions between the draft regulations in this prior rulemaking effort and the commercial recycling program outlined in AB 341, the fundamental framework and principals are parallel. Therefore, CalRecycle staff adjusted the proposed regulation for a new rulemaking, as described above to reflect the specifics of AB 341, while also carrying forward the language and details incorporated through the nearly 3-year informal stakeholder engagement process.

The following provides additional details regarding each of these workshops.

WorkShop Dates

- **July 19, 2011** (Sacramento, California)

CalRecycle staff conducted a workshop seeking stakeholder input on additional staff economic analysis and changes to the proposed AB 32 Mandatory Commercial Recycling regulation since the January 19, 2011 meeting. The workshop materials and description are posted on the related CalRecycle public notice page.

- **January 19, 2011** (Sacramento, California)

At the January 19, 2011 workshop, CalRecycle and ARB staff reviewed the [revised draft regulatory language](#), various related economic and environmental impact analyses, and the final draft report for the cost study on commercial recycling. Staff engaged with participants, addressing questions and collecting informal stakeholder comments related to these subjects through January 26, 2011.

- **September 21, 2010** (Sacramento, California)

In coordination with the Air Resources Board, CalRecycle focused the September 21, 2010 informal stakeholder workshop on various related analysis efforts, including:

- Cost model for economic evaluation of the proposed regulation with supplemental economic analysis
- Local government cost survey
- Recycling and composting GHG emission reduction factors
- Environmental impacts analysis

The workshop materials are posted on the related CalRecycle public notice page. CalRecycle staff requested comments by October 8, 2010.

- **June 16, 2010** (Sacramento, California)

As part of the Materials Management and Local Assistance (MMLA) monthly public meeting agenda, CalRecycle staff engaged in an informal stakeholder workshop on the proposed AB 32 Mandatory Commercial Recycling regulation. Event information included: agenda, proposed regulations, summary of proposed regulation, background information, and presentations. CalRecycle staff requested comments by June 30, 2010.

Workshop topics included:

- Introductions and general project background information.
- Overview of the regulation.
- Focused discussion on related issues.
- Presentation of associated tools.
- Next steps and timeline for formal rulemaking.

Presentations included:

- [Sample Mandatory Commercial Recycling Ordinance Project](#) by Yvonne Hunter, Institute for Local Government.
- [Calculator to Estimate Climate, Financial, and Diversion Benefits of Zero Waste](#) by Amity Lumper, Cascadia Consulting Group, Inc.

- **December 15, 2009** (Sacramento, California)

At the December 15 [CIWMB Board Meeting](#), CIWMB Staff presented a discussion of and request for direction on [Draft Proposed Regulatory Language](#) and [Rulemaking Plan](#).

- **September 15, 2009** (Sacramento, California)

At the September 15th [CIWMB Board Meeting](#), CIWMB Staff presented a compilation of [stakeholder input](#) obtained from workshops conducted in July and August. Also presented was [Staff's Draft Concepts](#) for Mandatory Commercial Recycling Regulation.

- **July 20 and August 6, 2009** (Northern and Southern California)

[Agenda](#) | [White Paper](#)

All interested stakeholders were invited to informal stakeholder workshops on Mandatory Commercial Recycling.

Staff provided background information regarding this measure, including related legislation, support projects, and the overall timeline at two initial workshops hosted in the summer of 2009. Discussion included input on a range of issues such as thresholds, exemptions, implementation, enforcement, and costs. These are also described in the related "white paper" provided above.

In follow-up to these workshops, staff prepared and presented a summary of the informal stakeholder comment received relative to staff's draft conceptual regulatory provisions at the September 9, 2009, Strategic Policy Development Committee meeting. At this meeting, staff was directed to use these conceptual regulatory provisions as the basis for draft regulatory language to be presented and discussed at the Strategic Policy Development Committee meeting in December 2009.

Presentations

July 20, 2009

CalEPA Headquarters Building
Sacramento, California

- [Sacramento County's Commercial Recycling Program](#) by Pat Quinn. For more information, go to the Sacramento County Business Recycling web page.

August 6, 2009

South Coast Air Quality Management District
Diamond Bar, California

- [The City of Chula Vista's Commercial Recycling Ordinance](#) by Lynn France. For more information, refer to the City of Chula Vista's Business Recycling Guidelines.



Mandatory Commercial Recycling Frequently Asked Questions

Background

Assembly Bill (AB) 341 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]) directed CalRecycle to develop and adopt regulations for mandatory commercial recycling. CalRecycle initiated formal rulemaking with a 45-day comment period beginning Oct. 28, 2011. The final regulation was approved by the Office of Administrative Law on May 7, 2012. Rulemaking documents and information have been archived.

This FAQ provides CalRecycle's responses to frequently asked questions from stakeholders about the requirements of the commercial recycling regulation under AB 341. Stakeholders have asked the following questions about the mandatory commercial recycling regulation. Please note some questions were received during initial rulemaking conducted jointly by CalRecycle and the Air Resources Board under AB 32, which was later cancelled due to the passage of AB 341.

CalRecycle recognizes that businesses and jurisdictions may have specific needs that are not addressed in the responses provided below. Please contact your Local Assistance and Market Development (LAMD) representative to discuss situations specific to a jurisdiction. Additional resources, including sample ordinances and commercial recycling case studies, can be found on the Institute for Local Government's website. CalRecycle will continue to participate in workshops throughout the state in 2012 to provide assistance to stakeholders.

The FAQ is broken down into the following categories:

- [General](#)
- [Business Requirements](#)
- [Jurisdiction Requirements](#)
- [Reporting](#)
- [Compliance](#)
- [Enforcement](#)

General

What are the main differences in the regulations that were being developed by ARB and CalRecycle under AB 32 and the regulations that CalRecycle is now developing to support AB 341?

While there are some distinctions between the draft regulations in the prior ARB/CalRecycle rulemaking effort and the commercial recycling program outlined in AB 341, the fundamental framework and principal requirements are parallel. The primary difference between AB 341 and the draft ARB/CalRecycle regulations is that the threshold for businesses has changed so that all multi-family housing of five or more units are included in the statutory definition of business.

When will the regulations be adopted?

The Mandatory Commercial Recycling Regulation was approved by the Office of Administrative Law on May 7, 2012. Please see the Regulations page for more information.

What is the schedule for complying with the regulations?

On and after July 1, 2012, businesses are required to recycle, and jurisdictions will need to implement a program that includes education, outreach, and monitoring. The regulations also allow for phased-in implementation ([see related questions](#)). Jurisdictions are required to report in the 2012 Electronic Annual Report (due Aug. 1, 2013) on their initial education, outreach, and monitoring efforts, and, if applicable, on any enforcement activities or exemptions implemented by the jurisdiction.

How many businesses in California will be impacted by AB 341?

CalRecycle estimates that about 470,000 businesses and multi-family residences will have to take specific actions to comply with

the regulations. Of this total, about 250,000 are businesses and an additional 220,000 are multi-family dwellings. The affected businesses represent approximately 20 percent of California's 1.3 million businesses and are responsible for about 75 percent of the commercial waste generated in California. Using the California Department of Finance criteria for small business (fewer than 100 employees), about 90 percent of these affected businesses would be considered "small" businesses. The regulated multi-family dwellings account for about 60 percent of the waste generated by multi-family housing.

Will implementation of the mandatory commercial recycling regulations increase costs for jurisdictions?

The regulations are designed to allow jurisdictions flexibility to utilize their existing tools and solid waste management infrastructure to inform the businesses of the state requirement and to follow up with businesses that are not recycling. When jurisdictions implement the regulations, they will not be starting from zero. Most jurisdictions have some type of education, outreach, and monitoring programs for the commercial sector to build upon. For example, jurisdictions can use existing print material to include information for businesses about the requirement to recycle, and include information about how the businesses can recycle in the jurisdiction. Also, jurisdictions can use their own websites or request updates to franchised or permitted haulers' websites that provide information about the requirement to recycle and how businesses can recycle in the jurisdiction.

Regarding monitoring, the regulation allows for phased-in monitoring using existing mechanisms to inform the businesses of the requirement if they are not recycling. Some examples of monitoring include using the hauler's sales representatives or annual business renewal license letters to inform businesses about AB 341, and/or using code enforcement officers that may already be visiting the business to provide information about recycling requirements. These are just a few examples of the different approaches that jurisdictions can take to monitor commercial recycling efforts.

For reporting, jurisdictions will use the existing Electronic Annual Report to inform CalRecycle staff about their education, outreach, and monitoring programs ([see related question](#)).

Are jurisdictions and/or businesses required to divert 75 percent of their waste?

In addition to Mandatory Commercial Recycling, AB 341 sets a *statewide* goal for 75 percent disposal reduction by the year 2020. This is not written as a 75 percent diversion mandate for each jurisdiction. The 50 percent disposal reduction mandate still stands for cities, counties, and State agencies (including community colleges) under AB 939 and AB 75, respectively. CalRecycle will continue to evaluate program implementation as it has in the past through the Annual Report review process for entities subject to either AB 939 or AB 75.

Similarly, AB 341 does not mandate a diversion goal for businesses - it simply requires that they implement a commercial recycling program.

Are there any costs savings associated with the statute and regulations?

The regulations do not impose additional requirements on businesses or local governments beyond what is required in statute. However, CalRecycle expects that implementation of the statute's requirements (both for businesses and jurisdictions) will result in an estimated statewide average annual cost savings of \$40 million-\$60 million for the 2012-2020 time period. Furthermore, individual businesses may realize cost savings due to reduced rates for recycling services and avoided disposal costs.

What benefits to California are anticipated due to the regulations?

Implementation of the regulations is estimated to result in overall cost savings to California businesses during the 2012 through 2020 time frame. Previous studies on the economic impact of recycling versus disposal have found significant positive economic effects in California. The benefits from increased recycling will not only generate new jobs, but will also result in additional goods and services. CalRecycle expects that implementation of these regulations will increase the availability of recyclable materials, provide increased feedstock for recycled-content product manufacturers, and expand the opportunity for recycling manufacturing facilities and associated job creation in California.

Expanding and/or developing new recycling manufacturing infrastructure in California makes sense from a greenhouse gas emissions standpoint, as most emission reductions occur at the point of remanufacturing and not at the origin of recycling. While some materials collected in California remain in the state for remanufacturing, the majority of the recycled materials are shipped to other parts of the United States or to global markets. CalRecycle will continue to work with the Air Resources Board and other agencies on efforts to provide incentives for the enhancement of in-state recycling manufacturing.

As a result of increasing recycling, CalRecycle also expects that there will be reduced emissions of methane, air toxics, and criteria pollutants from landfills. Furthermore, diverting organic materials into compost products will result in positive impacts on soil and water quality.

The regulations also will help jurisdictions to develop or enhance commercial recycling programs, help the state to further reduce disposal at landfills, and assist in meeting the state's new 75 percent diversion goal. The long-term results will be positive for all entities--businesses grow, tax revenue is generated, California jobs are created, California's dependence on volatile foreign

recycling markets is reduced, the amount of waste sent to landfills is reduced, resources are conserved, new sources of biofuels and energy are created, and greenhouse gas emissions are significantly reduced.

Business Requirements

What is the definition of a "business" and which businesses are required to comply?

"Business" means any commercial or public entity that generates four or more cubic yards of commercial solid waste per week, including but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or non-profit entity, strip mall (e.g. property complex containing two or more commercial entities), industrial facility, school, school district, California State University, community colleges, University of California, special district or a federal, state, local, regional agency or facility. For purposes of this Chapter, "business" also includes a multi-family residential dwelling of five units or more regardless of the amount of commercial solid waste generated. The regulation does not apply to single-family dwellings, multi-family dwellings of four or fewer units, or those businesses that generate less than four cubic yards of commercial solid waste per week. Local jurisdictions can also establish other specific exemptions. Typically, since waste service is identified by round numbers, e.g., 1 cubic yard, 2 cubic yards, etc., it is assumed that a hauler or jurisdiction will educate/outreach/monitor to businesses that generate 4 cubic yards or more of waste.

What is "commercial solid waste?"

The definition of commercial solid waste was further clarified through AB 1398, and includes all types of solid waste generated by a store, office, or other commercial or public entity source, including a business or a multifamily dwelling of five or more units that falls under the definition of a covered business above. According to 2008 Statewide Waste Characterization data, the commercial sector generates nearly three-fourths of the solid waste in California. Most of the material disposed from this sector is readily recyclable.

Are industrial facilities/sites and waste generated at industrial facilities/sites subject to the regulation?

Industrial waste, defined in Section 17225.35 of Title 14 of the California Code of Regulations, is not subject to the requirements of the regulation. However, commercial solid waste generated at an industrial facility or site, for example paper, plastic, metals, cardboard, etc., could be subject to the requirements of the regulation provided the facility/site generates four or more cubic yards of commercial solid waste per week.

Are State facilities subject to the regulation?

It is important to note that many State agencies already operate under a 50 percent waste disposal reduction mandate under AB 75. AB 341 did not add or change the 50 percent diversion requirements for agencies subject to AB 75. However, it is important to note that the definition in the regulation of a business includes public entities, including state agencies, schools, school districts, California State Universities, community colleges, the University of California, special districts and federal, state, local, regional agencies or facilities. Thus, any State facility that generates four or more cubic yards of solid waste per week is subject to these new recycling requirements, if they are not already recycling.

Are public housing complexes operated by local Public Housing Authorities subject to the regulation?

Complexes of 5 or more units operated by a Housing Authority would be required to provide recycling to tenants. CalRecycle is working to get the word out about Mandatory Commercial recycling to Housing Authorities.

Are mobile home and RV parks subject to the regulation?

If mobile homes, RV parks condominiums, and townhomes are considered single family residences by the jurisdiction, then they would not be subject to the requirements. However, jurisdictions are allowed to implement more stringent requirements. For example, for mobile home parks a jurisdiction may consider current service type and zoning to make the determination if mobile home parks should be subject to the regulation. If a mobile home park is serviced by the residential collection program, the jurisdiction may consider a mobile home park of this type is not subject to the regulation. However, if the mobile home park receives commercial service or has commercial zoning, the jurisdiction should work with its Attorney or Counsel to make the determination if the mobile home park is a covered entity and/or if an exemption can be granted.

For RV parks that operate on a rental basis and serve more of a recreational use, the jurisdiction might consider this a commercial business, and apply the waste disposal threshold to determine if the park is subject to the regulation.

My jurisdiction has a dwelling type that may fall under the regulatory definition of a covered business as a multi-family residential dwelling with 5 or more units. However, the waste hauler and/or the owner of the housing complex has indicated that it does not qualify as a multi-family residential dwelling as defined. What additional information would be needed to determine if this is a covered entity under the regulation, or to grant an exemption if appropriate?

Per the regulation, a "business" includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated. There have been inquiries as to how this definition should be applied to certain properties either

based on their use, which may not fall under a jurisdiction's definition of multi-family per its zoning code, for example, or based on the type of service received (e.g. the units receive and pay for individual service).

If a jurisdiction needs help in determining if an entity is covered under the regulation, then the jurisdiction can contact the jurisdiction's LAMD representative. The LAMD representative will consult internally with the CalRecycle Mandatory Commercial Recycling team and then get back to the jurisdiction.

Jurisdictions have the ability under the regulation to consider exemptions from the jurisdiction's ordinance (if applicable), policy, or program to individual businesses and or multifamily complexes within the jurisdiction. The jurisdiction should work with its Attorney or Counsel to determine potential exemptions. If it is determined that an exemption can be made, the jurisdiction would include information as part of the Mandatory Commercial Recycling program update in the Annual Report explaining to CalRecycle the rationale behind the exemption. Reasons for an exemption might include zoning requirements, lack of sufficient space in multi-family complexes to provide additional recycling bins, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste. If you need additional assistance in determining the type of information that would need to be included with the Annual Report to support an exemption, please contact your LAMD representative.

As a reminder, jurisdictions can also develop standards more stringent than those outlined in AB 341. To that end, the jurisdiction could develop recycling standards that address the dwelling type in question.

Please clarify what is meant by a four cubic yard threshold.

The definition of business in the statute and regulation includes any commercial or public entity that generates four or more cubic yards of commercial solid waste per week. SB 1018 was signed by the Governor at the end of June 2012. The bill included clean-up language relating to the MCR threshold for businesses i.e., clarifying that it is four or more cubic yards of trash weekly rather than more than four cubic yards a week. The entire bill is available online.

What activities constitute business diversion?

Businesses are required to select from any one or combination of the following activities:

- Separate recyclable materials from their solid waste stream and either self-haul, subscribe to a hauler, and/or allow the pickup of recyclables, so that the separated material is diverted from disposal to recycling, reuse, or composting activities; and/or
- Subscribe to a recycling service that includes mixed waste processing as part of a system in combination with other programs, activities, or processes that divert recyclable materials from disposal and yields diversion results comparable to source separation ([see related question](#)).

What materials do businesses need to recycle under the regulation?

The regulation does not specify how much or what type of materials must be recycled by businesses, nor does it limit the types of materials that could be included in a recycling or composting program. The regulation does require that jurisdictions inform businesses about the state requirement to recycle and how they can recycle in the jurisdiction. Although composting and other organics management activities will assist in reducing a covered entity's waste generation, it should be noted that legislation specifically requires those meeting the threshold requirements to arrange for recycling services.

CalRecycle understands that each jurisdiction has its own unique set of circumstances, including different types of commercial generators, and is in a better position to determine what programs will work best to divert material from the commercial sector. The regulation provides flexibility and does not dictate how a jurisdiction must implement a program or specify that a jurisdiction must implement a commercial collection program.

While the regulation does not require that jurisdictions implement a commercial collection program, every jurisdiction in the state already has some type of existing commercial recycling program. Some communities have commercial recycling programs that collect the same materials that are included in their residential single-stream program. Some communities offer organics recycling and/or construction and demolition debris recycling programs. Other communities offer source-separated commercial recycling programs in combination with mixed waste processing of materials. Rural communities that do not have an on-site commercial collection recycling infrastructure offer drop-off programs. Finally, many businesses utilize self-haul, back-haul and independent recyclers to recycle. Some programs target specific business materials for recycling while others do not provide this level of detail. The types and sizes of businesses and industry can vary, as can the amount and types of material generated per week.

Are school districts and municipal entities required to recycle?

To the extent that public entities, including schools, school districts and other municipal entities, generate four or more cubic yards per week of commercial solid waste, then they would be required to recycle. The jurisdiction is required to provide information about the recycling requirement to schools, school districts and municipal entities. Complying with the requirement to recycle is the

responsibility of the school district, municipal entity, etc. CalRecycle staff can provide assistance to the jurisdiction in working with school districts and other government agencies.

Will airports be included in the regulation, and how will air carriers be affected by the rule?

The regulatory definition of a business includes airports. Therefore, airports would be required to recycle solid waste generated on the airport's premises using one or more of the methods outlined in the regulation. In addition, airports can require airlines to handle the waste that is removed from the aircraft in California in a prescribed manner. The airlines would be required to comply with the airport's requirements, provided there is no conflict with federal requirements for solid waste handling (e.g., the USDA requirement that food waste from international flights be incinerated or sterilized). In cases of conflict, federal law preempts state, local or private regulation.

Will cruise ships be affected by the regulation?

The guidance on air carriers also applies to cruise ships (see above question).

With regards to strip malls, the regulation states that "the definition includes strip malls containing two or more commercial entities." Does this mean that the strip mall complex that a business resides in is required to recycle at a minimum level, even if many of the businesses within that complex share recycling services?

If the strip mall complex as a whole generates four or more cubic yards per week of commercial solid waste, then the individual businesses in the strip mall are required to recycle. Additionally, the regulation allows the property owner of the strip mall complex to require tenants to recycle and the regulation requires tenants to comply.

Is there an exact minimum amount of recycling that is required of a business or complex with shared services? For example, if a complex just needs to recycle, would the smallest recycling container offered by a jurisdiction be adequate for the entire complex? Would the complex be compliant by recycling only cardboard while disposing all other materials?

AB 341 and the regulation do not specify a minimum amount of recycling. Each business will determine the level of service and materials to be diverted, subject to local requirements. Additionally, a local jurisdiction may implement more prescriptive requirements through ordinances or policies, but this is not required by law.

If there is a business that has an extensive recycling program located in a strip mall, would that business be held liable if the other tenants in the strip mall are not recycling?

No, the business would not be held liable if the other tenants in the strip mall are not recycling. However, as part of its monitoring program, the local jurisdiction would notify the businesses in the strip mall that are not recycling of the state requirement to recycle and how they can recycle.

Our agency has several work sites that do not typically generate four cubic yards of waste per week. However, the sites periodically have special events, for example construction projects, that would generate four or more cubic yards for that week. Are these sites subject to the regulation?

During the time period that a site generates and subscribes to four cubic yards of waste service, then the business will need to recycle. In addition, if each site has individual waste collection, then each site operated by a business or agency would be considered separately in determining whether the regulation is applicable.

I own a business that usually generates 3 cubic yards of refuse per week, but occasionally uses a 6 cubic yard container to collect its own street sweepings. The host jurisdiction does not have a program for recycling or composting street sweepings. Would my business be expected to recycle this material?

The regulation does not address all waste streams, but it does allow flexibility to businesses and jurisdictions to address issues such as street sweepings in their individual programs. The diversion of street sweepings will depend on if there are diversion programs the business can utilize, such as a taking the material to a compost facility. The business should work with its hauler and the jurisdiction to determine if viable diversion opportunities for any specialized materials are available.

What is meant by subscribing to a service that includes mixed waste processing that diverts recyclable materials from disposal and that yields diversion results comparable to source separation?

Subsection 18837(a)(2) specifies a method that a business may take to meet the requirement to recycle the business's commercial solid waste: by subscribing to a recycling service that may include mixed waste processing that diverts recyclable and/or compostable materials from disposal, yielding diversion results comparable to source separation.

In reality, however, there is not sufficient data or standards available to make a comparison to source separation, and therefore CalRecycle is not establishing such a threshold at this time. The language in the existing statute has been interpreted differently by various stakeholders regarding whether or not it establishes a particular threshold for mixed waste processing. On its face, the

statute clearly does not do so. Instead, statute has provided a subjective standard to be evaluated on a case-by-case basis that allows flexibility for compliance. While Subsection 42649.2(b)(2) allows for a recycling service that may include mixed waste processing comparable to source separation as part of that recycling service, by using the term “may” instead of “shall” in this section, it does not require it. That is, mixed waste processing is not necessarily required and therefore a recycling service can include other programmatic aspects. Thus, the recycling service may include more than just mixed waste recycling (consistent with the “may” in statute), but also emphasizes the need for the overall recycling service to yield comparable results to the other compliance alternative in (b)(1) (source separation). Mixed waste processing is intended here to include a myriad of processes to recover recyclable and/or compostable materials from solid waste. This Subsection is not intended to change marketplace dynamics or express a preference for any particular diversion activity, program or process over another. It is intended to provide local governments with flexibility in designing programs specific to their community.

While no single quantitative recovery rate standard exists, the section does establish an expectation that overall diversion results from a recycling service that includes mixed waste processing, and that may include other programs and activities, will be comparable to the overall diversion results of recycling services that rely on source-separated processing of recyclables, and that may also include other programs and activities. In lieu of a quantitative standard, CalRecycle will review jurisdiction compliance on a case-by-case basis using the “good faith effort” standard as already provided in statute (See PRC 41825(e)). As part of its evaluation of local jurisdiction program implementation, the diversion performance of a particular facility may be considered by CalRecycle to see if the facility’s recovery appears to be significantly low (also see section 18839(b)). In this case CalRecycle would take into account relevant factors such as, but not limited to, the character and composition of the solid waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, and the nature and amount of feedstock processed at facilities used for solid waste generated in the jurisdiction. That is, CalRecycle would conduct a case-by-case qualitative evaluation in the context of the entire set of programs in a jurisdiction, whether the facilities involved are mixed waste processing or single-stream material recovery facilities.

Additionally, businesses that choose to subscribe to a recycling service are not required by statute to determine if a mixed waste processing facility that is part of that service is yielding comparable results (e.g., they do not have to survey facilities and ask for recovery data).

As for whether or not CalRecycle should develop a quantitative standard of what constitutes “comparable to source separation” for mixed waste processing, CalRecycle has committed to working on this issue in the future. Prior to the formal rulemaking, this was the subject of considerable discussion and controversy. A working group convened by CalRecycle determined that there is not sufficient information at this time to promulgate such a standard. This is due in part because of variations in feedstock, processing technologies, residuals composition, lack of reporting, etc. However, CalRecycle recognizes that future work is needed on this issue as part of its other work on AB 341 (report on how to meet 75 percent diversion) and that this may lead to future rulemakings that establish performance requirements for mixed waste processing facilities.

The regulation states that self-hauling recyclables would be enough for a business to be considered recycling. Does self-hauling include taking recyclables from a business to an employee’s or owner’s residence to recycle?

In general, self-haul refers to hauling done outside of a franchise agreement. There may be local restrictions that would pertain to this particular scenario. This level of detail would need to be addressed locally, as it is not specified in the regulation. Current examples of self-haul requirements implemented by California jurisdictions include:

- Sacramento County addresses self-haul requirements in its ordinance information booklet (see p.9). Although it does not address the specific detail in question, it is a good demonstration of how such details could be addressed.
- Santa Barbara County provides another example of how to address the self-haul issue by requiring specific documentation and following-up with a site visit. Information about this program can be found at the county’s recycling resources website.

Can a business donate or sell its recyclables and still be in compliance?

It is an existing right of businesses to donate or sell their recyclable material.

What information will businesses need to provide and who will it be provided to in order to demonstrate compliance?

AB 341 and the regulation do not require businesses to keep numerical data about recycled materials, but local jurisdictions may choose to enact more stringent requirements to track recycling activities. Thus, independent of this regulation, information about recycling efforts may be requested from the jurisdiction, or by haulers or other agencies assigned to work with businesses on behalf of the jurisdiction. The information requested will assist the jurisdiction in determining the effectiveness of its education, outreach, and monitoring efforts. The jurisdiction may want to know more about what types of materials the business generates and the materials that are being recycled or otherwise diverted from disposal.

We are a major recycling company in California. We process waste generated on site as well. The remainder of the waste that has no economic value or use is treated and shipped to landfills to be used as ground cover. In essence everything we

process is recycled. How do we document our efforts for the jurisdiction? Would we be exempt from the regulation?

There is no formal exemption process at the state level. The jurisdiction in which the business is located makes the determination as to whether to allow exemptions. Additionally, for this example, an exemption would not appear to be necessary as the business already is recycling and therefore would be meeting the requirements of the law.

Are senior citizen residences (nursing homes, assisted living facilities, adult special needs facilities, etc.) considered a multifamily complex or a business?

While not specifically defined in AB 341, senior citizen residences (nursing homes, etc.) and assisted living or adult special needs facilities are distinguished from multifamily rental dwellings in the Department of Housing and Community Development statutes. Also, these types of facilities provide more than housing; some level of service is also provided and they are required by the Health and Safety Code to be licensed. Therefore they would fall under the definition of business and would be required to recycle if they generate 4 cubic yards or more of solid commercial waste per week.

Jurisdiction Requirements

Will my city/county need to adopt a mandatory commercial recycling ordinance?

No. Some communities may choose to adopt a mandatory commercial recycling ordinance; however, an ordinance is not required. Approaches to enforcement might include: 1) requiring businesses to participate in the recycling services that are already available in the city or county, 2) requiring businesses to use a mixed waste processing facility, or 3) implementing a mandatory commercial recycling program using an ordinance.

A number of communities, such as Sacramento, Rancho Cordova, and Chula Vista, have implemented a mandatory commercial recycling ordinance. Please visit the Institute for Local Government's commercial recycling website to view sample ordinances, case studies, and sample outreach, education, and enforcement examples and review information provided by a number of jurisdictions that have implemented mandatory commercial recycling programs.

If my jurisdiction already has an ordinance in place requiring recycling for commercial and/or multifamily customers, but the thresholds are higher than those specified in legislation and the supporting regulation, will we need to modify our ordinance?

If a jurisdiction already has a mandatory commercial recycling ordinance in place but the thresholds would not capture all of the businesses covered by the threshold outlined in AB 341 (namely businesses that generated four or more cubic yards of solid waste or multifamily complexes with five or more units), then the ordinance does not need to be amended, but the jurisdiction would be responsible for providing education, outreach and monitoring to the additional businesses that would be subject to the mandatory commercial recycling provision.

What are the jurisdiction's requirements in terms of providing education, outreach, and monitoring to businesses?

The regulation requires jurisdictions to implement education, outreach, and monitoring programs to inform businesses of the state requirement to recycle and how they can recycle in the jurisdiction. Jurisdictions should choose methods to provide education and outreach that maximize existing resources including using existing websites, brochures, on-site meetings, etc. For example, if the hauler already sends out a sales representative to work with businesses that are not recycling, then the hauler's sales representative could inform the business of the state requirement, and then assist the business in determining the best approach to recycle. Other options include using the jurisdiction's own staff, community groups, or independent recyclers to inform the businesses of the state requirement and how the businesses can recycle in the jurisdiction. If the jurisdiction already sends out letters to businesses regarding recycling opportunities, the letter could include information about the state requirement.

The requirement for jurisdictions to monitor means identifying and notifying businesses that are not recycling and informing them about the state law and the various ways that they could recycle. The methods for monitoring can differ greatly depending upon a jurisdiction's resources, hauler arrangement, etc. Some jurisdictions may choose to phase in monitoring by targeting the largest businesses the first year and bringing in other businesses in subsequent years. The jurisdiction may choose to utilize the hauler to monitor and notify businesses that are not recycling. The jurisdiction's LAMD representative can help assess if the monitoring approach seems reasonable.

CalRecycle also recommends that jurisdictions view the Institute for Local Government webinar titled *Understanding California's Proposed Commercial Recycling Regulations: What Local Agencies Need to Know About the Education, Outreach and Monitoring Requirements*. This webinar, the fifth in a series, helps local officials understand the new regulation, emphasizing what they need to do to be in compliance with the education, outreach and monitoring requirements. The webinar also includes information about new tools available to help local agencies meet these challenges.

Would a jurisdiction be able to phase in education, outreach, and monitoring to different generator types, areas of the jurisdiction, etc., using a phased-in approach, or do jurisdictions need to ensure that education, outreach, and monitoring

efforts to address all businesses in the jurisdiction are in place by July 1, 2012?

Yes, the jurisdiction can phase in education, outreach, and monitoring efforts. For example, a jurisdiction may want to educate and monitor in the first year the multi-family complexes that have 16 units or greater because, by law, they have an on-site manager available to coordinate with. Jurisdictions also have the flexibility to decide how they develop and implement education and outreach. For example, if multi-family complexes have owners that are located in other areas of the state or live outside California, then the jurisdiction might take various approaches to contacting the owner to inform them of the state requirement to recycle at the complex, such as sending a letter, including information on the solid waste bill, etc.

Another approach in larger jurisdictions might be to target the largest businesses—say the 20 percent largest businesses based upon the amount of solid waste that they dispose—and then the next year move to the next largest group of businesses, and so on. The jurisdiction should communicate with its Local Assistance and Market Development representative to discuss the jurisdiction's plans for a reasonable time period to phase in its program.

If a jurisdiction opts to phase-in education, outreach and/or monitoring, what would be an acceptable timeline for the phase-in period?

The timeline for phasing in education, outreach, and/or monitoring efforts would be determined on a case by case basis in discussion with the jurisdiction's LAMD representative.

Is there a rural exemption in the current regulatory language? What are the general provisions that may be or are available to rural jurisdictions under the regulation?

No, neither AB 341 nor the regulation includes a rural exemption. The regulation is designed to provide flexibility to jurisdictions to design programs that fit their needs. The regulation in Section 18838 does state that CalRecycle may consider factors for rural jurisdictions in its evaluation of a jurisdiction's good-faith effort to implement diversion programs. Factors for rural jurisdictions include small geographic size, low population density, and/or distance to markets. The Final Statement of Reasons also provides guidance to rural jurisdictions on commercial recycling education, outreach, and monitoring programs. In terms of providing education and outreach, rural jurisdictions could include information (i.e., about the state requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction) using an annual letter to businesses for business license renewals. For jurisdictions that do not have staff and/or a hauler to ascertain which businesses are not recycling, then an annual letter would suffice. The letter could be sent electronically or by hard copy depending upon the rural jurisdiction's situation.

Do we need to have a franchise agreement for recycling collection services to comply with the regulation?

No, a franchise agreement is not required to comply with the regulation.

Will existing franchises need to be amended to comply with this regulation?

It will be up to the local jurisdiction to make such a determination. For example, jurisdictions may find that the education, outreach, and/or monitoring programs in their current contracts can meet their needs. Thus, jurisdictions may not need to amend the franchise agreement.

Local jurisdictions may have franchise agreements that do not require commercial recycling, but include a voluntary commercial recycling program. Under the regulation, would these businesses be required to subscribe to the recycling service?

The regulation provides flexibility to businesses and requires that businesses choose one or any combination of the following activities:

- Separating recyclable materials from their solid waste stream and either self-hauling, subscribing to a hauler, and/or allowing the pickup of recyclables, so that the separated material is diverted from disposal to recycling/reuse/composting activities; and/or
- Subscribing to a recycling service that includes mixed waste processing as part of a system in combination with other programs, activities or processes that diverts recyclable materials from disposal and yields diversion results comparable to source separation.

If a jurisdiction has additional specific requirements for businesses, they would inform the businesses of those requirements.

My franchise agreement already requires commercial recycling service be provided to any business that requests it, but my hauler has indicated that it will need a significant rate increase to comply with the regulation. What additional requirements will be placed on the hauler that would result in cost increases?

The regulations are not directed towards haulers. Businesses are required to recycle, and jurisdictions are required to provide education, outreach, and monitoring to the businesses. Jurisdictions will determine how best to implement their education, outreach,

and monitoring programs and whether they must place additional requirements upon the haulers and/or businesses in order to comply with the regulations. The regulations provide flexibility and do not dictate how a jurisdiction must implement a program.

Our franchised hauler has indicated that all of its trucks currently have full routes. Therefore, to add a recycling route for commercial customers would mean the purchase of additional equipment and containers for recycling service. Will there be any financial assistance available to help offset the costs associated with implementing the regulations?

There is some limited financial assistance available through CalRecycle. This financial assistance includes existing grant programs, such as CalRecycle's City/County Beverage Container Block Grant and the Beverage Container Recycling Grants (Competitive) programs, to assist with offsetting costs for implementing recycling programs that include diversion of beverage containers. Please see our website for additional details.

Additionally, the regulations allow for phased-in implementation to help in reducing costs. Thus, if the jurisdiction and hauler find that there are a large number of businesses that are not currently recycling, the jurisdiction and hauler could target a certain number of businesses and bring them into the program using a phased-in approach.

Is there anything in the regulatory language that includes a stipulation that the jurisdiction would be required to provide a curbside program? What are the specific requirements on jurisdictions to comply with the regulation?

No, a curbside program is not required. Jurisdictions are not required to provide any specified type of commercial collection program. Section 18837 of the draft regulations requires jurisdictions to provide education, outreach, and monitoring to affected businesses to inform them of the state requirement to recycle and to tell businesses how they can recycle in the jurisdiction. Regarding informing and educating businesses about recycling opportunities in the jurisdiction, the types and combinations of commercial recycling programs vary by jurisdiction and can include curbside collection, drop-offs, and utilizing mixed waste processing. Additionally, businesses may choose to self-haul material to a drop-off or recycling center, back-haul recyclables to a distribution center, arrange for the pick-up of recyclables, etc.

Many restaurant patrons enjoy their food and beverages at work, home and in locations other than point of purchase. We have found residential and commercial recycling programs can be incongruent. How or will the rulemaking process address these issues?

The regulation is focused on diverting the recyclable material disposed of by the business or at the business location. However, jurisdictions may want to consider current programs in place that serve residents and interface with commercial waste. There is a nexus between the material generated at business locations, for example product packaging, carry out bags and take out boxes, that may become waste at another business location (i.e., place of work) or at the customer's residence. An opportunity may exist in the development of education and outreach methodologies, depending on existing infrastructure and resources, to assist customers in making better decisions about managing materials that leave a business location.

Do we need to develop a specific type of program (e.g., commercial food waste collection, on-site recycling collection, construction and demolition debris recycling) to comply with the regulations?

Jurisdictions are required to conduct education, outreach, and monitoring programs to inform businesses of the state requirement to recycle and provide information about the recycling opportunities that are available within the jurisdiction. However, a jurisdiction does not need to implement a specific type of collection program to comply with these requirements. The regulations do not require specific programs, how much must be recycled, or what type of materials must be recycled by businesses. The regulations also do not limit the types of materials that could be included in a recycling program. By not specifying which materials must be recycled, jurisdictions, businesses, and service providers have greater flexibility in determining the most cost-effective approach(es) to commercial recycling.

Do the regulations change the provisions of transformation as provided for in Public Resources Code section 41783?

Subsection (e)(3) of the regulations clarifies that the provisions of Public Resources Code section 41783 are not affected by this regulation. Commercial solid waste may be taken to a transformation facility, as long as the existing requirement in Public Resources Code section 41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met. For example, front-end processing includes source-separating recyclables or processing material at a mixed waste processing facility. The subsection clarifies that there is no change to the existing provisions of section 41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent.

How does a jurisdiction determine the amount of solid waste a business generates? Is it what the business subscribes to, i.e. a four cubic yard solid waste bin, even if it only fills the bin half full?

The determination of whether a business meets the four cubic yard threshold is based upon the level of service to which the business subscribes and not if they fill the bin every week. For example, a business would meet the threshold if they subscribe to having one four cubic yard refuse container picked up each week, or, conversely, a single one cubic yard refuse container serviced

four times per week, etc. The regulation also distinguishes between recyclable materials that already are separated prior to any solid waste being discarded, versus potentially recyclable materials that are not separated and instead are included in the solid waste being discarded (within this definition the term “generates” refers to commercial solid waste produced and disposed, excluding previously separated recyclable materials, and not the amount of solid waste diverted plus the amount of solid waste disposed). For example, if a business has refuse service for a 3 cubic yard bin serviced once per week and also has a 2 cubic yard recycling bin serviced once per week, this business would be generating less than 4 cubic yards of trash per week and would not meet the threshold that would require it to recycle under the regulation (Note: In this scenario the business is also already recycling). Requiring the threshold to only include solid waste should make it easier for a jurisdiction to determine which businesses are required to comply with the regulation. A jurisdiction does not have to conduct a waste generation study to determine if four or more cubic yards of commercial solid waste is generated; instead, a jurisdiction can, for example, review waste subscription service.

How should a jurisdiction determine the businesses that are subject to the legislation and regulations?

Jurisdictions can utilize hauler records to determine which businesses dispose of four or more cubic yards of solid waste per week. Some jurisdictions, for example those in rural areas, might find it challenging to determine which businesses generate four or more cubic yards of commercial solid waste per week, so they may choose to provide education and outreach to all of the businesses in the community and inform them of the state requirement. In large jurisdictions, or ones serviced by multiple haulers, a more customized approach may be necessary. Local Assistance and Market Development staff can assist in developing a strategy for identifying businesses subject to the regulations.

Are there any exemptions for temporary waste generating activities, such as filming locations, special events, seasonal store sites, etc.?

There are no exemptions for temporary activities such as filming locations, special events, seasonal store sites, etc. Businesses engaged in temporary activities such as these should contact the local jurisdiction to determine how best to proceed with diverting recyclables.

Temporary waste-generating activities may already be tracked by the jurisdiction. Special event licenses and filming permits, for example, may be required for operations of this type. Temporary retail sites may also be tracked through the jurisdiction’s Business License or Tax Collection office. The jurisdiction contact(s) tasked with implementing education, outreach, and monitoring efforts in relation to the mandatory commercial recycling program can work with other departments to determine the best way to provide education and outreach to temporary commercial waste generators, including identifying recycling opportunities, and monitoring the results of these efforts. It should be noted that some temporary uses, such as filming locations, may currently have contracts to handle their recyclable material through the permanent studio site. Additional guidance regarding recycling at special events and location film shooting can be found on the CalRecycle website.

Please clarify what is meant by authorizing a local agency to charge and collect a fee from a commercial waste generator to recover the local agency’s costs incurred in complying with the commercial solid waste recycling program requirements.

AB 341’s fee provision is separate from authorization for jurisdictions to charge a fee for implementing its recycling programs under The Integrated Waste Management Act of 1989 (Chapter 1095, Statutes of 1989 [Sher, AB 939]). AB 341 provides that if a jurisdiction already has a commercial recycling program in place that meets the education, outreach, and monitoring requirements, it is not required to implement an additional program. If, however, the jurisdiction needs to implement a new commercial recycling program in order to comply with AB 341, then it is authorized to charge a new program fee to cover the costs of the new program. Similarly, if a jurisdiction has to make additions to an existing commercial recycling program in order to comply with the mandatory recycling regulations, it is authorized to charge a program fee for the costs of implementing the additional program features. In such as instance, depending on the nature and extent of the additional features, it may be advisable for a jurisdiction to create a new program and charge a fee for the implementation costs. For additional guidance on when this would be the most feasible cause of action, please contact your LAMD representative.

Is a webpage with information about the mandatory commercial recycling requirement enough?

The jurisdiction should demonstrate a real effort to develop and implement an effective outreach program. Information should be placed on the jurisdiction’s website (and the franchise hauler’s website, if applicable) that informs businesses of the state requirement to recycle and explains how businesses can recycle in the jurisdiction. For example, information placed on the website might include contact information for the franchise hauler for service information, locations to self-haul recyclables to, recyclers that will collect specific materials, information about mixed waste processing options versus source separated recycling options, etc. In addition to a webpage, the jurisdiction may consider sending out emails to its business listings. Some jurisdictions are using Twitter, Facebook, and other social media outlets to communicate with businesses. A jurisdiction might also collaborate with local business organizations to help send out emails to their members, place information in their newsletters, or place information on their websites. The California Chamber of Commerce has also offered to assist CalRecycle inform businesses.

For any type of outreach methodology, the jurisdiction will need to assess the tool(s) needed to convey the message to businesses

and reach the businesses in their communities. As part of the Electronic Annual Report review ([see related question](#)), CalRecycle will be looking to make sure the education, outreach, and monitoring programs are being implemented, but also taking into account the jurisdiction's specific circumstances.

How frequently should outreach information be provided to businesses?

The jurisdiction has the flexibility to determine the frequency that outreach should be provided based upon what will work best for the jurisdiction. Providing outreach once per year would be typical. The jurisdiction should communicate with its LAMD representative about the jurisdiction's outreach plans to allow staff the opportunity to provide early guidance on whether the approach seems reasonable.

Some examples of outreach include utilizing existing print pieces and, when updating an existing brochure, letter, or newsletter that is sent out to businesses, adding information about the state requirement to recycle and the recycling opportunities available to recycle in the jurisdiction. Print information could be sent annually to account for turnover, etc., but it could be done more frequently or less frequently depending on what works best for the jurisdiction.

If information is already sent out annually to businesses, then information about the state requirement for businesses to recycle could be incorporated. Or, if a jurisdiction's budget does not allow for sending out a printed material to all businesses annually, then perhaps a phased-in approach would work better. For example, a certain number of printed materials can be sent to a specified group of businesses each year, or a jurisdiction may find that it is most effective to provide a brochure on site visits, etc. Rural jurisdictions might include information in the annual letter to businesses for business license renewals about the state requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction (e.g., drop-off programs, on-site collection, etc.). The jurisdiction may also choose to coordinate with the local Chamber of Commerce and Apartment Associations to assist in disseminating information. The Institute for Local Government has developed sample brochures and outreach materials for jurisdictions to use.

I have been unsuccessful in the past in making contact with the commercial sector. Are there any recommendations for making contact with businesses?

Direct contact with the business community will ensure that the businesses are informed of the requirement to recycle. CalRecycle encourages jurisdictions to include information about the state requirement to recycle as part of any of the activities where the jurisdiction, hauler(s), and/or community organizations make direct contact with businesses.

Examples of direct contact include presenting at business forums, such as the Chamber of Commerce, having the hauler talk to the business, and/or providing technical assistance through waste assessments to explain the state requirement and how businesses can recycle in the jurisdiction.

Always provide a contact person that businesses can call to ask follow-up questions. Community groups such as Heal the Bay and others may be able to assist with making direct contact with businesses. Community groups frequently engage in outreach to small businesses. They might be able to contact businesses in a particular area and meet one on one with businesses to explain how they can recycle in the community and inform the businesses of the state requirement to recycle.

The jurisdiction's hauler or haulers may already contact businesses directly through their sales staff or staff that conduct waste assessments for businesses. The hauler can also assist to inform the businesses that are not currently recycling about the state requirement to recycle and explain how they can recycle. The hauler can then report back to the jurisdiction on those businesses that are not currently recycling. In some jurisdictions the hauler may already be providing this type of information to the jurisdiction.

Another approach is to determine if the jurisdiction's staff may already be working with businesses and can provide information to businesses on the state requirement to recycle. For example, some communities may utilize their health and/or building inspectors to inform businesses as they are working with them on inspecting an establishment, or the local recycling coordinator may conduct waste assessments and can include information about the state requirement to recycle.

Is it a jurisdiction's responsibility to provide outreach, education, and monitoring regarding the regulation to individual tenants of an apartment complex?

It is the jurisdiction's responsibility to provide education and outreach to the apartment owners and to monitor the recycling activities at each complex. The property owner, management company, hauler, or jurisdiction can prepare and provide information about the recycling program to the tenants, for example including a flyer as part of the welcome package, so that tenants know the opportunity is available. The jurisdiction can assess if the information the property owner or management company, for example signage, lease language, welcome package flyer, etc. is sufficient to inform residents about the program. The jurisdiction and/or hauler can provide property owners and/or management companies with sample outreach materials, for example those found on the ILG website, that may assist in getting the word out to tenants of a multifamily complex. Jurisdictions may also want to use the phased in approach [mentioned previously](#) to initially work with complexes with 16 or more units, which by law are required to have an on-site manager, to provide education and outreach and set up monitoring efforts. The phased in approach can assist if limited resources are

available initially to provide education, outreach and monitoring to smaller complexes.

What are some suggestions on how a jurisdiction should handle businesses that are recalcitrant in providing information on self-hauling and other recycling activities not provided by the jurisdiction's franchised/permited hauler?

If a jurisdiction is having difficulty collecting information from businesses, the jurisdiction could develop requirements for businesses that self-haul such as requiring these businesses to complete and retain at their place of business a form certifying that they are recycling. Some businesses already track this information to demonstrate compliance with internal environmental procedures or as part of other state programs.

Reporting

Will businesses and/or jurisdictions need to report diverted tonnages?

Although they are not required to do so, jurisdictions may provide diverted tonnages in the Electronic Annual Report, if available. Jurisdictions will report in the Electronic Annual Report on how they are implementing education, outreach, and monitoring activities. The reported information should include a description of activities implemented, how many and/or which types of businesses were contacted, how the jurisdiction tracked businesses that are not currently recycling and informed them of the recycling requirement, etc. More information about what information jurisdictions should provide in the Electronic Annual Report will be provided later in 2012/early 2013 prior to the release of the 2012 report cycle. Jurisdictions may also implement additional requirements on businesses for reporting purposes.

Additionally, CalRecycle will be measuring if the state as a whole is meeting the goal of reducing approximately 2-3 million tons of solid waste from the commercial waste stream by conducting statewide waste characterization studies in 2014 and 2019.

Does a jurisdiction need to report on its education, outreach and monitoring efforts if it is meeting its per capita disposal target?

Nothing in statute or the regulation relieves a jurisdiction of its obligations once it exceeds a certain level of diversion. The jurisdiction is still required to implement a program that includes education, outreach, and monitoring, and report on the efforts in each of those areas in its Electronic Annual Report in addition to reporting on other AB 939 programs.

When will jurisdictions need to start reporting on their implementation efforts and what should be reported?

Jurisdictions will be required to report in the Electronic Annual Report starting with the 2012 report (due August 2013) on how they are implementing education, outreach, and monitoring activities.

For the 2012 Electronic Annual Report, jurisdictions will only be reporting on what they have done with regards to education, outreach, and monitoring in the last six months of 2012. Note: The 2012 Electronic Annual Report will be reviewed, but will not be part of the next Jurisdiction Review cycle commencing in late 2012, which will cover annual reports from years 2007 through 2011.

How should I report multi-family recycling for complexes that are serviced under the residential program?

If multifamily complexes, such as condominiums and townhomes, including subdivisions operated under homeowners associations, are considered residential properties by the jurisdiction, e.g., they are on the curbside recycling collection route, then they would not be subject to the regulation as they are already provided recycling service as a part of the residential program. The jurisdiction would report this information on its AB 939 residential recycling program in the Electronic Annual Report.

How should I report multi-family recycling for complexes that are subject to the regulation?

The regulation requires that jurisdictions report in the Electronic Annual Report on how they are implementing education, outreach, and monitoring. Guidance will be provided to jurisdictions prior to submittal of the 2012 Electronic Annual Report. The reporting is not intended to be significantly time-consuming. To further illustrate, here is an example of what could be reported to CalRecycle in the Electronic Annual Report regarding a jurisdiction's efforts to provide education, outreach, and monitoring to the multi-family sector: Annual outreach is provided to all multi-family units via a letter or bill insert or a site visit by a representative for the hauler. The hauler confirms that all multi-family units of five or more units have subscribed to recycling services, or, the hauler confirms X number are subscribing to recycling services and that Y number are not subscribing to recycling services. In addition, a representative for the hauler met with the on-site manager of all complexes not subscribing to recycling services to inform them of the requirement.

Compliance

How will CalRecycle determine compliance with the Mandatory Commercial Recycling regulation?

CalRecycle will continue to follow its historical process of reviewing jurisdictions' AB 939 compliance by focusing on program implementation. CalRecycle's Local Assistance and Market Development staff will continue to review the implementation of the local

programs that the jurisdiction has chosen to implement, to determine if the jurisdiction has met the requirements. Additionally, CalRecycle will continue to rely on Electronic Annual Reports, annual staff jurisdiction site visits, and other information that the jurisdiction deems relevant.

If my jurisdiction already offers recycling to commercial and multi-family customers at no additional charge and we monitor participation rates, are we in compliance?

If a jurisdiction already has a commercial recycling program that targets affected businesses and addresses the education, outreach, and monitoring components of the regulation, the jurisdiction would not be required to implement a new or expanded program. However, most jurisdictions will need to ensure that their program informs public entities and multi-family complexes about the state requirement to recycle under AB 341. In addition, depending on the program that the jurisdiction has for monitoring participation rates, the jurisdiction may need to add a component of informing those entities that are not recycling of the state requirement to recycle and how they can recycle in the jurisdiction.

Will a generation study be required to demonstrate compliance with the regulation?

No, a generation study is not required to demonstrate compliance with the regulation.

How will jurisdictions and CalRecycle be able to evaluate the effectiveness of a program without data?

CalRecycle will be measuring if the state as a whole is meeting the goal of reducing approximately 2-3 million tons of solid waste from the commercial waste stream by conducting statewide waste characterization studies in 2014 and 2019.

Regarding jurisdictions' compliance with the law, CalRecycle will take into consideration the reasons that a jurisdiction cannot provide data. However, jurisdictions should have some data to provide to CalRecycle in the Electronic Annual Report to demonstrate that they have conducted education, outreach, and monitoring activities. For example, jurisdictions should know (or have an estimate if the jurisdiction does not have a franchise system) how many businesses are located in the jurisdiction, and how many meet the threshold. The jurisdiction should also be able to determine or estimate the number of businesses that are recycling. The jurisdiction should also be able to report on how many businesses received outreach, education, and monitoring. If jurisdictions are making a good-faith effort to provide education, outreach, and monitoring and there are things outside of their ability to control, e.g., a hauler will not provide data on businesses that meet the threshold, then CalRecycle would take this into consideration. Just as is required in the AB939 review regarding implementing the Source Reduction and Recycling Element and Household Hazardous Waste Element programs, whether or not a jurisdiction has made a good-faith effort in complying with the commercial recycling requirement will be determined on a case-by-case basis.

How should jurisdictions collect information from businesses to determine compliance with the regulation?

Typically, jurisdictions will utilize hauler information to assess if businesses are recycling. Jurisdictions also have the ability to place additional requirements on businesses. Jurisdictions will want to discuss approaches with their Local Assistance and Market Development contact in advance and report in the Electronic Annual Report their efforts at monitoring. It is important to note that the jurisdiction is not held accountable if a business chooses not to recycle, although the jurisdiction still needs to have outreach, education, and monitoring in place. The monitoring of businesses that are and are not recycling is not intended to be onerous for the jurisdiction. However, Local Assistance and Market Development staff will want to know if there are businesses that are not recycling so that CalRecycle staff can assist—as you may have heard in past webinars there are a lot of ways to get businesses, public entities, and multi-family complexes to recycle—and Local Assistance and Market Development staff would like to see how we can assist you in working with key businesses that are not recycling. Discuss your ideas with your LAMD representative to get additional feedback and consider coordinating with any other neighboring jurisdictions for consistency.

Will CalRecycle issue a “Compliance Order” if my jurisdiction cannot demonstrate compliance with Mandatory Commercial Recycling requirements?

Jurisdictions are required to implement outreach, education, and monitoring. CalRecycle will review each jurisdiction's compliance as a part of its review authorized under AB 939 pursuant to PRC 41825. As part of that AB 939 program review, a good faith effort determination can be reached based on the parameters identified in PRC 41850 and PRC 42649.3 (i), namely that all reasonable and feasible efforts have been made to implement its commercial recycling program.

If CalRecycle finds that a jurisdiction has failed to make a good-faith effort to implement a commercial recycling program, CalRecycle would initiate the compliance order process, just as is currently done as a part of the AB 939 review. CalRecycle will evaluate the jurisdiction's implementation of its outreach, education, and monitoring programs during its AB 939 review of the jurisdiction's Source Reduction and Recycling Element and Household Hazardous Waste Element. If the jurisdiction is found to not have made a good-faith effort in implementing its programs, possibly including its mandatory commercial recycling program, CalRecycle can place the jurisdiction on a compliance order, as part of the AB 939 review. If the jurisdiction fails to adequately meet the conditions of the compliance order, then CalRecycle could consider a penalty hearing, etc.

The jurisdiction has a number of privately owned and operated transfer stations where self-haulers deliver commercial waste. Is it the responsibility of the facility owner/operator to ensure compliance with the regulation? Or does the jurisdiction need to establish an ordinance or landfill ban?

The requirement is on businesses to ensure that they are complying with the law. Jurisdictions shall implement a program that includes education, outreach, and monitoring to targeted businesses. Jurisdictions also have discretion to implement landfill bans, ordinances, or other means to regulate commercial recycling consistent with their legal authority.

All waste materials generated by the commercial sector in my jurisdiction are sent to a mixed waste processing facility (a.k.a. 'dirty MRF') whereupon materials are separated from general garbage for recycling. Is that system alone sufficient to comply with the regulation?

No, the system alone is not sufficient, because the jurisdiction is still responsible for conducting education, outreach, and monitoring. Education, outreach, and monitoring ensure that businesses know about the state requirement to recycle and how they can recycle in the jurisdiction. Most communities that have a mixed waste processing system also offer source-separated collection for particular material types, and there is likely associated education. Additional options that may be available to businesses based on the jurisdiction include use of third party recyclers, self-haul, back-haul, and/or donation of recyclables. These communities would need to educate businesses about the state requirement to recycle and how they can recycle in the jurisdiction, e.g. using source-separated collection, mixed waste processing, or a combination of both. Monitoring efforts could include verification as to how the material is being processed at the materials recovery facility. For more information about mixed waste processing in relation to AB 341, please review the Final Statement of Reasons.

Do we need to send commercial and/or multi-family waste to a mixed waste processing facility prior to landfilling to comply with the regulation?

CalRecycle understands that each jurisdiction has its own unique set of circumstances and generators and is in a better position to determine what will work best to divert material from the commercial sector. The regulation provides flexibility and does not dictate how a jurisdiction must implement a program or that the material must be sent to a mixed waste processing facility prior to it being landfilled.

Will CalRecycle consider availability of composting facilities and markets in its review?

CalRecycle will consider availability of markets for collected recyclables, as well as availability of markets for organics.

Enforcement

Is there a requirement for local jurisdictions to enforce the regulation?

No, the regulation does not require jurisdiction enforcement. The objective is to reduce greenhouse gas emissions by 5 million metric tons of carbon dioxide equivalent (MMTCO₂E), which equates to roughly an additional 2 to 3 million tons of currently disposed commercial solid waste being recycled by 2020 and thereafter. This is considered a modest goal based on current recycling trends. It is anticipated that with the built-in flexibility, enough businesses, including multi-family dwellings, will start new recycling programs and/or expand upon existing programs to meet the greenhouse gas emission reduction goal.

Jurisdictions can choose to implement some type of local mandatory commercial recycling program to enforce business compliance. Approaches might include: 1) requiring businesses to participate in the recycling services that are already available in their city or county, 2) requiring businesses to use a mixed waste processing facility, or 3) implementing a mandatory commercial recycling ordinance or policy. In terms of overall policy and program design, mandatory commercial recycling programs can vary substantially. For example, the types and sizes of businesses and industry can vary, as can the amount and types of material generated per week, etc. Those regulated may include the hauler, business generators, or both. Some programs target specific business materials for recycling while others do not specify. The methods for monitoring and determining compliance and enforcing the ordinance can differ greatly depending upon a jurisdiction's resources, hauler arrangement, etc. The regulation is designed to offer as much flexibility as possible while still keeping on target to meet the greenhouse gas emission reduction goal.

Is there an enforcement component for any entity in the regulation?

CalRecycle will evaluate the jurisdiction's implementation of its outreach, education, and monitoring programs during its AB 939 review of the jurisdiction's Source Reduction and Recycling Element and Household Hazardous Waste Element. If the jurisdiction is found to not have made a good-faith effort in implementing its program, CalRecycle can place the jurisdiction on a compliance order. In January 2017, a memo from CalRecycle Director, Scott Smithline, was sent to all Jurisdiction and Annual Report Contacts outlining at any time Jurisdiction Reviews of Mandatory Commercial Recycling and Commercial Organics Recycling Programs.

If a business or school generates over four cubic yards per week of commercial solid waste and refuses to subscribe to recycling service, do we need to take some enforcement action against the business (e.g. fine, notice of violation, etc.) to maintain the jurisdiction's compliance with the regulation?

The regulation does not require enforcement. Jurisdictions are required to inform the business or public entity of the state requirement to recycle and how to recycle in the jurisdiction. However, a jurisdiction may choose to implement an enforcement program. Enforcement options that would be consistent with a jurisdiction's authority include, but are not limited to, a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution.

Will local jurisdictions be required to fine customers for not participating in the program?

No. Enforcement, including fines, is not a requirement. However, jurisdictions may choose, at their discretion and consistent with their legal authority, to use fines or other enforcement mechanisms.

If haulers are not a regulated party, how can jurisdictions and businesses be held accountable if the haulers are not required to provide services and/or report out to the jurisdictions?

The legislation was developed to place the requirement on businesses to use any combination of recycling options, including subscribing to a recycling service, self-hauling recyclables, using a mixed waste processing facility, and/or allowing for the pickup of recyclables. It seems unlikely that a community would have no options for businesses to recycle. Additionally, the jurisdictions may establish their own requirements on haulers. Finally, as each jurisdiction's situation is unique, the assigned LAMD representative will work with jurisdictions to assess their particular situation.

If my jurisdiction offers recycling through a franchised hauler and a multi-family property owner subscribes to the service, but the tenants do not participate in it, does the tenant, property owner, or jurisdiction receive the enforcement action?

In order to answer this question, it is important to distinguish between different types of enforcement. Under AB 341, it is up to jurisdictions to have a commercial recycling program that consists of education, outreach, and monitoring. CalRecycle will evaluate each jurisdiction's education, outreach, and monitoring compliance using the same good-faith effort standard as used when reviewing the jurisdiction's AB 939 Source Reduction and Recycling Element and Household Hazardous Waste Element programs. CalRecycle will not be enforcing directly on businesses, so how the situation described above will be handled will depend upon the program that the jurisdiction has in place. For example, if the jurisdiction requires property owner participation, then it would be taking enforcement action against the property owner and be leaving it up to the property owner to deal with the tenant—most likely through a rental agreement provision.

The jurisdiction's Local Assistance and Market Development contact can assist the jurisdiction in developing effective education and outreach tools to maximize compliance by property owners and tenants. Also, please visit the Institute for Local Government's commercial recycling website for sample flyers and outreach materials that property owners can utilize to educate tenants.



Proposed Regulations: Mandatory Commercial Recycling

Written Comments Received During 45-Day Comment Period (October 28-December 12, 2011)

The written comment period for this rulemaking closed at 5:00 p.m. on December 12, 2011.

Comments submitted are organized below. An overview of comments and CalRecycle responses is provided in two ways: [a summary arranged by section number](#) and [a summary arranged by comment number](#).

Written comments received during 45-day comment period of October 28 through December 12, 2011 for proposed regulations for mandatory commercial recycling.

- W01, [Jennifer Svec, California Association of Realtors](#)
- W02, [Margaret Clark, Los Angeles County Solid Waste Management Committee](#)
- W03, [Linda Novick, Harvest Power](#)
- W04, [Matt Sutton, California Restaurant Association](#)
- W05, [Nenad Trifunovic, Allan Company](#)
- W06, [Todd Priest, Association of California Recycling Industries](#)
- W07, [Nick Lapis, Californians Against Waste](#)
- W08, [Kristina McCaffrey, City of San Jose](#)
- W09, [Cathy Foley, American Forest & Paper Association](#)
- W10, [Brenda Coleman, CalChambe](#)
- W11, [William Merry, Solid Waste Association of North America](#)
- W12, [Charles White, Waste Management](#)
- W13, [Patrick Serfass, American Biogas Council](#)
- W14, [Katherine Brandenburg, Institute of Scrap Recycling Industries](#)
- W15, [Mark Bowers, City of Sunnyvale](#)
- W16, [Kendall Christiansen, Gaia Strategies-InSinkErator](#)
- W17, [Evan Edgar, California Refuse Recycling Council](#)
- W18, [Mary Pitto, Rural Counties Environmental Services Joint Powers Authority](#)
- W19, [Sharon Rubalcava, Contract Services Administrative Trust Fund](#)
- W20, Michael Threoux, Teru Talk, Verbal 12/13/11,

NOTICE PUBLICATION REGULATORY SUBMISSION

See instructions on reverse

For use by Secretary of State only

STD. 400 (REV. 01-09)

NONSUBSTANTIVE

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2012 0706 02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED FILED
IN THE OFFICE OF

2012 JUL 26 PM 3:23

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
Department of Resources Recycling and Recovery

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) MANDATORY COMMERCIAL RECYCLING	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2012-0327-01-S
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 18836
TITLE(S) 14	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective 30th day after filing with Secretary of State

Effective on filing with Secretary of State

\$100 Changes Without Regulatory Effect

Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON TAMAR DYSON	TELEPHONE NUMBER (916) 341-6083	FAX NUMBER (Optional) (916) 399-7217	E-MAIL ADDRESS (Optional) Tamar.dyson@calrecycle.ca.gov
----------------------------------	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Elliot W. Block</i>	DATE 7/6/12
TYPED NAME AND TITLE OF SIGNATORY ELLIOT BLOCK, Chief Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 26 2012

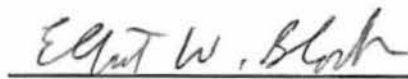
Office of Administrative Law

MEMORANDUM

To: Debra Cornez
Director
Office of Administrative Law

July 6, 2012

From:



Elliot Block
Chief Counsel
Legal Office
California Department of Resources Recycling and Recovery

Subject: **CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA
CODE OF REGULATIONS, TITLE 1, SECTION 100**

Statement of Explanation

On May 7, 2012, the California Department of Resources Regulation and Recovery ("CalRecycle") adopted California Code of Regulations, Title 14, Sections 18835-18839 ("Regulation") to clarify the procedures for implementing Part 3 of Division 30 of the Public Resources Code §42469 through §42649.7 regarding Recycling of Commercial Solid Waste [Chapter 12.8, Statutes of 2011, Chesbro, AB 341] ("Statute").

On June 27, 2012, the Governor signed SB 1018 [Public Resources, Committee on Budget and Fiscal Review] which included an amendment to Section 42649.2 of the Statute changing the threshold for businesses subject to mandatory commercial recycling from "more than 4 cubic yards of commercial solid waste per week" to "4 or more cubic yards of commercial solid waste per week." The relevant text from SB 1018 states:

SEC. 108. Section 42649.2 of the Public Resources Code is amended to read:

42649.2. (a) On and after July 1, 2012, a business that generates four cubic yards or more of commercial solid waste per week or is a multifamily residential dwelling of five units or more shall arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste, to the extent that these services are offered and reasonably available from a local service provider.

- (b) A commercial waste generator shall take at least one of the following actions:
- (1) Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials.
 - (2) Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

JUL 30 2012

CALRECYCLE

State of California
Office of Administrative Law

In re:

Department of Resources Recycling and
Recovery

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:

Amend sections: 18836

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT


California Code of Regulations, Title 1,
Section 100

OAL File No. 2012-0706-02 N

The Governor signed SB 1018 (Stats. 2012, c. 39) on June 27, 2012 which, among other things amended Section 42649.2 (a) of the Public Resources Code concerning the Recycling of Commercial Solid Waste Statute. As a result, CalRecycle found it necessary to amend section 18836 to make it consistent with this changed California statute. CalRecycle proposed to revise the definition of "Business" in Section 18836 (a) Definition by adding "four cubic yards or more" of commercial solid waste per week and striking out "more than four cubic yards" of commercial solid waste per week.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 7/26/2012



Rhea A. Moyer
Legal Analyst

For: DEBRA M. CORNEZ
Director

Original: Caroll Mortensen

Copy: Tamar Dyson

- 37 (4) "Hauler" means any person, commercial or public entity which collects,
38 hauls, or transports solid waste for a fee by use of any means, including but
39 not limited to, a dumpster truck, roll off truck, side-load, front-load, or
40 rear-load garbage truck, or a trailer.
41
- 42 (5) "Mixed Waste Processing" means processing solid waste that contains both
43 recyclable and/or compostable materials and trash.
44
- 45 (6) "Self hauler" or "self hauling" means a business that transports its own waste
46 and/or recyclables rather than contracting with a hauler for that service.
47
- 48 (7) "Source separating" or "source separation" means the process of removing
49 recyclable materials from solid waste at the place of generation, prior to
50 collection, and placing them into separate containers that are separately
51 designated for recyclables.
52

53 **Authority cited: Section 40502, Public Resources Code. Reference: Section 42649.1,**
54 **Public Resources Code.**
55

56 **§18837. Mandatory recycling of commercial solid waste by businesses.**
57

- 58 (a) On and after July 1, 2012, a business shall take at least one of the following
59 actions in order to reuse, recycle, compost, or otherwise divert commercial solid
60 waste from disposal:
61
- 62 (1) Source separating recyclable and/or compostable materials from the solid
63 waste they are discarding and either self-hauling, subscribing to a hauler,
64 and/or otherwise arranging for the pick-up of the recyclable and/or
65 compostable materials separately from the solid waste to divert them from
66 disposal.
67
- 68 (2) Subscribing to a recycling service that may include mixed waste processing
69 that yields diversion results comparable to source separation.
70
- 71 (b) To comply with §18837(a), property owners of commercial or multi-family
72 complexes may require tenants to source separate their recyclable materials.
73 Tenants must source separate their recyclable materials if required to by property
74 owners of commercial or multi-family complexes.
75
- 76 (c) Each business shall be responsible for ensuring and demonstrating its
77 compliance with the requirements of this Section. The activities undertaken by
78 each business pursuant to §18837(a) shall be consistent with local requirements,

79 including, but not limited to, a local ordinance, policy, contract or agreement
80 applicable to the collection, handling or recycling of solid waste.

81
82 (d) Except as expressly set forth in §18837(e)(3), this Chapter does not limit the
83 authority of a jurisdiction to adopt, implement, or enforce a recycling program that
84 is more stringent or comprehensive than the requirements of this Section.
85 Businesses located in such a jurisdiction must comply with any local
86 requirements that have been enacted.

87
88 (e) This Chapter does not modify, limit, or abrogate in any manner any of the
89 following:

90
91 (1) A franchise granted or extended by a city, county, city and county, or other
92 local government agency;

93
94 (2) A contract, license, or permit to collect solid waste granted or extended by a
95 city, county, or other local government agency as of the effective date of this
96 regulation;

97
98 (3) The existing right of a business to sell or donate its recyclable materials; or

99
100 (4) The existing provisions of §41783 of the Public Resources Code related to
101 transformation that allow jurisdictions to reduce their per-capita disposal rate
102 by no more than 10 percent. Materials sent to transformation facilities must
103 meet the requirements of §41783(a)(2) of the Public Resources Code
104 regarding front-end methods or programs to remove all recyclable materials
105 from the waste stream prior to transformation to the maximum extent
106 feasible (i.e., businesses whose waste goes to a transformation facility still
107 need to comply with the requirements in subsection 18837(a)).

108
109 **Authority cited: Section 40502, Public Resources Code. Reference: Sections 41783,**
110 **42649.2, and 42649.5, Public Resources Code**

111
112 **§18838. Implementation of commercial recycling program by jurisdictions.**

113 (a) Effective July 1, 2012, whether or not the jurisdiction has met the requirements of
114 Section 41780, each jurisdiction shall implement a commercial recycling program
115 appropriate for that jurisdiction which is designed to divert commercial solid
116 waste generated by businesses and that consists of the following components:

117
118 (1) The commercial recycling program shall include education and outreach to
119 businesses. The jurisdiction shall determine the types of educational and

120 outreach programs to ensure that the program targets the components of
121 the jurisdiction's commercial waste stream.

122
123 (2) The commercial recycling program shall include identification and
124 monitoring of businesses to assess if they are complying with §18837(a). If
125 any businesses subject to these regulations are not in compliance with
126 these provisions, the jurisdiction shall, at a minimum, notify those
127 businesses that they are out of compliance.

128
129 (b) The commercial recycling program adopted pursuant to Subdivision (a) may
130 include, but is not limited to, implementing a commercial recycling policy or
131 ordinance requiring businesses to recycle, requiring a mandatory commercial
132 recycling program through a franchise agreement or contract, or requiring that
133 commercial solid waste from businesses go through either a source separated or
134 mixed waste processing system that diverts material from disposal.

135
136 (c) When adopting its commercial recycling ordinance, policy, or program, a
137 jurisdiction may also, but is not required to, consider the following:
138

139 (1) Enforcement consistent with a jurisdiction's authority, including, but not
140 limited to, a penalty or fine structure that incorporates warning notices, civil
141 injunctions, financial penalties, or criminal prosecution.

142
143 (2) Building design standards that specify space requirements for storage of
144 recyclables or other purposes that may assist the compliance of businesses
145 with the program.

146
147 (3) Exemptions deemed appropriate by the jurisdiction for reasons such as, but
148 not limited to, zoning requirements, lack of sufficient space in multi-family
149 complexes to provide additional recycling bins, lack of markets,
150 non-generation of recyclable materials, or current implementation by a
151 business of actions that result in recycling of a significant portion of its
152 commercial waste.

153
154 (4) Certification requirements for self-haulers which may include, but are not
155 limited to, requiring businesses to maintain written records demonstrating
156 that all self-hauling activities have been completed in accordance with the
157 standards imposed by the jurisdiction's commercial recycling program.

158
159 (d) The commercial recycling program shall apply to businesses, but may also apply
160 to any other commercial entity identified by the jurisdiction as being a source of
161 commercial solid waste.
162

- 163 (e) A jurisdiction may determine the specific material types included in its
164 commercial recycling program, which could include, but are not limited to, paper
165 (including cardboard), plastics, glass, metals, organics, food waste, and non-
166 hazardous construction and demolition.
167
- 168 (f) If, prior to July 1, 2012, a jurisdiction has implemented a commercial recycling
169 program that meets all requirements of this Chapter, as determined by
170 CalRecycle pursuant to §18839, the jurisdiction will not be required to implement
171 a new or expanded program.
172
- 173 (g) If, in order to satisfy the requirements of this Chapter, a jurisdiction must
174 implement a new, or expand an existing, commercial recycling program, it shall
175 not be required to revise its source reduction and recycling element nor comply
176 with the requirements of Public Resources Code §41800 et seq.
177
- 178 (h) The jurisdiction shall include the addition or expansion of a commercial recycling
179 program in its Annual Report required by §41821, et seq. of the Public
180 Resources Code. Each jurisdiction shall report the progress achieved in
181 implementing its commercial recycling program, including education, outreach,
182 identification and monitoring, and, if applicable, enforcement efforts, and the
183 rationale for allowing exemptions, by providing updates in its Annual Report.
184

185 **Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780,**
186 **41821, 42649.3 and 42649.4, Public Resources Code**

187
188 **§18839. CalRecycle Review**

- 189 (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance
190 with §18838 as part of its review of the jurisdiction's source reduction and
191 recycling element and household hazardous waste element programs, pursuant
192 to 14 California Code of Regulations §18772 and §41825 of the Public
193 Resources Code.
194
- 195 (b) During its review pursuant to this Section, CalRecycle shall determine whether
196 each jurisdiction has made a good faith effort to implement its selected
197 commercial recycling program. For this purpose, "good faith effort" means all
198 reasonable and feasible efforts by a jurisdiction to implement its commercial
199 recycling program. During its review, CalRecycle may include, but is not limited
200 to, the following factors in its evaluation of a jurisdiction's "good faith effort":
201
- 202 (1) The extent to which the businesses have complied with §18837(a), including
203 information on the amount of solid waste that is being diverted from

204 disposal by the businesses, if available, and on the number of businesses
205 that are subscribing to service;

206

207 (2) The recovery rate of the commercial waste from each material recovery
208 facility that is utilized by the businesses, the role of that facility in the
209 jurisdiction's overall waste diversion and recycling system, and all
210 information, methods, and calculations, and any additional performance
211 data, as requested and collected by CalRecycle from the material recovery
212 facility operators pursuant to 14 California Code of Regulations §18809.4;

213

214 (3) The extent to which the jurisdiction is conducting education and outreach to
215 businesses;

216

217 (4) The extent to which the jurisdiction is monitoring businesses and notifying
218 those businesses that are out of compliance;

219 (5) The availability of markets for collected recyclables;

220

221 (6) Budgetary constraints; and

222

223 (7) In the case of a rural jurisdiction, the small geographic size, low population
224 density or distance to markets.

225

226 (c) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has
227 failed to make a good faith effort to implement a commercial recycling program
228 and meet the requirements of §18838, CalRecycle shall issue a compliance
229 order with a specific schedule for achieving those requirements. CalRecycle
230 shall issue the compliance order within 30 days after making its finding of
231 non-compliance.

232

233 (d) The compliance order shall identify the portions of the commercial recycling
234 program which are not being implemented or attained by the jurisdiction, or
235 identify areas of the commercial recycling program which need revision.
236 CalRecycle shall also set a date by which the jurisdiction shall meet the
237 requirements of the compliance order.

238

239 **Authority Cited: Section 40502, Public Resources Code. Reference: Sections**
240 **41825, 42649.3, 42649.4 and 42649.5, Public Resources Code.**

1 MANDATORY COMMERCIAL RECYCLING

2
3 **TITLE 14. NATURAL RESOURCES**

4 **DIVISION 7. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD**

5 **CHAPTER 9.1. MANDATORY COMMERCIAL RECYCLING**

6
7 **§18835. Purpose.**

8 This Chapter implements Mandatory Commercial Recycling pursuant to §42649 of the
9 Public Resources Code. The purpose of the statute is to reduce greenhouse gas
10 emissions by diverting commercial solid waste to recycling efforts and to expand the
11 opportunity for additional recycling services and recycling manufacturing facilities in
12 California.

13 **Authority cited: Section 40502, Public Resources Code. Reference: Section 42649**

14 **§18836. Definitions.**

15 (a) The following definitions shall govern the provisions of this Chapter.

- 16
17 (1) “Business” means any commercial or public entity that generates more than
18 four cubic yards of commercial solid waste per week, including, but not
19 limited to, a firm, partnership, proprietorship, joint-stock company,
20 corporation, or association that is organized as a for-profit or nonprofit
21 entity, strip mall (e.g. property complex containing two or more commercial
22 entities), industrial facility, school, school district, California State University,
23 community college, University of California, special district or a federal,
24 state, local, or regional agency or facility. For purposes of this Chapter,
25 “business” also includes a multi-family residential dwelling of five units or
26 more, regardless of the amount of commercial solid waste generated.
27
28 (2) “Commercial solid waste” means all types of solid waste, including
29 recyclable materials that are discarded from businesses as defined in
30 subdivision (1), but does not include waste from single family residences or
31 multifamily units of less than 5 units and does not include industrial waste.
32
33 (3) “Franchise” means any agreement between a jurisdiction and a hauler for
34 transporting commercial solid waste.
35

- 36 (4) “Hauler” means any person, commercial or public entity which collects,
37 hauls, or transports solid waste for a fee by use of any means, including but
38 not limited to, a dumpster truck, roll off truck, side-load, front-load, or
39 rear-load garbage truck, or a trailer.
40
- 41 (5) “Mixed Waste Processing” means processing solid waste that contains both
42 recyclable and/or compostable materials and trash.
43
- 44 (6) “Self hauler” or “self hauling” means a business that transports its own waste
45 and/or recyclables rather than contracting with a hauler for that service.
46
- 47 (7) “Source separating” or “source separation” means the process of removing
48 recyclable materials from solid waste at the place of generation, prior to
49 collection, and placing them into separate containers that are separately
50 designated for recyclables.
51

52 **Authority cited: Section 40502, Public Resources Code. Reference: Section 42649.1,**
53 **Public Resources Code.**

54
55 **§18837. Mandatory recycling of commercial solid waste by businesses.**
56

- 57 (a) On and after July 1, 2012, a business shall take at least one of the following
58 actions in order to reuse, recycle, compost, or otherwise divert commercial solid
59 waste from disposal:
60
- 61 (1) Source separating recyclable and/or compostable materials from the solid
62 waste they are discarding and either self-hauling, subscribing to a hauler,
63 and/or otherwise arranging for the pick-up of the recyclable and/or
64 compostable materials separately from the solid waste to divert them from
65 disposal.
66
- 67 (2) Subscribing to a recycling service that may include mixed waste processing
68 that yields diversion results comparable to source separation.
69
- 70 (b) To comply with §18837(a), property owners of commercial or multi-family
71 complexes may require tenants to source separate their recyclable materials.
72 Tenants must source separate their recyclable materials if required to by property
73 owners of commercial or multi-family complexes.
74
- 75 (c) Each business shall be responsible for ensuring and demonstrating its
76 compliance with the requirements of this Section. The activities undertaken by
77 each business pursuant to §18837(a) shall be consistent with local requirements.

78 including, but not limited to, a local ordinance, policy, contract or agreement
79 applicable to the collection, handling or recycling of solid waste.

80
81 (d) Except as expressly set forth in §18837(e)(3), this Chapter does not limit the
82 authority of a jurisdiction to adopt, implement, or enforce a recycling program that
83 is more stringent or comprehensive than the requirements of this Section.
84 Businesses located in such a jurisdiction must comply with any local
85 requirements that have been enacted.

86
87 (e) This Chapter does not modify, limit, or abrogate in any manner any of the
88 following:

89
90 (1) A franchise granted or extended by a city, county, city and county, or other
91 local government agency;

92
93 (2) A contract, license, or permit to collect solid waste granted or extended by a
94 city, county, or other local government agency as of the effective date of this
95 regulation;

96
97 (3) The existing right of a business to sell or donate its recyclable materials; or

98
99 (4) The existing provisions of §41783 of the Public Resources Code related to
100 transformation that allow jurisdictions to reduce their per-capita disposal rate
101 by no more than 10 percent. Materials sent to transformation facilities must
102 meet the requirements of §41783(a)(2) of the Public Resources Code
103 regarding front-end methods or programs to remove all recyclable materials
104 from the waste stream prior to transformation to the maximum extent
105 feasible (i.e., businesses whose waste goes to a transformation facility still
106 need to comply with the requirements in subsection 18837(a)).
107

108 **Authority cited: Section 40502, Public Resources Code. Reference: Sections 41783,**
109 **42649.2, and 42649.5, Public Resources Code**

110
111 **§18838. Implementation of commercial recycling program by jurisdictions.**

112 (a) Effective July 1, 2012, whether or not the jurisdiction has met the requirements of
113 Section 41780, each jurisdiction shall implement a commercial recycling program
114 appropriate for that jurisdiction which is designed to divert commercial solid
115 waste generated by businesses and that consists of the following components:

116
117 (1) The commercial recycling program shall include education and outreach to
118 businesses. The jurisdiction shall determine the types of educational and

- 119 outreach programs to ensure that the program targets the components of
120 the jurisdiction's commercial waste stream.
121
- 122 (2) The commercial recycling program shall include identification and
123 monitoring of businesses to assess if they are complying with §18837(a). If
124 any businesses subject to these regulations are not in compliance with
125 these provisions, the jurisdiction shall, at a minimum, notify those
126 businesses that they are out of compliance.
127
- 128 (b) The commercial recycling program adopted pursuant to Subdivision (a) may
129 include, but is not limited to, implementing a commercial recycling policy or
130 ordinance requiring businesses to recycle, requiring a mandatory commercial
131 recycling program through a franchise agreement or contract, or requiring that
132 commercial solid waste from businesses go through either a source separated or
133 mixed waste processing system that diverts material from disposal.
134
- 135 (c) When adopting its commercial recycling ordinance, policy, or program, a
136 jurisdiction may also, but is not required to, consider the following:
137
- 138 (1) Enforcement consistent with a jurisdiction's authority, including, but not
139 limited to, a penalty or fine structure that incorporates warning notices, civil
140 injunctions, financial penalties, or criminal prosecution.
141
- 142 (2) Building design standards that specify space requirements for storage of
143 recyclables or other purposes that may assist the compliance of businesses
144 with the program.
145
- 146 (3) Exemptions deemed appropriate by the jurisdiction for reasons such as, but
147 not limited to, zoning requirements, lack of sufficient space in multi-family
148 complexes to provide additional recycling bins, lack of markets,
149 non-generation of recyclable materials, or current implementation by a
150 business of actions that result in recycling of a significant portion of its
151 commercial waste.
152
- 153 (4) Certification requirements for self-haulers which may include, but are not
154 limited to, requiring businesses to maintain written records demonstrating
155 that all self-hauling activities have been completed in accordance with the
156 standards imposed by the jurisdiction's commercial recycling program.
157
- 158 (d) The commercial recycling program shall apply to businesses, but may also apply
159 to any other commercial entity identified by the jurisdiction as being a source of
160 commercial solid waste.
161

- 162 (e) A jurisdiction may determine the specific material types included in its
163 commercial recycling program, which could include, but are not limited to, paper
164 (including cardboard), plastics, glass, metals, organics, food waste, and non-
165 hazardous construction and demolition.
166
- 167 (f) If, prior to July 1, 2012, a jurisdiction has implemented a commercial recycling
168 program that meets all requirements of this Chapter, as determined by
169 CalRecycle pursuant to §18839, the jurisdiction will not be required to implement
170 a new or expanded program.
171
- 172 (g) If, in order to satisfy the requirements of this Chapter, a jurisdiction must
173 implement a new, or expand an existing, commercial recycling program, it shall
174 not be required to revise its source reduction and recycling element nor comply
175 with the requirements of Public Resources Code §41800 et seq.
176
- 177 (h) The jurisdiction shall include the addition or expansion of a commercial recycling
178 program in its Annual Report required by §41821, et seq. of the Public
179 Resources Code. Each jurisdiction shall report the progress achieved in
180 implementing its commercial recycling program, including education, outreach,
181 identification and monitoring, and, if applicable, enforcement efforts, and the
182 rationale for allowing exemptions, by providing updates in its Annual Report.
183

184 **Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780,**
185 **41821, 42649.3 and 42649.4, Public Resources Code**

186

187 **§18839. CalRecycle Review**

- 188 (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction’s compliance
189 with §18838 as part of its review of the jurisdiction’s source reduction and
190 recycling element and household hazardous waste element programs, pursuant
191 to 14 California Code of Regulations §18772 and §41825 of the Public
192 Resources Code.
193
- 194 (b) During its review pursuant to this Section, CalRecycle shall determine whether
195 each jurisdiction has made a good faith effort to implement its selected
196 commercial recycling program. For this purpose, “good faith effort” means all
197 reasonable and feasible efforts by a jurisdiction to implement its commercial
198 recycling program. During its review, CalRecycle may include, but is not limited
199 to, the following factors in its evaluation of a jurisdiction’s “good faith effort”:
200
- 201 (1) The extent to which the businesses have complied with §18837(a), including
202 information on the amount of solid waste that is being diverted from

203 disposal by the businesses, if available, and on the number of businesses
204 that are subscribing to service;
205

206 (2) The recovery rate of the commercial waste from each material recovery
207 facility that is utilized by the businesses, the role of that facility in the
208 jurisdiction's overall waste diversion and recycling system, and all
209 information, methods, and calculations, and any additional performance
210 data, as requested and collected by CalRecycle from the material recovery
211 facility operators pursuant to 14 California Code of Regulations §18809.4;
212

213 (3) The extent to which the jurisdiction is conducting education and outreach to
214 businesses;
215

216 (4) The extent to which the jurisdiction is monitoring businesses and notifying
217 those businesses that are out of compliance;

218 (5) The availability of markets for collected recyclables;
219

220 (6) Budgetary constraints; and
221

222 (7) In the case of a rural jurisdiction, the small geographic size, low population
223 density or distance to markets.
224

225 (c) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has
226 failed to make a good faith effort to implement a commercial recycling program
227 and meet the requirements of §18838, CalRecycle shall issue a compliance
228 order with a specific schedule for achieving those requirements. CalRecycle
229 shall issue the compliance order within 30 days after making its finding of
230 non-compliance.
231

232 (d) The compliance order shall identify the portions of the commercial recycling
233 program which are not being implemented or attained by the jurisdiction, or
234 identify areas of the commercial recycling program which need revision.
235 CalRecycle shall also set a date by which the jurisdiction shall meet the
236 requirements of the compliance order.
237

238 **Authority Cited: Section 40502, Public Resources Code. Reference: Sections**
239 **41825, 42649.3, 42649.4 and 42649.5, Public Resources Code.**

FINAL STATEMENT OF REASONS MANDATORY COMMERCIAL RECYCLING REGULATIONS

PURPOSE OF THE REGULATION

The purpose of the proposed regulation is to clarify certain provisions of statute (AB 341, Chesbro) and provide procedures for complying with that statute. The purpose of that statute is to reduce greenhouse gas emissions by increasing the amount of commercial waste recycled in California, specifically by requiring businesses and public entities that generate 4 cubic yards or more of solid waste per week, and multifamily residences with 5 or more units, to recycle. Increasing diversion of commercial solid waste through recycling will reduce greenhouse gas (GHG) emissions by as much as 5 million metric tons of carbon dioxide (CO₂) equivalents (MMTCO_{2e}) per year by 2020.

Increasing the amount of commercial solid waste that is recycled, reused, or composted will reduce GHG emissions primarily by: 1) reducing the energy requirements associated with the extraction, harvest, and processing of raw materials; and 2) using recyclable materials that require less energy than raw materials to manufacture finished products. Increased diversion of organic materials (green and food waste) will also reduce GHG emissions by redirecting this material to processes that use the solid waste material to produce vehicle fuels, heat, electricity, or compost.

Implementation of this statute will increase the availability of recyclable materials, provide increased feedstock for recycled-content product manufacturers, and could expand the opportunity for additional recycling manufacturing facilities and associated job creation in California. From a GHG emissions standpoint, providing incentives for expanded or new recycling manufacturing infrastructure in California makes sense because most emission reductions occur at the point of remanufacturing and not at the origin of recycling. While some materials collected in California remain in the state for remanufacturing, the majority of the recycled materials are shipped to other parts of the United States or to global markets.

The proposed regulation includes the following components:

- Requires businesses and public entities that generate 4 cubic yards or more of trash per week, and multifamily complexes of 5 or more residential units, to recycle solid waste that they generate by selecting one, or any of combination of the following: subscribing to a recycling service, source separating their material and self-hauling to a recycling facility, allowing for the pick-up of recyclables, and/or having their material processed in a mixed waste processing facility that yields diversion results comparable to source separation.
- Requires each local jurisdiction, regardless of whether the jurisdiction has met its AB 939 50 percent diversion requirement, to implement a commercial recycling program by July 1, 2012, that consists of education, outreach and monitoring of businesses subject to the Commercial Recycling Regulation. If a jurisdiction

already has a commercial recycling program that targets businesses required to comply with the regulation, and if the program includes education, outreach, and monitoring elements, it would not be required to implement a new or expanded program. Jurisdictions are required to provide education/outreach/monitoring to inform businesses of their obligation to recycle. However, enforcement by local jurisdictions is not required, and jurisdictions do not need to have legal control over the businesses.

- Establishes general criteria for education and outreach to provide information explaining the requirements of the Commercial Recycling Regulation, as well as the recycling opportunities available within the jurisdiction. Jurisdictions have flexibility to conduct education and outreach that fits their existing programs and resources. For example, the jurisdiction may choose whether they or the hauler(s) or community groups conduct these activities, or they may choose a combination. Jurisdictions are also encouraged to utilize existing programs to incorporate information about the new state requirement, such as an existing website, newsletter, etc., to maximize outreach opportunities.
- Establishes general criteria for monitoring of affected businesses and multifamily complexes and includes assessing if affected businesses are subscribing to and participating in recycling services, and notifying affected businesses that are not in compliance with these regulations. This is necessary to ensure that affected businesses that are required by these regulations to recycle commercial waste are identified and monitored, and that they are notified if not in compliance. Jurisdictions have flexibility to implement monitoring that fits their existing programs and resources. For example, the jurisdiction may choose whether it and/or the hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to inform businesses of the state requirement to recycle, such as letters that are sent to businesses, on-site visits, phone calls from the hauler's sales representative, or other approaches to maximize resources. Jurisdictions might also choose to phase in monitoring over time depending on how many businesses are in the jurisdiction.
- Identifies commercial recycling program options that may be used by local jurisdictions to implement the regulation including: implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the franchise contract or agreement, and/or requiring that all commercial recycling materials go through either a source separated or a mixed waste processing system that diverts material from disposal.
- Allows jurisdictions the flexibility to implement a commercial program that meets their local needs and works with their existing infrastructure. For example, a jurisdiction's recycling program may include an enforcement component; the enforcement component may include all businesses subject to a jurisdiction's

recycling program or a subset of these businesses; and, a jurisdiction's recycling program may apply to businesses beyond those as defined in this regulation.

- Recognizes rural jurisdictions' limitations (such as small geographic size, low population density, or distance to markets) when CalRecycle evaluates program implementation and makes a determination regarding whether a rural jurisdiction is making a "good faith effort" to implement a commercial recycling program.
- Protects existing franchise agreements, contracts, and licenses.
- Protects the existing right of a business to sell or donate its recyclable materials.
- Allows property owners of commercial and multifamily complexes to comply with the requirements by requiring, if needed, tenants to source separate their recyclable materials.
- Makes CalRecycle responsible for evaluating and enforcing jurisdiction performance in implementing the mandatory commercial recycling program, and for measuring GHG emissions reductions associated with commercial recycling at the statewide level.

NECESSITY OF THE PROPOSED REGULATION

This portion of the Statement of Reasons provides a summary of the necessity and the key components of the proposed Commercial Recycling Regulation. This chapter is also intended to satisfy the requirements of Government Code section 11346.2, which requires that a non-controlling "plain English" summary of the regulation be made available to the public. Additionally, this chapter pursuant to Government Code sections 11349.1, and 11346.2(b)(1), and title 1, CCR, section 10, describes the rationale for each proposed section of the regulation. The complete text of the proposed Commercial Recycling Regulation is provided in Attachment A.

The following paragraphs provide a plain English description of each of the sections of the proposed regulation and explain the necessity of each section.

1. Purpose (section 18835)

The purpose of this Chapter is to clarify and provide procedures for Mandatory Commercial Recycling pursuant to Section 42649 of the Public Resources Code. The purpose of the statute is to reduce GHG emissions by diverting commercial solid waste that would otherwise be landfilled to recycling and composting efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

2. Definitions (section 18836)

Section 18836 is necessary to explain a number of technical and administrative terms from the Public Resources Code that appear in this Chapter that require definition to ensure regulatory consistency and clarity.

Subsection 18836(a)

Subsection (a) is necessary to define the technical and administrative terms that appear in this Chapter that require definition. Except as otherwise noted, the definitions of this Chapter are governed by the definitions set forth in Chapter 2 (commencing with section 40100), Part 1, Division 30 of the Public Resources Code.

Subsection (a)(1)

Subsection (a)(1) defines the term “Business.” This subsection is necessary to clarify which types of commercial or public entities are subject to the requirements of this Chapter, and to explicitly state that public entities are included. Public entities include military installations, school districts, schools, federal, state, local, regional agencies or facilities, special districts, California State Universities, Universities of California, and community colleges. Additionally, the definition of business includes strip malls containing two or more commercial entities and industrial facilities. This also clarifies that the threshold for businesses (not including multifamily residences) is 4 cubic yards or more of commercial solid waste per week, not 4 cubic yards of commercial solid waste and recyclables. The definition distinguishes between recyclable materials that already are separated prior to any commercial solid waste being discarded – and thus excluded from the 4 cubic yards – versus potentially recyclable materials that are not separated and instead are included in the commercial solid waste being discarded. Establishing the threshold to include only commercial solid waste should make it easier for a jurisdiction to determine which businesses are subject to the regulation; a jurisdiction does not have to conduct a waste generation study to determine if 4 cubic yards of commercial solid waste is generated. Within this definition then, the term “generates” simply refers to commercial solid waste produced and disposed, excluding previously separated recyclable materials; it does not refer to other uses of the terms “generates” or “generation” that mean the amount of commercial solid waste diverted plus the amount of solid waste disposed. “Business” also includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated.

Subsection (a)(2)

Subsection (a)(2) defines the term “Commercial solid waste.” This subsection is necessary to clarify the types of material that shall be recycled in order to meet the requirements of this Chapter. It is also necessary to correct a drafting error in statute, which used a different definition for this term that inadvertently excluded multi-family residences. Because numerous other statutory provisions clearly include multi-family residences, this definition provides consistency and clarity that commercial solid waste from multi-family residences is subject to the statutory requirements. Also, to complement and reinforce the affected Business definition, it is necessary to clarify that commercial solid waste does not include solid waste from single family residences or

multifamily residences of less than 5 units and does not include industrial waste. This definition does not make any substantive change to statute.

Subsection (a)(3)

Subsection (a)(3) defines the term “Franchise.” This subsection is necessary to clarify that the existing contractual and other legal obligations between a jurisdiction and a hauler to transport solid waste would not be modified or abrogated by this Chapter. For purposes of these regulations, the definition for “Franchise” is limited to commercial solid waste to differentiate them from other types of franchises.

Subsection (a)(4)

Subsection (a)(4) defines the term “Hauler.” This subsection is necessary to clarify the action required of businesses regarding movement of commercial solid waste. This action includes either self-haul or subscribing to a service that hauls.

Subsection (a)(5)

Subsection (a)(5) defines the term “Mixed Waste Processing.” This subsection is necessary to clarify that the option for a business to subscribe to a recycling service that includes mixed waste processing means a service that processes solid waste that contains both recyclable and/or compostable materials and trash. This is necessary to provide specificity on materials management options that a business can take.

Subsection (a)(6)

Subsection (a)(6) defines the terms “Self hauler” or “self-hauling.” This subsection is necessary to add clarity to an option for a business to consider for meeting the requirement to recycle its commercial solid waste. One option is transporting its own waste to a recycling facility.

Subsection (a)(7)

Subsection (a)(7) defines the terms “Source separating” or “source separation.” This subsection is necessary to clarify the process required of the owner or operator of a business to recycle its commercial solid waste when choosing the option described in subsection 18837(a) to either self-haul or subscribe to a service that hauls, or arrange for the pickup of the recyclable materials separately from the solid waste to divert them from disposal.

3. Mandatory Recycling of Commercial Solid Waste by Businesses (section 18837)

Section 18837 specifies the requirements a business shall meet to recycle its commercial solid waste.

Subsection (a)

Subsection 18837(a) specifies a business shall reuse, recycle, compost, or otherwise divert its commercial solid waste from disposal by taking at least one or any

combination of the following materials management options described in subsection 18837(a)(1) or subsection 18837(a)(2). This is necessary to define the party responsible for recycling commercial solid waste and the start date.

Subsection (a)(1)

Subsection (a)(1) specifies methods that a business may take to meet the requirement of this Chapter to recycle the business' commercial solid waste: by source separating recyclable and/or compostable materials, alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials, and self-hauling these separately from the solid waste to a recycling facility; and/or subscribing to a hauler that transports these source-separated recyclable materials to a recycling facility; and/or otherwise arranging for the pick-up of recyclables (e.g., by independent recyclers). This is necessary to inform business owners, operators, and employees of actions they may take to meet the requirement that commercial solid waste generated as part of business operations is recycled.

Subsection (a)(2)

Subsection (a)(2) specifies a method that a business may take to meet the requirement of this Chapter to recycle the business' commercial solid waste: by subscribing to a recycling service that may include mixed waste processing that diverts recyclable and/or compostable materials from disposal, yielding diversion results comparable to source separation. This is necessary to provide information to business owners, operators, and employees about another option to meet the requirement to recycle commercial solid waste.

In reality, however, there is not sufficient data or standards available to make a comparison to source separation, and therefore CalRecycle is not establishing such a threshold at this time. The language in the existing statute has been interpreted differently by various stakeholders regarding whether or not it establishes a particular threshold for mixed waste processing. On its face, the statute clearly does not do so. Instead, statute has provided a subjective standard to be evaluated on a case-by-case basis that allows flexibility for compliance. While Subsection 42649.2(b)(2) allows for a recycling service that may include mixed waste processing comparable to source separation as part of that recycling service, by using the term "may" instead of "shall" in this section, it does not require it. That is, mixed waste processing is not necessarily required and therefore a recycling service can include other programmatic aspects. Thus, the recycling service may include more than just mixed waste recycling (consistent with the "may" in statute), but also emphasizes the need for the overall recycling service to yield comparable results to the other compliance alternative in (b)(1) (source separation). Mixed waste processing is intended here to include a myriad of processes to recover recyclable and/or compostable materials from solid waste. This Subsection is not intended to change marketplace dynamics or express a preference for any particular diversion activity, program or process over another. It is intended to provide local governments with flexibility in designing programs specific to their community.

While no single quantitative recovery rate standard exists, the section does establish an expectation that overall diversion results from a recycling service that includes mixed waste processing, and that may include other programs and activities, will be comparable to the overall diversion results of recycling services that rely on source-separated processing of recyclables, and that may also include other programs and activities. In lieu of a quantitative standard, CalRecycle will review jurisdiction compliance on a case-by-case basis using the “good faith effort” standard as already provided in statute (See PRC 41825(e)). As part of its evaluation of local jurisdiction program implementation, the diversion performance of a particular facility may be considered by CalRecycle to see if the facility’s recovery appears to be significantly low (also see section 18839(b)). In this case CalRecycle would take into account relevant factors such as, but not limited to, the character and composition of the solid waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, and the nature and amount of feedstock processed at facilities used for solid waste generated in the jurisdiction. That is, CalRecycle would conduct a case-by-case qualitative evaluation in the context of the entire set of programs in a jurisdiction, whether the facilities involved are mixed waste processing or single-stream material recovery facilities.

Additionally, businesses that choose to subscribe to a recycling service are not required by statute to determine if a mixed waste processing facility that is part of that service is yielding comparable results (e.g., they do not have to survey facilities and ask for recovery data).

As for whether or not CalRecycle should develop a quantitative standard of what constitutes “comparable to source separation” for mixed waste processing, CalRecycle has committed to working on this issue in the future. Prior to the formal rulemaking, this was the subject of considerable discussion and controversy. A working group convened by CalRecycle determined that there is not sufficient information at this time to promulgate such a standard. This is due in part because of variations in feedstock, processing technologies, residuals composition, lack of reporting, etc. However, CalRecycle recognizes that future work is needed on this issue as part of its other work on AB 341 (report on how to meet 75% diversion) and that this may lead to future rulemakings that establish performance requirements for mixed waste processing facilities.

Subsection (b)

Subsection (b) clarifies that property owners of commercial or multifamily complexes may require tenants to source separate their recyclable materials. Tenants in commercial or multifamily complexes must source separate their recyclable materials if required by the property owner. This provision is necessary to ensure that owners can require those persons actually generating recyclable materials and therefore in an opportune position to source separate them, to do so.

Subsection (c)

Subsection (c) specifies that each business is responsible for ensuring and demonstrating compliance with the requirements of section 18837. It also specifies that the activities a business undertakes pursuant to subsection 18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance or agreement applicable to the collection, handling or recycling of solid waste. This is necessary to inform businesses of their responsibilities to ensure and demonstrate compliance with the commercial recycling requirement. In addition, this allows a jurisdiction to determine whether or not a business is in compliance with the commercial recycling requirements of this section and for an implementing or enforcing agency to take further implementation or enforcement action as appropriate.

Subsection (d)

Subsection (d) specifies that the authority of a jurisdiction is not limited by this section and that it may adopt, implement, or enforce a more stringent or comprehensive recycling program and that businesses located in such a jurisdiction are required to comply with local requirements. This is necessary to inform affected parties that in regards to more stringent or comprehensive recycling programs, a local jurisdiction is not limited by the statewide requirements for a business to recycle its commercial solid waste. It is also necessary to inform businesses that they shall, at a minimum, comply with the more stringent local requirements if applicable. This allows jurisdictions a level of autonomy to adopt, implement, or enforce more stringent or comprehensive recycling programs more suited to local conditions.

Subsection (e)

Subsection (e) specifies that legal mechanisms and rights described in this subsection shall not be modified, limited, or abrogated by section 18837. This is necessary to assure relevant parties that this subsection does not affect legal mechanisms and rights.

Subsection (e)(1)

Subsection (e)(1) specifies that a franchise agreement granted or extended by a city, county, or other local government agency cannot be modified or abrogated by section 18837. This is necessary to assure franchisees that this section does not modify or abrogate a franchise agreement granted by local government. This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing franchise agreement.

Subsection (e)(2)

Subsection (e)(2) specifies that a contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local government agency cannot be modified or abrogated by section 18837. This is necessary to ensure that this section does not modify or abrogate a contract, license, or permit to collect solid waste granted by local government. This offers protection from the threat of unforeseen and disruptive changes to an existing contract, license, or permit to collect solid waste.

Subsection (e)(3)

Subsection (e)(3) specifies that the right of a business to sell or donate its recyclables under existing statute cannot be limited. This is necessary to protect a business from being required to sell or exchange its recyclable materials at less than fair market value, and allow a business to donate its recyclable materials to another entity for reuse or recycling prior to discarding them.

Subsection (e)(4)

Subsection (e)(4) clarifies that interpretation of the provisions of Public Resources Code section 41783 are not affected by this regulation. Commercial solid waste may be taken to a transformation facility, as long as the existing requirement in Public Resources Code section 41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met. For example front-end processing includes source-separating recyclables or processing material at a mixed waste processing facility. The subsection clarifies that there is no change to the existing provisions of section 41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Businesses whose waste goes to a transformation facility still need to comply with the requirements in subsection 18837(a); i.e., a business would not be in compliance with the regulation if it does not use one or any combination of the actions listed in subsection 18837(a) and instead all of its waste is sent to a transformation facility.

4. Implementation of Commercial Recycling Program by Jurisdictions (section 18838)

Section 18838 specifies the requirements a jurisdiction shall meet to implement a commercial recycling program, which are necessary to ensure that affected businesses are aware of their requirements to recycle and are doing so.

Subsection (a)

Subsection (a) specifies that effective July 1, 2012, whether or not the jurisdiction has met its diversion requirements under section 41780, each jurisdiction shall implement a commercial recycling program that consists of education, outreach, and monitoring. Education and outreach consists of informing businesses of the state requirement to recycle and providing information on how businesses can recycle. Monitoring entails assessing whether businesses are recycling and, if not, informing them again of the requirement. This is necessary to define the party responsible and timeline for implementing a commercial recycling program.

Subsection (a)(1)

Subsection (a)(1) specifies that the commercial recycling program shall include education and outreach to businesses and that the jurisdiction shall determine the types of educational and outreach programs to ensure that the program targets the components of the jurisdiction's commercial waste stream. This is necessary to ensure affected businesses are adequately informed about a jurisdiction's commercial recycling

program, their requirements to recycle, and the components of the solid waste stream that the jurisdiction has targeted. While specific elements of a jurisdiction's education and outreach program will be unique, the following are examples of what jurisdictions could do annually to inform and educate businesses about the state requirement and how businesses can comply:

- 1) **Electronic:** Place information on the jurisdiction's website that informs businesses of the state requirement to recycle and explains how businesses can recycle in the jurisdiction. The information placed on the website could include contact information for the franchise hauler for service information, locations to self-haul recyclables to, and other relevant information.
- 2) **Print:** Send out information to the affected businesses via a brochure, letter, or newsletter. At a minimum, this information should be sent annually, but could be done more frequently.
- 3) **Direct Contact:** Present at business forums, such as the Chamber of Commerce, and/or provide technical assistance through waste assessments to explain the state requirement and how businesses can recycle in the jurisdiction. Provide a contact person that businesses can call to ask questions.

The following provides guidance to rural jurisdictions that may have unique circumstances due to small geographic size and/or low population density:

- Rural jurisdictions could include information in its annual letter to businesses for business license renewals about the requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction.

A jurisdiction may choose whether the jurisdiction itself and/or hauler(s) conduct these activities. Jurisdictions are also encouraged to utilize existing programs to incorporate information about the new state requirement to maximize resources, such as utilizing an existing website, newsletter, and/or other existing media.

Jurisdictions also may choose to phase in education/outreach to multifamily complexes depending on the jurisdictions infrastructure, mechanisms for communicating with multifamily complexes, etc. For example, recognizing that multifamily units of 16 or more by law are required to have an on-site manager, a jurisdiction has the flexibility to target those units first. Jurisdictions also have the flexibility in how they develop and implement the education/outreach to owners of multifamily complexes. For example, if multifamily complexes have owners that are located in other areas of the state or live outside of the state, then the jurisdiction might take various approaches to contacting the owner to inform them of the state requirement to recycle at the complex, such as sending a letter, including information on the solid waste bill, etc.

Subsection (a)(2)

Subsection (a)(2) specifies that the commercial recycling program shall include identification and monitoring of businesses, to assess if businesses are complying with subsection 18837(a). In addition, this subsection specifies that the jurisdiction shall, at a minimum, notify businesses that are not in compliance with these regulations. This is

necessary to ensure that businesses required by these regulations to recycle commercial solid waste are identified and monitored, and that they are notified if not in compliance. While specific elements of a jurisdiction's monitoring program will be unique, the following are examples of what jurisdictions could do annually to notify businesses that are out of compliance with the state requirement and how the businesses can comply. The jurisdiction may choose whether the jurisdiction and/or hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to incorporate information about the new state requirement, such as letters that are sent to businesses, notifications sent electronically, on-site visits, phone calls from the hauler's sales representative, etc., to maximize resources. Jurisdictions might also choose to phase in monitoring depending on how many businesses are in the jurisdiction, including phasing in monitoring to focus first on larger multifamily residences.

Examples related to monitoring include the following:

- 1) The jurisdiction, if it is a city run program, or the franchise hauler(s) would track businesses and report to the jurisdiction on those businesses that are not recycling. For those businesses that are not complying, either the jurisdiction or the hauler would send a notice to the business to inform them of the state requirement and how the business can recycle in the jurisdiction.
- 2) An additional approach to monitoring that jurisdictions might choose is the following: Either the hauler or the jurisdiction could follow-up in person or with a phone call with the businesses that are not in compliance with the state regulation. The purpose of this follow-up would be to assist the business with identifying how it can recycle in the local jurisdiction.

The following provides guidance regarding monitoring to rural jurisdictions that may have unique circumstances due to small geographic size and/or low population density:

- 1) For jurisdictions that have staff or a hauler that services commercial businesses, the staff and/or hauler could identify the businesses that aren't recycling and then the jurisdiction would send out a letter that explains the state requirement that businesses recycle and how the businesses can recycle in the jurisdiction.
- 2) For jurisdictions that do not have staff and/or a hauler to do (1) above and because it might be difficult for the jurisdiction to ascertain which businesses are not recycling, then an annual letter would suffice. The letter could be sent electronically or hard copy depending upon the rural jurisdiction's situation.

Subsection (b)

Subsection (b) specifies that the recycling program adopted pursuant to subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses to recycle; requiring a mandatory commercial recycling program, through a franchise agreement or contract; or, requiring that commercial solid waste from businesses go through either a source separated or a mixed waste processing system that diverts material from disposal. This is necessary to inform jurisdictions of optional components that may be included in a recycling program.

Subsection (c)

Subsection (c) suggests a non-exclusive list of additional components that the recycling program may include. This is necessary to inform jurisdictions of different types of components that can contribute to an effective recycling program.

Subsection (c)(1)

Subsection (c)(1) specifies that an additional component of the recycling program may include, but is not required to include, enforcement. If an enforcement component is implemented, jurisdictions may include a penalty or fine structure that, consistent with a jurisdiction's authority, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. This subsection is necessary to inform jurisdictions of enforcement mechanisms that they can choose for their commercial recycling program.

This subsection is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program. In developing compliance criteria for an enforcement program, a jurisdiction could consider a multi-family complex owner's effort to comply with recycling requirements. Criteria for exempting a multi-family complex owner from enforcement penalties could include the owner not being able to get a hauler to provide recycling services to the complex, or the efforts the owner has made to address tenants' refusal to source separate their recyclables.

Subsection (c)(2)

Subsection (c)(2) specifies that an additional component of the recycling program may include building design standards that specify space requirements for storage of recyclables or other purposes that may assist businesses with compliance with the program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (c)(3)

Subsection (c)(3) clarifies that as part of developing a commercial recycling program a jurisdiction may consider whether exemptions are warranted for zoning requirements; lack of markets; non-generation of recyclable materials; current implementation by a business of actions that result in recycling of a significant portion of its commercial waste; or multifamily complexes that lack sufficient space to provide additional recycling bins or where the owner is unable to get a hauler to provide recycling services to the complex. This is necessary to inform jurisdictions of types of exemptions that they may deem appropriate for their commercial recycling program.

Subsection (c)(4)

Subsection (c)(4) specifies that an additional component of the recycling program may include certification requirements for self-haulers which may include, but are not limited to, requiring businesses to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the

jurisdiction's commercial recycling program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (d)

Subsection (d) specifies that, in addition to the businesses defined in subsection 18836(a)(1), the businesses subject to commercial recycling may also include any other commercial entity that the jurisdiction identifies as being a source of commercial solid waste. This section is necessary to allow jurisdictions the flexibility to enact ordinances, rules or policies to make commercial recycling applicable to other commercial entities that are sources of recyclable materials within the jurisdiction and that otherwise do not meet the definition of business.

Subsection (e)

Subsection (e) specifies that a jurisdiction may determine the specific material types included in its commercial recycling program and provide a non-exclusive list of the types of materials that could be considered for inclusion. This is necessary to ensure that a jurisdiction has flexibility to target specific material types for inclusion in its commercial recycling program which, based on local conditions, may differ from other jurisdictions.

Subsection (f)

Subsection (f) specifies that if, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this Chapter, the jurisdiction will not be required to implement a new or expanded program. In the event a jurisdiction's existing recycling program does not include all businesses as defined in this regulation, or the monitoring, outreach and education requirements of this Chapter, the program will need to be revised to do so. This is necessary to protect jurisdictions that already implemented suitable commercial recycling programs from being required to implement a new program.

Subsection (g)

Subsection (g) makes it explicit that if, in order to satisfy the requirements of this Chapter, a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code section 41800 et seq. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' implementation of their commercial recycling programs, but offers relief to jurisdictions by exempting them from the statutory requirement to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.

Subsection (h)

Subsection (h) specifies that each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, monitoring, by providing updates in its electronic annual report. In addition, the

jurisdiction should include in its annual report an explanation, if applicable, of enforcement efforts if the jurisdiction has implemented an enforcement program and of the rationales for any exemptions allowed by the jurisdiction in its program. This is necessary to ensure CalRecycle is provided information annually on each jurisdiction's commercial recycling program without requiring the jurisdiction to revise its Source Reduction and Recycling Element when implementing a new, or expanding an existing, commercial recycling program.

5. CalRecycle Review (section 18839)

Section 18839 specifies the oversight responsibilities of CalRecycle in ensuring a jurisdiction implements a commercial recycling program in accordance with this Chapter.

Subsection (a)

Subsection (a) specifies CalRecycle's responsibility to review, pursuant to section 41825 of the Public Resources Code, a jurisdiction's compliance with its requirements under this Chapter to implement a commercial recycling program that consists of education, outreach, and monitoring. Also, this subsection specifies the commencement date and mechanism for this review, which is important for providing lead time to affected jurisdictions. This is necessary to clarify the responsibilities of CalRecycle in reviewing a jurisdiction's compliance with its requirements under this Chapter to implement a commercial recycling program.

Subsection (b)

Subsection (b) specifies that during its review of a jurisdiction's compliance with its requirements under this Chapter, CalRecycle is required to determine whether each jurisdiction has made a good faith effort to implement its commercial recycling program. This subsection clarifies the criteria a jurisdiction is required to meet in order for CalRecycle to determine whether a "good faith effort" has been made. This subsection defines "good faith effort" as "all reasonable and feasible efforts" by a jurisdiction to implement its selected commercial recycling program. This definition mirrors the "good faith effort" standard contained in Public Resources Code subsection 41825(e). CalRecycle has extensive experience in applying this standard in evaluating the programs contained in jurisdictions' Source Reduction and Recycling Elements. This "good faith effort" standard as provided in this Subsection takes into account the numerous considerations and factors contained in Public Resources Code subsection 41825(e)(1) through (5), as applicable to the jurisdiction. In addition to these considerations and factors, this subsection specifies a non-exclusive list of some additional specific factors pertaining to commercial recycling, that CalRecycle may include in its evaluation of a jurisdiction's "good faith effort." This subsection is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program and that its efforts are fairly evaluated.

Subsection (b)(1)

Subsection (b)(1) specifies that in its evaluation of a jurisdiction's "good faith effort,"

CalRecycle may include, but is not limited to, considering the extent to which the businesses are complying with subsection 18837(a), including information on the amount of disposal that is being diverted from the businesses, if available, and the number of businesses that are subscribing to service. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program that consists of outreach, education, and monitoring of businesses.

Subsection (b)(2)

Subsection (b)(2) specifies additional factors CalRecycle will consider in its evaluation of a jurisdiction’s “good faith effort.” These factors may include, but are not limited to, the extent to which material recovery facilities (including mixed waste processing facilities) utilized by the businesses exhibit recovery rates that, in combination with the entire set of programs and activities in a jurisdiction, are comparable to source separation, based on factors such as, but not limited to, the character and composition of the waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, the role of that facility in the jurisdiction’s overall waste diversion and recycling system, the nature and amount of feedstock processed at facilities used for waste generated in the jurisdiction, and any additional performance data, as requested and collected by CalRecycle from the material recovery facilities operators pursuant to 14 California Code of Regulations §18809.4.

Subsection (b)(3)

Subsection (b)(3) specifies that in its evaluation of a jurisdiction’s “good faith effort,” CalRecycle may include, but is not limited to, considering the extent to which the jurisdiction is conducting education and outreach to businesses in accordance with this Section. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

Subsection (b)(4)

Subsection (b)(4) specifies that in its evaluation of a jurisdiction’s “good faith effort,” CalRecycle may include, but is not limited to, considering the extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of compliance. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program.

Subsection (b)(5)

Subsection (b)(5) specifies that in its evaluation of a jurisdiction’s “good faith effort,” during its review, CalRecycle may include, but is not limited to, considering the availability of markets for collected recyclables. This is necessary to clarify criteria CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program.

Subsection (b)(6)

Subsection (b)(6) specifies that in its evaluation of a jurisdiction's "good faith effort," during its review, CalRecycle may include, but is not limited to, considering budgetary constraints of local jurisdictions. This is necessary to clarify criteria CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" implement a commercial recycling program.

Subsection (b)(7)

Subsection (b)(7) specifies that in its evaluation of a jurisdiction's "good faith effort," during its review, CalRecycle may, include but is not limited to, considering a rural jurisdiction's small geographic size, low population density, or distance to markets in determining whether a rural jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to clarify criteria that CalRecycle may use in determining whether a certain type of jurisdiction is making a "good faith effort" to implement a commercial recycling program.

Subsection (c)

Subsection (c) specifies that a jurisdiction's failure to implement its commercial recycling program may be a sufficient basis for issuance of a compliance order, even if the jurisdiction has met its AB 939 50 percent per capita equivalent disposal target. If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program, CalRecycle shall issue a compliance order with a specific schedule for achieving the requirements of this Chapter. This is necessary to ensure that a jurisdiction that is not complying with the requirements to implement a commercial recycling program is issued a compliance order with a specific schedule for achieving these requirements.

Subsection (d)

Subsection (d) specifies that the compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. Also, this subsection specifies that CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order. This is necessary to identify, for the jurisdiction, which aspects of its program are not being implemented or attained, and to set a date for the jurisdiction to comply with the requirements. This is necessary to ensure each jurisdiction is meeting the requirements of this Chapter to implement a commercial recycling program.

REGULATORY ALTERNATIVES

With respect to all sections of this Statement of Reasons, other alternatives have been considered, including a „no-action" alternative. It has been determined that: 1) no other alternative would be as effective and less burdensome to private persons while at the same time protecting human health, safety, and the environment; 2) no other alternative would lessen adverse economic impact on small business while protecting human

health, safety and the environment; and 3) no other alternative is sufficient to satisfy the purposes of these proposed regulations which is to clarify existing law and establish administrative procedures to efficiently and effectively implement the Department's responsibilities pursuant to the mandatory commercial recycling requirements of section 42649 et seq. of the Public Resources Code. The Department has determined that minimal additional clarification and procedures included in the regulations was necessary to effectuate the statute. Unless otherwise indicated, this paragraph applies to each section in the proposed regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Department relied upon Assembly Bill 341 and the Notice on AB 341 contained in Tab 12.

ADDITIONAL FINDINGS

Determination That The Action Will Not Have A Significant Impact On Business

The Department made a determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, will not result in the creation or elimination of jobs, or the creation of new, or the expansion or elimination of existing California businesses, and do not affect small businesses because these regulations only provide procedural clarity. The Department is not aware of any cost impacts on private persons or representative businesses as a result of these regulations.

Local Mandate And Fiscal Determinations

The Department has determined that the proposed regulations do not impose: 1) a mandate on local school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

Duplication Or Conflicts With Code Of Federal Regulations

No unnecessary duplication or conflict exists between the proposed regulations and federal regulations contained in the Code of Federal Regulations because federal law or regulations do not contain comparable requirements.

Finding On Necessity of Reports (Government Code section 11346.3(c))

The Department has found that the requirement for specific reports are necessary for the health, safety and welfare of the people of the State because it will help to ensure that the requirements of these regulations are met and adequately monitored.

THE RESPONSES TO COMMENTS IN TAB 11 ARE INCORPORATED BY REFERENCE HEREIN.

UPDATED INFORMATIVE DIGEST

CalRecycle Mandatory Commercial Recycling Regulations

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

**FINAL STATEMENT OF REASONS
MANDATORY COMMERCIAL RECYCLING REGULATIONS**

ADDENDUM #1

(NONDUPLICATION)

Government Code section 11349(f) prohibits, and requires the identification of, any proposed regulation which duplicates or “serves the same purpose” as an existing statute or regulation by repeating or rephrasing, in whole or in part, language from that statute or regulation. Duplication is allowed, however, if this incorporated language meets the nonduplication standard of Government Code section 11349.1. See also Title 1 California Code of Regulations section 12.

The incorporation of statutory language from AB 341 into the proposed regulations is justified because this duplication is necessary in order to provide “clarity” as required by Government Code Section 11349.(a)(3). Title 1 California Code of Regulations section 12(b)(1). Most of the statutory language was included in response to requests or comments by regulated parties or their representatives because of their concern that the regulation might be misinterpreted as changing the statutory requirements if the exact language of AB341 was not used. Some of these comments were made during the informal rulemaking period and some were made during the formal 45-day comment period. See comments W-02-2, W-11-02, W-05-5 and W-14-06 contained in the Comment & Response Matrix located at Tab 14. In addition, duplication is necessary to provide ease of use to regulated parties by having all relevant law in one location, making it more convenient for them to comply with their mandatory commercial recycling responsibilities under AB341.

**MCR Comments received during 45 day public comment period,
October 28 – December 12, 2011**

1. California Association of REALTORS®, Apartment Association of Greater Los Angeles, San Diego County Apartment Association and Santa Barbara Rental Property Association
2. Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force and Council Member, City of Rosemead
3. Harvest Power
4. California Restaurant Association
5. Allan Company
6. Association of Recycling Industries
7. Californians Against Waste
8. City of San Jose
9. American Forest & Paper Association
10. Cal Chamber, California Grocers Association, and California Manufacturers & Technology Association
11. Solid Waste Association of North America
12. Waste Management
13. American Biogas
14. West Coast Chapter of the Institute of Scrap Recycling Industries
15. City of Sunnyvale
16. Gaia Strategies/InSinkErator
17. California Refuse Recycling Council
18. Environmental Services Joint Powers Authority
19. Contract Services Administrative Trust Fund
20. Michael Theroux, Teru Talk (verbal)

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE NOTICE PUBLICATION/REGULATORY SUBMISSION (See Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2011-108-06	2012-0327-015	

ENDORSED FILED IN THE OFFICE OF

2012 MAY -7 PM 4:09

John Bowen
JOHN BOWEN
CLERK OF THE STATE

For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE	2012 MAR 27 AM 11:33
OCT 18 '11	OCT 28 '11
Office of Administrative Law	OFFICE OF ADMINISTRATIVE LAW
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of Resources Recycling and Recovery (CalRecycle)

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
MANDATORY COMMERCIAL RECYCLING	14	18835	October 28, 2011
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice is Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
	TAMAR DYSON	(916) 341-6083	(916) 399-7217
OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		2011, 432	10-28-2011

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
Mandatory Commercial Recycling	
SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
ACTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	Sections 18835, 18836, 18837, 18838 and 18839
TITLE(S)	REPEAL
14	

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Tamar Dyson	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
	916-341-6083	916-399-7217	tamar.dyson@calrecycle.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 07 2012

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
<i>Elliot W. Block</i>	3/26/12
TYPED NAME AND TITLE OF SIGNATORY	
Elliot Block, Chief Counsel	

REQUEST FOR APPROVAL

To: Caroll Mortensen
Director

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

Request Date: January 17, 2011

Decision Subject: Adoption of Proposed Mandatory Commercial Recycling Regulation

Action By: January 17, 2011

Summary of Request:

Staff requests adoption of the Mandatory Commercial Recycling Regulation, which is needed to implement the new statutory mandatory commercial recycling provisions enacted in 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]).

Recommendation:

Staff recommends adoption of the Mandatory Commercial Recycling Regulation (Attachment 1) so that it may be forwarded to the Office of Administrative Law (OAL) for approval and publishing. Staff also recommends that the Department file a Notice of Exemption with the State Clearinghouse as provided under the California Environmental Quality Act.

Action:

On the basis of the information and findings in this Request for Approval, I hereby approve the adoption of the Proposed Mandatory Commercial Recycling Regulation (Attachment 1) and direct staff to prepare and forward the regulatory package to the OAL for approval and publishing. I also direct staff to file a Notice of Exemption with the State Clearinghouse as provided under the California Environmental Quality Act.

Dated: _____

Caroll Mortensen, Director

Attachments: 1. Proposed Mandatory Commercial Recycling Regulation
2. Summary Matrix of Comments, 45-Day Public Comment Period (Oct 28 - Dec 12, 2011)

Background Information

Assembly Bill (AB) 341 (Chapter 476, Statutes of 2011, Chesbro) authorizes CalRecycle to establish a new, mandatory commercial recycling program. Such a program is important both for diverting additional materials from landfills, especially since about three-fourths of what is disposed in landfills comes from the commercial sector, and for reducing greenhouse gas (GHG) emissions from multiple phases of product production including extraction of raw materials, preprocessing and manufacturing. CalRecycle has been given authority by the legislature to make regulations whenever there is substantial evidence that regulations are needed to implement, interpret, make specific, or to govern CalRecycle's procedure, to effectuate the purpose of the statute. Therefore, this rulemaking seeks to add clarity and establish the necessary administrative procedures to fulfill CalRecycle's responsibilities under AB 341.

CalRecycle also is responsible for the Mandatory Commercial Recycling measure in the AB 32 Scoping Plan, adopted by the Air Resources Board (ARB) in 2008, pursuant to AB 32, the California Global Warming Solutions Act (Chapter 488, Statutes of 2006). Prior to the enactment of AB 341, CalRecycle had been working with ARB to develop a Mandatory Commercial Regulation pursuant to this measure. CalRecycle and ARB were intending to take the proposed Mandatory Commercial Recycling regulations to the ARB meeting on October 21, 2011, for consideration. However, as a result of AB 341 being signed on October 6, 2011, the public hearing scheduled for that meeting to consider adoption of the regulations was cancelled. Instead, at the ARB meeting, CalRecycle and ARB presented an informational item on their collaborative efforts.

Rulemaking Timeline

While there are some distinctions between the draft regulations in the cancelled CalRecycle/ARB rulemaking effort and the commercial recycling program outlined in AB 341, the fundamental framework and principals are parallel. Therefore, CalRecycle staff adjusted the previous draft regulation for a new rulemaking (see Attachment 1 for the proposed regulatory language), and commenced its own rulemaking to implement the statute. In doing so, CalRecycle relied on the extensive stakeholder input received at eight (8) informal workshops conducted from July 2009 through July 2011 as part of the joint CalRecycle/ARB draft regulation process. These workshops offered stakeholders numerous informal opportunities to talk about design and implementation issues of this measure.

Formal rulemaking activities began in October 2011. A 45-day public comment period for the Proposed Mandatory Commercial Recycling Regulation ran from October 28 through December 12, 2011. CalRecycle staff held a public meeting on the proposed regulation on December 13, 2011, to receive additional comments.

Summary of Non-Substantive Revisions Incorporated as a Result of Comments Received

Attachment 2 summarizes comments received during the 45-day comment period and presents CalRecycle's responses. As noted in Attachment 2, CalRecycle did not agree with most comments and accordingly determined that no revision in the proposed regulation was needed for these. However, CalRecycle did agree that revisions were warranted in a few instances. These are noted with "Yes (non-substantive)" in Attachment 2, Column 4, and are shown in strikeout/underline in Attachment 1. CalRecycle's Legal Office has determined that all of these revisions are non-substantive in nature and, therefore, that an additional public comment period is not required.

The primary changes that CalRecycle made to the proposed regulations were to:

- Revise Section 18837(a)(2) regarding mixed waste processing, to conform to statute (CalRecycle has provided additional explanation of how it will implement this section in its response in Attachment 2 and will include this in the Final Statement of Reasons); and
- Revise Section 18837(e) regarding the right of a business to donate or sell its material, to conform to statute.

Findings

Staff also evaluated the potential environmental effects of the proposed regulations as required by CEQA and determined that the adoption of the regulation is exempt from CEQA on the ground that there is no possibility that the regulation will have an effect on the environment (the "common sense exemption"). A "project," as the word is utilized in CEQA, is an activity that "has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA Guidelines, Section 15378(a). The regulation establishes only administrative procedures necessary for CalRecycle to implement AB 341. The adoption of the regulation will have no direct and no indirect effects on the environment. Staff prepared a Notice of Exemption that will be filed with the State Clearinghouse as required by CEQA.

Staff has given careful consideration to all comments received throughout the rulemaking process and recommends that the Department adopt the Mandatory Commercial Recycling Regulation and direct staff to forward the regulatory package to the Office of Administrative Law (OAL) for approval and publishing. With approval of the regulation at this meeting, staff will prepare and submit the final rulemaking package to OAL.

Attachment 1

PROPOSED REGULATORY TEXT

MANDATORY COMMERCIAL RECYCLING

TITLE 14.

DIVISION 7.

CHAPTER 9.4.

MANDATORY COMMERCIAL RECYCLING

§18835. Purpose.

This Chapter implements Mandatory Commercial Recycling pursuant to §42649 of the Public Resources Code. The purpose of the statute is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

§18836. Definitions.

- (a) The following definitions shall govern the provisions of this Chapter.
- (1) “Business” means any commercial or public entity, that generates four cubic yards or more of commercial solid waste per week, including, but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or nonprofit entity, strip mall (e.g. property complex containing two or more commercial entities), industrial facility, school, school district, California State University, community colleges, University of California, special district or a federal, state, local, regional agency or facility. For purposes of this Chapter, “business” also includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated.

- (2) "Commercial solid waste" means all types of solid waste, including recyclable materials that are discarded from businesses as defined in subdivision (1), but does not include waste from single family residences or multifamily units of less than 5 units and does not include industrial waste.
- (3) "Franchise" means any agreement between a jurisdiction and a hauler for transporting commercial solid waste.
- (4) "Hauler" means any person, commercial or public entity which collects, hauls, or transports solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll off truck, side-load, front-load, or rear-load garbage truck, or a trailer.
- (5) "Mixed Waste Processing" means processing solid waste that contains both recyclable and/or compostable materials and trash.
- (6) "Self hauler" or "self hauling" means a business that transports its own waste and/or recyclables rather than contracting with a hauler for that service.
- (7) "Source separating" or "source separation" means the process of removing recyclable materials from solid waste at the place of generation, prior to collection, and placing them into separate containers that are separately designated for recyclables.

§18837. Mandatory recycling of commercial solid waste by businesses.

- (a) On and after July 1, 2012, a business shall take at least one of the following actions in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:
 - (1) Source separating recyclable and/or compostable materials from the solid waste they are discarding and either self-hauling, subscribing to a hauler, and/or otherwise arranging for the pick-up of, the recyclable and/or compostable materials separately from the solid waste to divert them from disposal.
 - (2) Subscribing to a recycling service that may includes mixed waste processing ~~alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding~~ that yields diversion results comparable to source separation.

- (b) To comply with §18837(a), property owners of commercial or multi-family complexes may require tenants to source separate their recyclable materials. Tenants must source separate their recyclable materials if required to by property owners of commercial or multi-family complexes.
- (c) Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section. The activities undertaken by each business pursuant to §18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance, policy, contract or agreement applicable to the collection, handling or recycling of solid waste.
- (d) Except as expressly set forth in §18837(e)(3), this Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction must comply with any local requirements that have been enacted.
- (e) This Subsection does not modify, limit, or abrogate in any manner any of the following:
 - (1) A franchise granted or extended by a city, county, city and county, or other local government agency;
 - (2) A contract, license, or permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation; ~~or~~
 - (3) The existing right of a business to sell or donate its recyclable materials; or
 - (4) The existing provisions of §41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Materials sent to transformation facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible ~~possible~~.

§18838. Implementation of commercial recycling program by jurisdictions.

- (a) Effective July 1, 2012, whether or not the jurisdiction has met the requirements of Section 41780, each jurisdiction shall implement a commercial recycling program appropriate for that jurisdiction which is designed to divert commercial solid waste generated by businesses and that consists of the following components:

- (1) The commercial recycling program shall include education and outreach to businesses. The jurisdiction shall determine the types of educational and outreach programs to insure that the program targets the components of the jurisdiction's commercial waste stream.
 - (2) The commercial recycling program shall include identification and monitoring of businesses to assess if they are complying with §18837(a). If any businesses subject to these regulations are not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.
- (b) The commercial recycling program adopted pursuant to Subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses to recycle, requiring a mandatory commercial recycling program through a franchise agreement or contract, or requiring that commercial solid waste from businesses ~~be sent to a~~ go through either a source separated or mixed waste processing facility system that diverts material from disposal.
- (c) When adopting its commercial recycling ordinance, policy, or program, a jurisdiction may also, but is not required to, consider the following:
- (1) Enforcement consistent with a jurisdiction's authority, including, but not limited to, a penalty or fine structure that, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution.
 - (2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses with the program;
 - (3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of sufficient space in multi-family complexes to provide additional recycling bins, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste.
 - (4) Certification requirements for self-haulers which may include, but are not limited to, requiring businesses, to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program.
- (d) The commercial recycling program shall apply to businesses, but may also apply to any other commercial entity identified by the jurisdiction as being a source of commercial solid waste.

- (e) A jurisdiction may determine the specific material types included in its commercial recycling program, which could include, but are not limited to, paper (including cardboard), plastics, glass, metals, organics, food waste, and non-hazardous construction and demolition.
- (f) If, prior to July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets all requirements of this Chapter, as determined by CalRecycle pursuant to §18839, the jurisdiction will not be required to implement a new or expanded program.
- (g) If, in order to satisfy the requirements of this Chapter, a jurisdiction must implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code §41800 et seq.
- (h) The jurisdiction shall include the addition or expansion of a commercial recycling program in its Annual Report required by §41821, et seq. of the Public Resources Code. Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and, if applicable, enforcement efforts, and the rationale for allowing exemptions, by providing updates in its Annual Report.

§18839. CalRecycle Review

- (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance with §18838 as part of its review of the jurisdiction's source reduction and recycling element and household hazardous waste element programs, pursuant to 14 California Code of Regulations §18772 and §41825 of the Public Resources Code.
- (b) During its review pursuant to this Section, CalRecycle shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For this purpose, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program. During its review, CalRecycle may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":
 - (1) The extent to which the businesses have complied with §18837(a), including information on the amount of solid waste that is being diverted from disposal by the businesses, if available, and on the number of businesses that are subscribing to service;

- (2) The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, the role of that facility in the jurisdiction's overall waste diversion and recycling system, and all information, methods, and calculations, and any additional performance data, as requested and collected by CalRecycle from the material recovery facilities operators pursuant to 14 California Code of Regulations §18809.4;
 - (3) The extent to which the jurisdiction is conducting education and outreach to businesses);
 - (4) The extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of compliance;
 - (5) The availability of markets for collected recyclables;
 - (6) Budgetary constraints; and
 - (7) In the case of a rural jurisdiction, the small geographic size, low population density or distance to markets.
- (c) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program and meet the requirements of §18838, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. CalRecycle shall issue the compliance order within 30 days after making its finding of non-compliance.
- (d) The compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order.

Summary of Comments Received During 45-Day Public Comment Period on Proposed Regulation for Mandatory Commercial Recycling
(note that general comments of support are not listed here; all individual comments and responses will be included in the final rulemaking package when it is sent to OAL)

Section	Summary of Comment	CalRecycle Response	Revision Needed
Chapter 9.4 and 18835	Change Chapter 9.4 heading and Section 18835 to reflect "Mandatory Commercial Recycling of Commercial Solid Waste"	CalRecycle does not see the need to change the title or purpose statement of the regulation. This issue was discussed during the informal rulemaking and at that time CalRecycle decided to change the heading of Subsection 18837 to "Mandatory recycling of commercial solid waste by businesses."	No
18836a1	Business definition - The proposed definition should exclude industry facility/industrial facilities.	CalRecycle disagrees that this change is needed. Industrial waste is already excluded in the definition of commercial solid waste. However, industrial facilities that generate recyclables, such as paper, metal, etc., are included in the definition of businesses. CalRecycle will develop an FAQ to provide this guidance.	No
18836a1	Business definition - Amend the definition to exempt businesses from the requirement to contract with a waste hauler with mixed waste processing for waste generation that occurs off-site or that is short-term in duration.	CalRecycle disagrees that this change is needed. Statute does not allow CalRecycle to preclude certain businesses from recycling. Amending the definition to exempt the requirement to recycle would discourage any attempt at recycling in these situations. CalRecycle understands the potential challenges of this situation and will develop an FAQ and guidance for local jurisdictions so they are aware of these potential situations with remote sites.	No
18836a1	Business definition and enforcement on public entities -- Because the proposed regulation indicates that public entities are included in the definition of a business, comments questioned how jurisdictions will take enforcement action against public entities or suggested that the regulation clearly recognize that a jurisdiction has no means to take such enforcement on public entities.	CalRecycle disagrees that this change is needed. The regulations state that enforcement by jurisdictions is permissive, but not required. In addition, CalRecycle recognizes that jurisdictions do not have authority to take enforcement actions against schools. However, jurisdictions are required to provide education and outreach to public entities and monitor if they are recycling. This is further addressed in both the ISOR and FAQs. Jurisdictions are only required to provide education, outreach and monitoring to these entities to inform them of the state law to recycle and how they can recycle in the jurisdiction.	No
18836a2	Commercial Solid Waste definition – Comment that the proposed definition is inconsistent with AB 341 [PRC 42649.1 (b)].	CalRecycle disagrees that this change is needed, but to provide more clarity agrees to add a phrase that industrial waste is excluded, consistent with the PRC.	Yes (non-subst.)
18837a2	Mixed Waste Processing – Numerous comments, for example: 1) Requirement is self-contradictory since mixed waste processing does not yield diversion results that are comparable to source separation. 2) There is no baseline to compare results; proposal must clearly define how to measure so that jurisdictions are not penalized. 3) This is substantively different and weaker than the language in AB 341, which	CalRecycle will revise this section to reflect the exact language in AB 341 in order to avoid the impression that it is somehow changing the standard in statute. However, as explained below, the additional language in the previous draft that resulted in this comment was not intended to change the standard in statute, but was simply designed to reflect the reality of how this requirement would be implemented.	Yes (non-subst.)

	<p>allows businesses to “subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation”. The language in the regulation and ISOR might be interpreted to be weaker than the language in statute.</p>	<p>Subsection (a)(2) specifies a method that a business may take to meet the requirement of this Chapter to recycle the business’s commercial solid waste: by subscribing to a recycling service that may include mixed waste processing that diverts recyclable and/or compostable materials from disposal, yielding diversion results comparable to source separation.</p> <p>In reality, however, there is not sufficient data or standards available to make a comparison to source separation, and therefore CalRecycle is not establishing such a threshold at this time. The language in the existing statute has been interpreted differently by various stakeholders regarding whether or not it establishes a particular threshold for mixed waste processing. On its face, the statute clearly does not do so. Instead, statute has provided a subjective standard to be evaluated on a case-by-case basis that allows flexibility for compliance. While Subsection 42649.2(b)(2) allows for a recycling service that may include mixed waste processing comparable to source separation as part of that recycling service, by using the term “may” instead of “shall” in this section, it does not require it. That is, mixed waste processing is not necessarily required and therefore a recycling service can include other programmatic aspects. Thus, the recycling service may include more than just mixed waste recycling (consistent with the “may” in statute), but also emphasizes the need for the overall recycling service to yield comparable results to the other compliance alternative in (b)(1) (source separation). Mixed waste processing is intended here to include a myriad of processes to recover recyclable and/or compostable materials from solid waste. This Subsection is not intended to change marketplace dynamics or express a preference for any particular diversion activity, program or process over another. It is intended to provide local governments with flexibility in designing programs specific to their community.</p> <p>While no single quantitative recovery rate standard exists, the section does establish an expectation that overall diversion results from a recycling service that includes mixed waste processing, and that may include other programs and activities, will be comparable to the overall diversion results of recycling services that rely on source-separated processing of recyclables, and that may also include other programs and activities. In lieu of a quantitative standard, CalRecycle will review jurisdiction compliance on a case-by-case basis using the “good faith effort” standard as already provided in statute (See PRC 41825(e)). As part of its evaluation of local jurisdiction program implementation, the diversion performance of a particular facility may be considered by CalRecycle to see if the facility’s recovery appears to be significantly low (also see section 18839(b). In this case CalRecycle would take into account relevant factors such as, but not limited to, the character and composition of the solid waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, and the nature and amount of feedstock processed at facilities used for solid waste generated in the jurisdiction. That is, CalRecycle would conduct a case-by-case qualitative evaluation in the context of the entire set of programs in a jurisdiction, whether the facilities involved are mixed waste processing</p>
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		<p>or single-stream material recovery facilities.</p> <p>Additionally, businesses that choose to subscribe to a recycling service are not required by statute to determine if a mixed waste processing facility that is part of that service is yielding comparable results (e.g., they do not have to survey facilities and ask for recovery data).</p> <p>As for whether or not CalRecycle should develop a quantitative standard of what constitutes “comparable to source separation” for mixed waste processing, CalRecycle has committed to working on this issue in the future. Prior to the formal rulemaking, this was the subject of considerable discussion and controversy. A working group convened by CalRecycle determined that there is not sufficient information at this time to promulgate such a standard. This is due in part because of variations in feedstock, processing technologies, residuals composition, lack of reporting, etc. However, CalRecycle recognizes that future work is needed on this issue as part of its other work on AB 341 (report on how to meet 75% diversion) and that this may lead to future rulemakings that establish performance requirements for mixed waste processing facilities.</p>	
18836a5 18837a2	<p>Mixed Waste Processing – In addition to the above issue re: “comparable to source separation,” two additional questions about mixed waste processing:</p> <p>1) The term "processing" needs to be defined and. Is processing limited only to physical separation or waste materials or does it include chemical, biological, or any combination of these processes?</p> <p>2) The difference between mixed waste processing facility and a materials recovery facility needs to be defined.</p>	<p>1) CalRecycle disagrees that a definition of “processing” is needed. This provision refers to material recovery and mixed waste facilities that typically use physical means of separation (such as manual, mechanical, optical, etc.), not chemical or biological processing.</p> <p>2) CalRecycle disagrees that this difference needs to be explained because it would be impossible to account for the range of variability in processing facilities and the distinction is not necessary for understanding the regulation. For example, many MRFs use a variety of technology and many MRFs take in many different variations of single streams and mixed solid waste, e.g., wet/dry streams, mixed solid waste, etc. (see CalRecycle’s 2006 MRF study for more information on this wide variety)..</p>	No
18836a6	<p>"Self hauler" or "self hauling" definition – Comment suggesting that the definition be changed to be consistent with AB341, specifically to “Self-hauler” or “self-hauling” means a business that transports hauls its own <u>commercial solid waste</u> and/or <u>recyclables</u> <u>recyclable materials</u> rather than contracting with a hauler for that service.”</p>	<p>CalRecycle disagrees that this change is needed. CalRecycle considers the words “transport” and haul” to be equivalent, but is using transport to avoid confusion with other uses of the term “hauling.” CalRecycle added the word “recyclables” to clarify the provisions in PRC 42649.2(b)(1), which refer to self-hauling of recyclables.</p>	No

18836a7	<p>Source Separating and Source Separation –</p> <ol style="list-style-type: none"> 1) Does source separating include removal of all or some recyclable materials, or is it limited only to those materials listed in the jurisdiction's Source Reduction and Recycling Element, the local agency's recycling ordinance, or other undefined programs? 2) Recommendation that definition for source separation be revised to include reference to the existing definition of source separated found at CCR 17402.5(b)(4) or include the entire existing definition. 	<ol style="list-style-type: none"> 1) To allow maximum flexibility for businesses and jurisdictions, the regulation does not set a specified amount or type of recyclables including compostables. The regulation does allow jurisdictions to determine specific material types. The amount or type of recyclables removed is not limited to a jurisdiction's Source Reduction and Recycling Element or recycling ordinance. 2) CalRecycle disagrees that this change is needed because the two definitions do not conflict with each other. 14 CCR 17402.5(b)(4) is written within the context of determining whether a processing facility needs a solid waste facility permit, which is not applicable to businesses' determining how to comply with the requirements. 	No
18837a	<p>Anaerobic digestion, organics ordinance, organics markets – Several comments asserted that anaerobic digestion should be listed as a recommended diversion method; that CalRecycle should encourage communities to implement a mandatory commercial organics recycling ordinance; that CalRecycle should encourage attention to the superior diversion results achievable with source separation of organics; and that Section 18839(b)(5) be expanded to include the availability of composting facilities and markets for compost.</p>	<p>CalRecycle disagrees that these changes are needed. The regulation is designed so that it does not state a preference for any type of waste diversion technology. The regulation states in general that businesses may utilize a variety of actions to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal. CalRecycle will include an FAQ that clarifies that various technologies, such as anaerobic digestion, windrow composting, etc., are technologies that can be utilized to divert commercial solid waste. CalRecycle also will share examples of communities that implement mandatory commercial organics recycling ordinances and continue to promote organics diversion using a variety of approaches, as well as best management practices to maximize diversion. With respect to revising Section 18839(b)(5), CalRecycle disagrees that this change is needed. The section already addresses the availability of markets in general and that would take into account availability of markets for organic materials. CalRecycle will develop a FAQ to further clarify that consideration of organics markets are included. No change is necessary to the regulations.</p>	No
18837a 18838a1	<p>Flexibility for businesses -- National retailers cannot implement a "one size fits all approach" to recycling due to variability in recycling and waste collection across jurisdictions (e.g., materials accepted). CalRecycle should acknowledge these gaps to facilitate not only customer education but also help retailer partner's (employees) education and compliance activities.</p>	<p>CalRecycle concurs that maximum flexibility and customer education are critical but disagrees that a change is needed. The regulation already is designed to provide maximum flexibility to businesses and local jurisdictions due to the variability in infrastructure, markets, etc. CalRecycle will continue to provide education and assistance to businesses and jurisdictions to help them implement a recycling program that best meets their needs.</p>	No
18837a	<p>Many restaurant patrons enjoy their food and beverages at work, home and in location other than our stores. We have found residential and commercial recycling programs are incongruent. How or will the rulemaking process address these issues?</p>	<p>CalRecycle disagrees that this change is needed. This regulation only addresses solid waste generated at the business. CalRecycle can develop a FAQ that addresses that the regulation is focused on diverting the recyclable material that the business would have disposed of.</p>	No
18837b	<p>Requirements on owners of businesses or multi-family complexes:</p> <ol style="list-style-type: none"> 1) Question whether CalRecycle will promulgate rules that hold building owners accountable for commercial recycling services. 2) Owners should not be held responsible for the actions of their tenants who may not comply with recycling regulations. 	<ol style="list-style-type: none"> 1) CalRecycle concludes that no additional rule is needed, because the regulation already requires businesses (including property complexes containing two or more entities and multi-family complexes) to provide a recycling program for tenants. Tenants are responsible for participating in the recycling program. 2) No change is needed because the regulation does not make owners responsible for enforcing. 	No

18837c	Requirements on businesses - Comment that the regulation should recognize the difficulty of recycling materials at remote movie-shooting locations.	CalRecycle disagrees that this change is needed. CalRecycle recommends that it be a standard practice for a company to contact the local jurisdiction in advance of when a remote shoot is located to assess what material can be readily recycled and what cannot. Local jurisdictions are accustomed to short-duration events due to their experience working with large venue events.	No
18837c	If a business collecting street sweepings generally has 3 cubic yard bin refuse service, but sometimes has a 6 cubic yard bin and street sweepings are not in the materials covered by the local jurisdiction, is the business expected to recycle them?	It is not necessary for the regulation to address all wastestreams, and the regulation allows jurisdictions to address issues such as street sweepings in their individual programs. The diversion of street sweepings will depend on if there are programs that the business can utilize, such as composting. CalRecycle will add an FAQ that addresses businesses that generate street sweepings. The FAQ will address that the business will need to coordinate with the local jurisdiction	No
18837e	Right to donate or sell, and franchise agreements: 1) Recommended inclusion of " existing right of a business to sell or donate its recyclable materials" to be consistent with AB 341. 2) Recommended that CalRecycle eliminate any reference to exclusive recycling franchise agreements for commercial and multifamily property owners.	1) Although it is not necessary to repeat statute verbatim, CalRecycle agrees that the provision in AB 341 be included in this section to avoid creating the impression that the regulation is not consistent with statute. CalRecycle also will develop a FAQ to clarify that businesses are still allowed to donate or sell their recyclables as stated in statute. 2) CalRecycle disagrees that this change is needed re: franchise agreements. Many jurisdictions have exclusive franchise agreements and allow self-hauling and independent recycling, but as stated in the FSOR, the regulations do not specify a preference for any type of recycling activity or system. It is not in CalRecycle's purview to limit jurisdictions' ability to utilize franchises, etc. The regulation addresses the flexibility that businesses have to utilize a variety of recycling activities.	Yes in part (non-subst.)
18837e3	Transformation provisions - Recommendation that the word "feasible" be substituted for "possible" to be consistent with PRC 41783(a)(2)	CalRecycle agrees and has revised the regulation accordingly.	Yes (non-subst.)
18837e3	Transformation provisions – While regulations are admittedly accurate, need to clarify that generators still need to comply with regulations, i.e., to source-separate or subscribe to recycling service. PRC 40180 states "recycling does not include transformation"	CalRecycle disagrees that this change is needed. As noted by the commenter, the regulation is accurate. In addition, the regulation clarifies that a business does need to subscribe to a recycling service and that materials sent to one of the state's three transformation facilities must meet the front-end processing requirements.	No
18838a1	Jurisdiction outreach – Question on whether reporting outreach efforts are required when a jurisdiction has a diversion rate of 75% or more? Is outreach directed at only those regulated?	Nothing in statute or the regulation relieves a jurisdiction of its obligations once it exceeds a certain level of diversion. CalRecycle will develop a FAQ clarifying that whether a jurisdiction has exceeded the 50% diversion requirement, or has exceeded 75%, it is still required to report on its education/outreach/monitoring efforts relative to commercial recycling in its electronic annual report, in addition to reporting on other AB 939 programs.	No

18838a2	<p>Jurisdiction monitoring and reporting:</p> <ol style="list-style-type: none"> 1) Question whether condominium, townhomes, and mobile home parks that use individual cans rather than bins for solid waste and recycling need to be monitored and reported under this bill? 2) Comment that monitoring of all businesses in rural areas would require additional staff resources, which is not feasible. 3) Question on whether jurisdictions need to report a total number of business and multi-family dwellings or only those not in compliance? 	<ol style="list-style-type: none"> 1) Statute and the regulation give jurisdictions flexibility to design their own program, so no change is necessary to the regulation. CalRecycle will develop a FAQ clarifying that if condominiums, townhomes, and mobile homes are considered residential properties by the jurisdictions, then they would not be subject to the requirements. However, jurisdictions are allowed to implement more stringent requirements. 2) No specific change is requested. Jurisdictions are allowed the flexibility to design and implement programs that meet local needs, infrastructure and resources. Rural areas may have unique approaches for monitoring businesses and CalRecycle will continue to work with the ESJPA and rural jurisdictions to develop approaches that are appropriate for rural areas, including the development of a model rural commercial education, outreach, and monitoring program. 3) The regulation does not need to be specific on this point because of the flexibility allowed in statute and regulation. What is reported will depend on the information that the jurisdiction has available, based upon the program it has developed. Ideally, it would be helpful if the jurisdiction knows how many total businesses are included and how many are not recycling. 	No
18838b	Jurisdiction program – Comment that language should be changed to be consistent with statute, i.e., to include “to go through either a source separated or”.....	CalRecycle agrees with the proposed revision because it more closely mirrors statute.	Yes (non-subst.)
18838c	<p>Exemptions:</p> <ol style="list-style-type: none"> 1) Many buildings lack space to recycle materials. The regulations should provide exemptions for tenants where the building owner cannot or will not provide space for recycling services. 2) A financial hardship exemption is necessary to assure that the regulations do not adversely and unfairly impact small, minority and family-owned businesses. 	CalRecycle disagrees that these changes are needed. The regulations already provide local jurisdictions with the ability to assess and determine the need for exemptions that meet their local situations, including for space constraints. Local jurisdictions would work with tenants and building owners to assess space constraints. CalRecycle does not have the authority to require that jurisdictions must consider or include the exemptions or criteria that are being suggested.	No
18839a	CalRecycle review – Comment on need to address the processes that may be used by CalRecycle to verify the accuracy of the "information" received prior to subjecting the jurisdiction to additional tasks.	CalRecycle disagrees that this change is needed. This provision simply clarifies that CalRecycle is using the same process that has been used for the AB 939 jurisdiction reviews for many years.	No
18839	Enforcement “grace” period -- CalRecycle should include formal language that encourage local jurisdictions to provide a substantial grace period for enforcement.	CalRecycle disagrees that this change is needed. The regulation already allows local jurisdictions the flexibility to phase in program implementation. This is also addressed in the ISOR and FAQs. Additionally, jurisdictions are not required to implement an enforcement program. For those jurisdictions that do implement enforcement, CalRecycle’s experience has been that these jurisdictions focused first on education and did not immediately begin enforcement efforts when their mandatory program started.	No

18839b1	Jurisdiction program relative to owners of multi-family complexes - When developing compliance criteria for enforcement programs, a jurisdiction must consider a multi-family complex owner's effort to comply with recycling requirements.	CalRecycle disagrees that this change is needed. The regulation states that enforcement is permissive but not required. Jurisdictions are also provided the ability to offer exemptions as they deem appropriate. CalRecycle does not have the authority to require that jurisdictions enact enforcement programs or that they consider or include the exemptions or criteria that are being suggested. CalRecycle will review, through the annual report process, exemptions that are provided by jurisdictions. This oversight should help to ensure that challenges that multifamily owners face are adequately addressed.	No
18839b and c	"Good faith efforts" – Comment that the regulation should include the requirements of PRC 41850	CalRecycle disagrees that this change is needed because it is already included through statute. Staff will develop a FAQ that addresses the fact that CalRecycle's review of a jurisdiction's compliance will be done as part of its review of the jurisdiction's AB 939 programs pursuant to PRC 41825. As part of that AB 939 program review, the good faith effort determination is based upon the parameters identified in PRC 41850, and PRC 42649.3(i) also provides additional parameters related to good faith effort for assessing implementation of each jurisdiction's selected commercial recycling program.	No

1 **PROPOSED REGULATORY TEXT**

2
3 **MANDATORY COMMERCIAL RECYCLING**

4
5 **TITLE 14. NATURAL RESOURCES**

6 **DIVISION 7. DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY**

7 **CHAPTER 9.4. MANDATORY COMMERCIAL RECYCLING**

8 **SECTIONS: 18835-18839**

9
10 **MANDATORY COMMERCIAL RECYCLING**

11
12 **§18835. Purpose.**

13 This Chapter implements Mandatory Commercial Recycling pursuant to §42649 of the
14 Public Resources Code. The purpose of the statute is to reduce greenhouse gas
15 emissions by diverting commercial solid waste to recycling efforts and to expand the
16 opportunity for additional recycling services and recycling manufacturing facilities in
17 California.

18
19 **§18836. Definitions.**

20 (a) The following definitions shall govern the provisions of this Chapter.

- 21
22 (1) "Business" means any commercial or public entity, that generates four cubic
23 yards or more of commercial solid waste per week, including, but not limited
24 to, a firm, partnership, proprietorship, joint-stock company, corporation, or
25 association that is organized as a for-profit or nonprofit entity, strip mall
26 (e.g. property complex containing two or more commercial entities),
27 industrial facility, school, school district, California State University,
28 community colleges, University of California, special district or a federal,
29 state, local, regional agency or facility. For purposes of this Chapter,
30 "business" also includes a multi-family residential dwelling of five units or
31 more, regardless of the amount of commercial solid waste generated.
32

- 33 (2) "Commercial solid waste" means all types of solid waste, including
34 recyclable materials that are discarded from businesses as defined in
35 subdivision (1), but does not include waste from single family residences or
36 multifamily units of less than 5 units and does not include industrial waste.
37
- 38 (3) "Franchise" means any agreement between a jurisdiction and a hauler for
39 transporting commercial solid waste.
40
- 41 (4) "Hauler" means any person, commercial or public entity which collects,
42 hauls, or transports solid waste for a fee by use of any means, including but
43 not limited to, a dumpster truck, roll off truck, side-load, front-load, or
44 rear-load garbage truck, or a trailer.
45
- 46 (5) "Mixed Waste Processing" means processing solid waste that contains both
47 recyclable and/or compostable materials and trash.
48
- 49 (6) "Self hauler" or "self hauling" means a business that transports its own waste
50 and/or recyclables rather than contracting with a hauler for that service.
51
- 52 (7) "Source separating" or "source separation" means the process of removing
53 recyclable materials from solid waste at the place of generation, prior to
54 collection, and placing them into separate containers that are separately
55 designated for recyclables.
56

57
58 **§18837. Mandatory recycling of commercial solid waste by businesses.**
59

- 60 (a) On and after July 1, 2012, a business shall take at least one of the following
61 actions in order to reuse, recycle, compost, or otherwise divert commercial solid
62 waste from disposal:
63
- 64 (1) Source separating recyclable and/or compostable materials from the solid
65 waste they are discarding and either self-hauling, subscribing to a hauler,
66 and/or otherwise arranging for the pick-up of the recyclable and/or
67 compostable materials separately from the solid waste to divert them from
68 disposal.
69
- 70 (2) Subscribing to a recycling service that may include mixed waste processing
71 that yields diversion results comparable to source separation.
72
- 73 (b) To comply with §18837(a), property owners of commercial or multi-family
74 complexes may require tenants to source separate their recyclable materials.

75 Tenants must source separate their recyclable materials if required to by property
76 owners of commercial or multi-family complexes.

77
78 (c) Each business shall be responsible for ensuring and demonstrating its
79 compliance with the requirements of this Section. The activities undertaken by
80 each business pursuant to §18837(a) shall be consistent with local requirements,
81 including, but not limited to, a local ordinance, policy, contract or agreement
82 applicable to the collection, handling or recycling of solid waste.

83
84 (d) Except as expressly set forth in §18837(e)(3), this Section does not limit the
85 authority of a jurisdiction to adopt, implement, or enforce a recycling program that
86 is more stringent or comprehensive than the requirements of this Section.
87 Businesses located in such a jurisdiction must comply with any local
88 requirements that have been enacted.

89
90 (e) This Subsection does not modify, limit, or abrogate in any manner any of the
91 following:

92

93 (1) A franchise granted or extended by a city, county, city and county, or other
94 local government agency;

95
96 (2) A contract, license, or permit to collect solid waste granted or extended by a
97 city, county, or other local government agency as of the effective date of this
98 regulation;

99
100 (3) The existing right of a business to sell or donate its recyclable materials; or

101
102 (4) The existing provisions of §41783 of the Public Resources Code related to
103 transformation that allow jurisdictions to reduce their per-capita disposal rate
104 by no more than 10 percent. Materials sent to transformation facilities must
105 meet the requirements of §41783(a)(2) of the Public Resources Code
106 regarding front-end methods or programs to remove all recyclable materials
107 from the waste stream prior to transformation to the maximum extent
108 feasible (i.e., businesses whose waste goes to a transformation facility still
109 need to comply with the requirements in subsection 18837(a)).

110

111 **§18838. Implementation of commercial recycling program by jurisdictions.**

112 (a) Effective July 1, 2012, whether or not the jurisdiction has met the requirements of
113 Section 41780, each jurisdiction shall implement a commercial recycling program
114 appropriate for that jurisdiction which is designed to divert commercial solid
115 waste generated by businesses and that consists of the following components:

116

- 117 (1) The commercial recycling program shall include education and outreach to
118 businesses. The jurisdiction shall determine the types of educational and
119 outreach programs to ensure that the program targets the components of
120 the jurisdiction's commercial waste stream.
121
- 122 (2) The commercial recycling program shall include identification and
123 monitoring of businesses to assess if they are complying with §18837(a). If
124 any businesses subject to these regulations are not in compliance with
125 these provisions, the jurisdiction shall, at a minimum, notify those
126 businesses that they are out of compliance.
127
- 128 (b) The commercial recycling program adopted pursuant to Subdivision (a) may
129 include, but is not limited to, implementing a commercial recycling policy or
130 ordinance requiring businesses to recycle, requiring a mandatory commercial
131 recycling program through a franchise agreement or contract, or requiring that
132 commercial solid waste from businesses go through either a source separated or
133 mixed waste processing system that diverts material from disposal.
134
- 135 (c) When adopting its commercial recycling ordinance, policy, or program, a
136 jurisdiction may also, but is not required to, consider the following:
137
- 138 (1) Enforcement consistent with a jurisdiction's authority, including, but not
139 limited to, a penalty or fine structure that incorporates warning notices, civil
140 injunctions, financial penalties, or criminal prosecution.
141
- 142 (2) Building design standards that specify space requirements for storage of
143 recyclables or other purposes that may assist the compliance of businesses
144 with the program;
145
- 146 (3) Exemptions deemed appropriate by the jurisdiction such as, but not limited
147 to, zoning requirements, lack of sufficient space in multi-family complexes to
148 provide additional recycling bins, lack of markets, non-generation of
149 recyclable materials, or current implementation by a business of actions that
150 result in recycling of a significant portion of its commercial waste.
151
- 152 (4) Certification requirements for self-haulers which may include, but are not
153 limited to, requiring businesses to maintain written records demonstrating
154 that all self-hauling activities have been completed in accordance with the
155 standards imposed by the jurisdiction's commercial recycling program.
156
- 157 (d) The commercial recycling program shall apply to businesses, but may also apply
158 to any other commercial entity identified by the jurisdiction as being a source of
159 commercial solid waste.
160

- 161 (e) A jurisdiction may determine the specific material types included in its
162 commercial recycling program, which could include, but are not limited to paper
163 (including cardboard), plastics, glass, metals, organics, food waste, and non-
164 hazardous construction and demolition.
165
- 166 (f) If, prior to July 1, 2012, a jurisdiction has implemented a commercial recycling
167 program that meets all requirements of this Chapter, as determined by
168 CalRecycle pursuant to §18839, the jurisdiction will not be required to implement
169 a new or expanded program.
170
- 171 (g) If, in order to satisfy the requirements of this Chapter, a jurisdiction must
172 implement a new, or expand an existing, commercial recycling program, it shall
173 not be required to revise its source reduction and recycling element nor comply
174 with the requirements of Public Resources Code §41800 et seq.
175
- 176 (h) The jurisdiction shall include the addition or expansion of a commercial recycling
177 program in its Annual Report required by §41821, et seq. of the Public
178 Resources Code. Each jurisdiction shall report the progress achieved in
179 implementing its commercial recycling program, including education, outreach,
180 identification and monitoring, and, if applicable, enforcement efforts, and the
181 rationale for allowing exemptions, by providing updates in its Annual Report.
182

183 **§18839. CalRecycle Review**

- 184 (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance
185 with §18838 as part of its review of the jurisdiction's source reduction and
186 recycling element and household hazardous waste element programs, pursuant
187 to 14 California Code of Regulations §18772 and §41825 of the Public
188 Resources Code.
189
- 190 (b) During its review pursuant to this Section, CalRecycle shall determine whether
191 each jurisdiction has made a good faith effort to implement its selected
192 commercial recycling program. For this purpose, "good faith effort" means all
193 reasonable and feasible efforts by a jurisdiction to implement its commercial
194 recycling program. During its review, CalRecycle may include, but is not limited
195 to, the following factors in its evaluation of a jurisdiction's "good faith effort":
196
- 197 (1) The extent to which the businesses have complied with §18837(a), including
198 information on the amount of solid waste that is being diverted from
199 disposal by the businesses, if available, and on the number of businesses
200 that are subscribing to service;
201

- 202 (2) The recovery rate of the commercial waste from the material recovery
203 facilities that are utilized by the businesses, the role of that facility in the
204 jurisdiction's overall waste diversion and recycling system, and all
205 information, methods, and calculations, and any additional performance
206 data, as requested and collected by CalRecycle from the material recovery
207 facilities operators pursuant to 14 California Code of Regulations §18809.4;
208
- 209 (3) The extent to which the jurisdiction is conducting education and outreach to
210 businesses;
- 211
- 212 (4) The extent to which the jurisdiction is monitoring businesses and notifying
213 those businesses that are out of compliance;
- 214
- 215 (5) The availability of markets for collected recyclables;
- 216
- 217 (6) Budgetary constraints; and
- 218
- 219 (7) In the case of a rural jurisdiction, the small geographic size, low population
220 density or distance to markets.
- 221 (c) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has
222 failed to make a good faith effort to implement a commercial recycling program
223 and meet the requirements of §18838, CalRecycle shall issue a compliance
224 order with a specific schedule for achieving those requirements. CalRecycle
225 shall issue the compliance order within 30 days after making its finding of
226 non-compliance.
227
- 228 (d) The compliance order shall identify the portions of the commercial recycling
229 program which are not being implemented or attained by the jurisdiction, or
230 identify areas of the commercial recycling program which need revision.
231 CalRecycle shall also set a date by which the jurisdiction shall meet the
232 requirements of the compliance order.



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 9.4: Mandatory Commercial Recycling

Sections: 18835-18839

PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (CalRecycle) proposes to amend the California Code of Regulations, Title 14, Division 7, Chapter 9.4 commencing with §18835. The proposed regulations are intended to clarify the procedures for implementing Part 3 of Division 30 of the Public Resources Code §42649 through §42649.7 regarding Recycling of Commercial Solid Waste [Chapter 12.8, Statutes of 2011, Chesbro, AB 341] (Mandatory Commercial Recycling Act).

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to CalRecycle. **The written comment period for this rulemaking closes at 5:00 p.m. on December 12, 2011.** CalRecycle will also accept written comments during the public hearing described below. Please submit your written comments to either of the following CalRecycle staff:

Marshalle Graham
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
Phone: (916) 341-6270
E-mail: climatechange@calrecycle.ca.gov



Teri Wion
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
Phone: (916) 341-6374
E-mail: climatechange@calrecycle.ca.gov

PUBLIC HEARING

A public hearing to receive public comments has been scheduled for **December 13, 2011**. The hearing will be held at the:

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

The hearing will be held at 1:30 pm on December 13, 2011, 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 assessable. If you have any questions, please contact climatechange@calrecycle.ca.gov.

INFORMATIVE DIGEST

In March 2009, CalRecycle began an informal rulemaking process to develop the proposed regulations, including conducting eight informal stakeholder workshops in collaboration with the Air Resources Board (ARB). Throughout this process CalRecycle and ARB staff met with representatives of several affected stakeholder groups in an attempt to reach consensus on outstanding issues, including:

- Definition of business
- Thresholds (e.g. multi-family)
- Transformation
- Mixed waste processing
- Rural jurisdictions and “good faith effort” evaluation
- Franchise agreements and rights of businesses

These proposed regulations explain CalRecycle’s responsibilities for oversight and implementation of the Mandatory Commercial Recycling Act, as well as the responsibilities of affected businesses and jurisdictions. This rulemaking provides clarity to the new law and contains sections on the following topics: Purpose (§18835); Definitions (§18836); Mandatory recycling of commercial solid waste by businesses (§18837); Implementation of commercial recycling programs by jurisdictions (§18838); and CalRecycle Review (§18839).

More specifically, the proposed regulations:

1. Define the following terms: “Business”, “Commercial solid waste”, “Franchise”, “Hauler”, “Mixed Waste Processing”, “Self hauler” or “Self hauling”, and “Source separating” or “Source separation”.
2. Require businesses and public entities that generate four cubic yards or more of trash per week, and multifamily complexes of five or more residential units, to recycle the solid waste that they generate by selecting one, or any of combination, of the following:
 - a) Source separating, (i.e., removing recyclable and/or compostable materials from the solid waste that they are discarding and separating them into separate containers) and either: self hauling, subscribing to a hauler, and/or otherwise arranging for the pickup of these materials to divert them from disposal;
 - b) Subscribing to a service that includes mixed waste processing (i.e. recyclables and/or compostable materials and trash) and yielding results comparable to source separation.
3. Allow property owners of affected commercial and multifamily complexes the choice to require tenants to source separate their recyclable materials and require tenants to source separate these materials if required by the property owners.
4. Make each affected business responsible for ensuring and demonstrating its compliance with the proposed regulations and with any requirements by the local jurisdiction.
5. Require each local jurisdiction to implement a commercial recycling program by July 1, 2012 that consists of providing education and outreach and monitoring to businesses subject to the Mandatory Commercial Recycling Act, to inform them of their obligation to recycle.
6. Provide jurisdictions the flexibility to conduct education and outreach that fits their existing programs, resources and infrastructure and to adopt a more comprehensive or stringent program than required by the proposed regulations.
7. Establish general criteria for the jurisdictions’ obligation to monitor and assess the participation of affected businesses and multifamily complexes in recycling services, and notify affected businesses that are not in compliance with these regulations.
8. Identify commercial recycling program options that may be used by local jurisdictions to implement the regulations including: implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the jurisdictions’ franchise contract or agreement, and/or requiring that all commercial recycling materials go through a mixed waste processing system that yields diversion results comparable to source separation.

9. Do not modify or abrogate existing franchises, contracts, licenses and permits regarding the collection of solid waste or the transformation provisions of PRC §41783.
10. Require jurisdictions to include the addition or expansion of a commercial recycling program in its Annual Report required by PRC §41821.
11. Make CalRecycle responsible for evaluating and enforcing the performance of jurisdictions in implementing their commercial recycling outreach, education and monitoring programs.

POLICY STATEMENT OVERVIEW

To implement the Mandatory Commercial Recycling Act, CalRecycle has responsibility to evaluate each jurisdiction's implementation of its responsibilities to provide education, outreach to and monitoring of affected businesses concerning commercial recycling opportunities available within the jurisdiction. This evaluation is conducted as part of CalRecycle's existing review process of the jurisdictions' source recycling and recycling and household hazardous waste elements pursuant to 14 California Code of Regulations (CCR) and PRC §41825.

PLAIN ENGLISH REQUIREMENTS

CalRecycle staff prepared the proposed regulations 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). These proposed regulations are considered non-technical and are written to be easily understood by those parties that will use them.

AUTHORITY AND REFERENCE

The California Integrated Waste Management Act (Act), Part 3 of Division 30 of the Public Resources Code (PRC) §40000 et. seq., gives CalRecycle 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 CalRecycle to adopt rules and regulations to implement the Act. These proposed regulations implement, interpret and make specific the statutory provisions regarding the Mandatory Commercial Recycling Act. (PRC §42649 through §42649.7). The following is a list of references cited in these proposed regulations: PRC Sections: 41780, 41783, 41800, 41821, 41825, 42649 through 42649.7, and CCR Title 14 §18772 and §18809.4.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

CalRecycle has determined that the proposed regulations do not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code §§17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

CalRecycle has made a determination that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

CalRecycle has made an initial determination that, although the proposed regulations could affect approximately 470,000 businesses in California, they 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 regulations clarify existing law and impose no new requirements that would result in adverse cost impacts. The types of businesses affected include specified commercial or public entities and multi-family residential dwellings.

EFFECT ON SMALL BUSINESSES

CalRecycle has made an initial determination that, although the proposed regulations could affect approximately 250,000 small businesses, they 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 regulations clarify existing law and impose 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

No new businesses are expected to be created and no existing businesses eliminated as a result of this regulation package. The purpose of these regulations is to clarify the recently passed Mandatory Commercial Recycling Act and establish administrative procedures to efficiently and effectively implement CalRecycle's responsibilities under the new law.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CalRecycle is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

CONSIDERATION OF ALTERNATIVES

CalRecycle must determine that no reasonable alternative considered by CalRecycle or that has otherwise been identified and brought to the attention of CalRecycle would be more effective in

carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. CalRecycle invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Marshalle Graham
climatechange@calrecycle.ca.gov.

Teri Wion
climatechange@calrecycle.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

CalRecycle will have the entire rulemaking file, and all information that provides the basis for the proposed regulations, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations, and the initial statement of reasons. Copies may be obtained by contacting Marshalle Graham or Teri Wion at the address or phone numbers listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access CalRecycle's Internet webpage at <http://www.calrecycle.ca.gov/Climate/Recycling/default.htm>. The Final Statement of Reasons will be also available at the above listed Internet address or you may call the contact persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

CalRecycle may adopt the proposed regulations substantially as described in this notice. If CalRecycle 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 CalRecycle adopts the regulations as revised. Requests for the modified text should be made to the contact persons named above. CalRecycle 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. CalRecycle will accept written comments on the modified regulations for 15 days after the date on which they are made available.

*****END*****

INITIAL STATEMENT OF REASONS MANDATORY COMMERCIAL RECYCLING REGULATIONS

PURPOSE OF THE REGULATION

The purpose of the proposed regulation is to clarify certain provisions of statute (AB 341, Chesbro) and provide procedures for complying with that statute. The purpose of that statute is to reduce greenhouse gas emissions by increasing the amount of commercial waste recycled in California, specifically by requiring businesses and public entities that generate 4 cubic yards or more of solid waste per week, and multifamily residences with 5 or more units, to recycle. Increasing diversion of commercial solid waste through recycling will reduce greenhouse gas (GHG) emissions by as much as 5 million metric tons of carbon dioxide (CO₂) equivalents (MMTCO_{2e}) per year by 2020.

Increasing the amount of commercial solid waste that is recycled, reused, or composted will reduce GHG emissions primarily by: 1) reducing the energy requirements associated with the extraction, harvest, and processing of raw materials; and 2) using recyclable materials that require less energy than raw materials to manufacture finished products. Increased diversion of organic materials (green and food waste) will also reduce GHG emissions by redirecting this material to processes that use the solid waste material to produce vehicle fuels, heat, electricity, or compost.

Implementation of this statute will increase the availability of recyclable materials, provide increased feedstock for recycled-content product manufacturers, and could expand the opportunity for additional recycling manufacturing facilities and associated job creation in California. From a GHG emissions standpoint, providing incentives for expanded or new recycling manufacturing infrastructure in California makes sense because most emission reductions occur at the point of remanufacturing and not at the origin of recycling. While some materials collected in California remain in the state for remanufacturing, the majority of the recycled materials are shipped to other parts of the United States or to global markets.

The proposed statute includes the following components:

- Requires businesses and public entities that generate 4 cubic yards or more of trash per week, and multifamily complexes of 5 or more residential units, to recycle solid waste that they generate by selecting one, or any of combination of the following: subscribing to a recycling service, source separating their material and self-hauling to a recycling facility, allowing for the pick-up of recyclables, and/or having their material processed in a mixed waste processing facility that yields diversion results comparable to source separation.
- Requires each local jurisdiction, regardless of whether the jurisdiction has met its AB 939 50 percent diversion requirement, to implement a commercial recycling program by July 1, 2012, that consists of education, outreach and monitoring of businesses subject to the Commercial Recycling Regulation. If a jurisdiction already has a commercial recycling program that targets businesses required to

comply with the regulation, and if the program includes education, outreach, and monitoring elements, it would not be required to implement a new or expanded program. Jurisdictions are required to provide education/outreach/monitoring to inform businesses of their obligation to recycle. However, enforcement by local jurisdictions is not required, and jurisdictions do not need to have legal control over the businesses.

- Establishes general criteria for education and outreach to provide information explaining the requirements of the Commercial Recycling Regulation, as well as the recycling opportunities available within the jurisdiction. Jurisdictions have flexibility to conduct education and outreach that fits their existing programs and resources. For example, the jurisdiction may choose whether they or the hauler(s) or community groups conduct these activities, or they may choose a combination. Jurisdictions are also encouraged to utilize existing programs to incorporate information about the new state requirement, such as an existing website, newsletter, etc., to maximize outreach opportunities.
- Establishes general criteria for monitoring of affected businesses and multifamily complexes and includes assessing if affected businesses are subscribing to and participating in recycling services, and notifying affected businesses that are not in compliance with these regulations. This is necessary to ensure that affected businesses that are required by these regulations to recycle commercial waste are identified and monitored, and that they are notified if not in compliance. Jurisdictions have flexibility to implement monitoring that fits their existing programs and resources. For example, the jurisdiction may choose whether it and/or the hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to inform businesses of the state requirement to recycle, such as letters that are sent to businesses, on-site visits, phone calls from the hauler's sales representative, or other approaches to maximize resources. Jurisdictions might also choose to phase in monitoring over time depending on how many businesses are in the jurisdiction.
- Identifies commercial recycling program options that may be used by local jurisdictions to implement the regulation including: implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the franchise contract or agreement, and/or requiring that all commercial recycling materials go through a mixed waste processing system that yields diversion results comparable to source separation.
- Allows jurisdictions the flexibility to implement a commercial program that meets their local needs and works with their existing infrastructure. For example, a jurisdiction's recycling program may include an enforcement component; the enforcement component may include all businesses subject to a jurisdiction's recycling program or a subset of these businesses; and, a jurisdiction's recycling program may apply to businesses beyond those as defined in this regulation.

- Recognizes rural jurisdictions' limitations (such as small geographic size, low population density, or distance to markets) when CalRecycle evaluates program implementation and makes a determination regarding whether a rural jurisdiction is making a "good faith effort" to implement a commercial recycling program.
- Protects existing franchise agreements, contracts, and licenses.
- Allows property owners of commercial and multifamily complexes to comply with the requirements by requiring, if needed, tenants to source separate their recyclable materials.
- Makes CalRecycle responsible for evaluating and enforcing jurisdiction performance in implementing the mandatory commercial recycling program, and for measuring GHG emissions reductions associated with commercial recycling at the statewide level.

NECESSITY OF THE PROPOSED REGULATION

This portion of the Statement of Reasons provides a summary of the necessity and the key components of the proposed Commercial Recycling Regulation. This chapter is also intended to satisfy the requirements of Government Code section 11346.2, which requires that a non-controlling "plain English" summary of the regulation be made available to the public. Additionally, this chapter pursuant to Government Code sections 11349.1, and 11346.2(b)(1), and title 1, CCR, section 10, describes the rationale for each proposed section of the regulation. The complete text of the proposed Commercial Recycling Regulation is provided in Attachment A. The Notice Of The Proposed Regulation is provided in Attachment B.

The following paragraphs provide a plain English description of each of the sections of the proposed regulation and explain the necessity of each section.

1. Purpose (section 18835)

The purpose of this Chapter is to clarify and provide procedures for Mandatory Commercial Recycling pursuant to Section 42649 of the Public Resources Code. The purpose of the statute is to reduce GHG emissions by diverting commercial solid waste that would otherwise be landfilled to recycling and composting efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

2. Definitions (section 18836)

Section 18836 is necessary to explain a number of technical and administrative terms from the Public Resources Code that appear in this Chapter that require definition to ensure regulatory consistency and clarity.

Subsection 18836(a)

Subsection (a) is necessary to define the technical and administrative terms that appear in this Chapter that require definition. Except as otherwise noted, the definitions of this Chapter are governed by the definitions set forth in Chapter 2 (commencing with section 40100), Part 1, Division 30 of the Public Resources Code.

Subsection (a)(1)

Subsection (a)(1) defines the term “Business.” This subsection is necessary to clarify which types of commercial or public entities are subject to the requirements of this Chapter, and to explicitly state that public entities are included. Public entities include military installations, school districts, schools, federal, state, local, regional agencies or facilities, special districts, California State Universities, Universities of California, and community colleges. Additionally, the definition of business includes strip malls containing two or more commercial entities and industrial facilities. This also clarifies that the threshold for businesses (not including multifamily residences) is 4 cubic yards of commercial solid waste per week, not 4 cubic yards of commercial solid waste and recyclables. The definition distinguishes between recyclable materials that already are separated prior to any commercial solid waste being discarded – and thus excluded from the 4 cubic yards – versus potentially recyclable materials that are not separated and instead are included in the commercial solid waste being discarded. Establishing the threshold to include only commercial solid waste should make it easier for a jurisdiction to determine which businesses are subject to the regulation; a jurisdiction does not have to conduct a waste generation study to determine if 4 cubic yards of commercial solid waste is generated. Within this definition then, the term “generates” simply refers to commercial solid waste produced and disposed, excluding previously separated recyclable materials; it does not refer to other uses of the terms “generates” or “generation” that mean the amount of commercial solid waste diverted plus the amount of solid waste disposed. “Business” also includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated.

Subsection (a)(2)

Subsection (a)(2) defines the term “Commercial solid waste.” This subsection is necessary to clarify the types of material that shall be recycled in order to meet the requirements of this Chapter. It is also necessary to correct a drafting error in statute, which used a different definition for this term that inadvertently excluded multi-family residences. Because numerous other statutory provisions clearly include multi-family residences, this definition provides consistency and clarity that commercial solid waste from multi-family residences is subject to the statutory requirements. Also, to complement and reinforce the affected Business definition, it is necessary to clarify that commercial solid waste does not include solid waste from single family residences or multifamily residences of less than 5 units. This definition does not make any substantive change to statute.

Subsection (a)(3)

Subsection (a)(3) defines the term “Franchise.” This subsection is necessary to clarify that the existing contractual and other legal obligations between a jurisdiction and a

hauler to transport solid waste would not be modified or abrogated by this Chapter. For purposes of these regulations, the definition for “Franchise” is limited to commercial solid waste to differentiate them from other types of franchises.

Subsection (a)(4)

Subsection (a)(4) defines the term “Hauler.” This subsection is necessary to clarify the action required of businesses regarding movement of commercial solid waste. This action includes either self-haul or subscribing to a service that hauls.

Subsection (a)(5)

Subsection (a)(5) defines the term “Mixed Waste Processing.” This subsection is necessary to clarify that the option for a business to subscribe to a recycling service that includes mixed waste processing means a service that processes solid waste that contains both recyclable and/or compostable materials and trash. This is necessary to provide specificity on materials management options that a business can take.

Subsection (a)(6)

Subsection (a)(6) defines the terms “Self hauler” or “self-hauling.” This subsection is necessary to add clarity to an option for a business to consider for meeting the requirement to recycle its commercial solid waste. One option is transporting its own waste to a recycling facility.

Subsection (a)(7)

Subsection (a)(7) defines the terms “Source separating” or “source separation.” This subsection is necessary to clarify the process required of the owner or operator of a business to recycle its commercial solid waste when choosing the option described in subsection 18837(a) to either self-haul or subscribe to a service that hauls, or arrange for the pickup of the recyclable materials separately from the solid waste to divert them from disposal.

3. Mandatory Recycling of Commercial Solid Waste by Businesses (section 18837)

Section 18837 specifies the requirements a business shall meet to recycle its commercial solid waste.

Subsection (a)

Subsection 18837(a) specifies a business shall reuse, recycle, compost, or otherwise divert its commercial solid waste from disposal by taking at least one or any combination of the following materials management options described in subsection 18837(a)(1) or subsection 18837(a)(2). This is necessary to define the party responsible for recycling commercial solid waste and the start date.

Subsection (a)(1)

Subsection (a)(1) specifies methods that a business may take to meet the requirement of this Chapter to recycle the business’ commercial solid waste: by source separating

recyclable and/or compostable materials, alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials, and self-hauling these separately from the solid waste to a recycling facility; and/or subscribing to a hauler that transports these source-separated recyclable materials to a recycling facility; and/or otherwise arranging for the pick-up of recyclables (e.g., by independent recyclers). This is necessary to inform business owners, operators, and employees of actions they may take to meet the requirement that commercial solid waste generated as part of business operations is recycled.

Subsection (a)(2)

Subsection (a)(2) specifies a method that a business may take to meet the requirement of this Chapter to recycle the business's commercial solid waste: by subscribing to a recycling service that includes mixed waste processing as part of a system in combination with other programs, activities, and processes that diverts recyclable and/or compostable materials from disposal, yielding diversion results comparable to source separation (note: CalRecycle intends that the phrase "other programs, activities and processes" associated with a material recovery facility, including a mixed waste processing facility, applies to the commercial solid waste or recyclable materials after they are generated by the business, not to waste minimization or source reduction programs and activities). Mixed waste processing is intended here to include a myriad of processes to recover recyclable and/or compostable materials from solid waste. This Subsection is not intended to change marketplace dynamics or express a preference for any particular diversion activity, program or process over another. It is intended to provide local governments with flexibility in designing programs specific to their community. However, while no single quantitative recovery rate standard exists, the section does establish an expectation that overall diversion results from a recycling system that includes mixed waste processing, and that may include other programs and activities, will be comparable to the overall diversion results of recycling services that rely on source-separated processing of recyclables, and that may also include other programs and activities. The diversion performance of a particular facility will be considered by CalRecycle on a case-by-case basis as part of its evaluation of local jurisdiction program implementation to see if its recovery appears to be significantly low (also see section 18839(b). In this case CalRecycle would take into account relevant factors such as, but not limited to, the character and composition of the solid waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, and the nature and amount of feedstock processed at facilities used for solid waste generated in the jurisdiction. That is, CalRecycle would conduct a case-by-case qualitative evaluation in the context of the entire set of programs in a jurisdiction, whether the facilities involved are mixed waste processing or single-stream material recovery facilities. This is necessary to provide information to business owners, operators, and employees with another option to meet the requirement to recycle commercial solid waste

Subsection (b)

Subsection (b) clarifies that property owners of commercial or multifamily complexes may require tenants to source separate their recyclable materials. Tenants in

commercial or multifamily complexes must source separate their recyclable materials if required by the property owner. This provision is necessary to ensure that owners can require those persons actually generating recyclable materials and therefore in an opportune position to source separate, them to do so.

Subsection (c)

Subsection (c) specifies that each business is responsible for ensuring and demonstrating compliance with the requirements of section 18837. It also specifies that the activities a business undertakes pursuant to subsection 18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance or agreement applicable to the collection, handling or recycling of solid waste. This is necessary to inform businesses of their responsibilities to ensure and demonstrate compliance with the commercial recycling requirement. In addition, this allows a jurisdiction to determine whether or not a business is in compliance with the commercial recycling requirements of this Section and for an implementing or enforcing agency to take further implementation or enforcement action as appropriate.

Subsection (d)

Subsection (d) specifies that the authority of a jurisdiction is not limited by this section and that it may adopt, implement, or enforce a more stringent or comprehensive recycling program and that businesses located in such a jurisdiction are required to comply with local requirements. This is necessary to inform affected parties that in regards to more stringent or comprehensive recycling programs, a local jurisdiction is not limited by the statewide requirements for a business to recycle its commercial solid waste. It is also necessary to inform businesses that they shall, at a minimum, comply with the more stringent local requirements if applicable. This allows jurisdictions a level of autonomy to adopt, implement, or enforce more stringent or comprehensive recycling programs more suited to local conditions.

Subsection (e)

Subsection (e) specifies that legal mechanisms and rights described in this Subsection shall not be modified or abrogated by section 18837. This is necessary to assure relevant parties that this subsection does not affect legal mechanisms and rights.

Subsection (e)(1)

Subsection (e)(1) specifies that a franchise agreement granted or extended by a city, county, or other local government agency cannot be modified or abrogated by section 18837. This is necessary to assure franchisees that this section does not modify or abrogate a franchise agreement granted by local government. This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing franchise agreement.

Subsection (e)(2)

Subsection (e)(2) specifies that a contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local government agency cannot be modified or abrogated by section 18837. This is necessary to ensure that this

section does not modify or abrogate a contract, license, or permit to collect solid waste granted by local government. This offers protection from the threat of unforeseen and disruptive changes to an existing contract, license, or permit to collect solid waste.

Subsection (e)(3)

Subsection (e)(3) clarifies that interpretation of the provisions of Public Resources Code section 41783 are not affected by this regulation. Commercial solid waste may be taken to a transformation facility, as long as the existing requirement in Public Resources Code section 41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met. For example front-end processing includes source-separating recyclables or processing material at a mixed waste processing facility. The subsection clarifies that there is no change to the existing provisions of section 41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent.

4. Implementation of Commercial Recycling Program by Jurisdictions (section 18838)

Section 18838 specifies the requirements a jurisdiction shall meet to implement a commercial recycling program, which are necessary to ensure that affected businesses are aware of their requirements to recycle and are doing so.

Subsection (a)

Subsection (a) specifies that effective July 1, 2012, whether or not the jurisdiction has met its diversion requirements under section 41780, each jurisdiction shall implement a commercial recycling program that consists of education, outreach, and monitoring.. Education and outreach consists of informing businesses of the state requirement to recycle and providing information on how businesses can recycle. Monitoring entails assessing whether businesses are recycling and, if not, informing them again of the requirement. This is necessary to define the party responsible and timeline for implementing a commercial recycling program.

Subsection (a)(1)

Subsection (a)(1) specifies that the commercial recycling program shall include education and outreach to businesses and that the jurisdiction shall determine the types of educational and outreach programs to ensure that the program targets the components of the jurisdiction's commercial waste stream. This is necessary to ensure affected businesses are adequately informed about a jurisdiction's commercial recycling program, their requirements to recycle, and the components of the solid waste stream that the jurisdiction has targeted. While specific elements of a jurisdiction's education and outreach program will be unique, the following are examples of what jurisdictions could do annually to inform and educate businesses about the state requirement and how businesses can comply:

- 1) Electronic: Place information on the jurisdiction's website that informs businesses of the state requirement to recycle and explains how businesses can recycle in the jurisdiction. The information placed on the website could include contact information

for the franchise hauler for service information, locations to self-haul recyclables to, and other relevant information.

- 2) Print: Send out information to the affected businesses via a brochure, letter, or newsletter. At a minimum, this information should be sent annually, but could be done more frequently.
- 3) Direct Contact: Present at business forums, such as the Chamber of Commerce, and/or provide technical assistance through waste assessments to explain the state requirement and how businesses can recycle in the jurisdiction. Provide a contact person that businesses can call to ask questions.

The following provides guidance to rural jurisdictions that may have unique circumstances due to small geographic size and/or low population density:

- Rural jurisdictions could include information in its annual letter to businesses for business license renewals about the requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction.

A jurisdiction may choose whether the jurisdiction itself and/or hauler(s) conduct these activities. Jurisdictions are also encouraged to utilize existing programs to incorporate information about the new state requirement to maximize resources, such as utilizing an existing website, newsletter, and/or other existing media.

Jurisdictions also may choose to phase in education/outreach to multifamily complexes depending on the jurisdictions infrastructure, mechanisms for communicating with multifamily complexes, etc. For example, recognizing that multifamily units of 16 or more by law are required to have an on-site manager, a jurisdiction has the flexibility to target those units first. Jurisdictions also have the flexibility in how they develop and implement the education/outreach to owners of multifamily complexes. For example, if multifamily complexes have owners that are located in other areas of the state or live outside of the state, then the jurisdiction might take various approaches to contacting the owner to inform them of the state requirement to recycle at the complex, such as sending a letter, including information on the solid waste bill, etc.

Subsection (a)(2)

Subsection (a)(2) specifies that the commercial recycling program shall include identification and monitoring of businesses, to assess if businesses are complying with subsection 18837(a). In addition, this subsection specifies that the jurisdiction shall, at a minimum, notify businesses that are not in compliance with these regulations. This is necessary to ensure that businesses required by these regulations to recycle commercial solid waste are identified and monitored, and that they are notified if not in compliance. While specific elements of a jurisdiction's monitoring program will be unique, the following are examples of what jurisdictions could do annually to notify businesses that are out of compliance with the state requirement and how the businesses can comply. The jurisdiction may choose whether the jurisdiction and/or hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to incorporate information about the new state requirement, such as letters that are sent to businesses, notifications sent electronically, on-site visits, phone calls

from the hauler's sales representative, etc., to maximize resources. Jurisdictions might also choose to phase in monitoring depending on how many businesses are in the jurisdiction, including phasing in monitoring to focus first on larger multifamily residences.

Examples related to monitoring include the following:

- 1) The jurisdiction, if it is a city run program, or the franchise hauler(s) would track businesses and report to the jurisdiction on those businesses that are not recycling. For those businesses that are not complying, either the jurisdiction or the hauler would send a notice to the business to inform them of the state requirement and how the business can recycle in the jurisdiction.
- 2) An additional approach to monitoring that jurisdictions might choose is the following: Either the hauler or the jurisdiction could follow-up in person or with a phone call with the businesses that are not in compliance with the state regulation. The purpose of this follow-up would be to assist the business with identifying how it can recycle in the local jurisdiction.

The following provides guidance regarding monitoring to rural jurisdictions that may have unique circumstances due to small geographic size and/or low population density:

- 1) For jurisdictions that have staff or a hauler that services commercial businesses, the staff and/or hauler could identify the businesses that aren't recycling and then the jurisdiction would send out a letter that explains the state requirement that businesses recycle and how the businesses can recycle in the jurisdiction.
- 2) For jurisdictions that do not have staff and/or a hauler to do (1) above and because it might be difficult for the jurisdiction to ascertain which businesses are not recycling, then an annual letter would suffice. The letter could be sent electronically or hard copy depending upon the rural jurisdiction's situation.

Subsection (b)

Subsection (b) specifies that the recycling program adopted pursuant to subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses to recycle; requiring a mandatory commercial recycling program, through a franchise agreement or contract; or, requiring that commercial solid waste from businesses be sent to a mixed waste processing facility. This is necessary to inform jurisdictions of optional components that may be included in a recycling program.

Subsection (c)

Subsection (c) suggests a non-exclusive list of additional components that the recycling program may include. This is necessary to inform jurisdictions of different types of components that can contribute to an effective recycling program.

Subsection (c)(1)

Subsection (c)(1) specifies that an additional component of the recycling program may include, but is not required to include, enforcement. If an enforcement component is implemented, jurisdictions may include a penalty or fine structure that, consistent with a

jurisdiction's authority, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. This subsection is necessary to inform jurisdictions of enforcement mechanisms that they can choose for their commercial recycling program.

This subsection is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program. In developing compliance criteria for an enforcement program, a jurisdiction could consider a multi-family complex owner's effort to comply with recycling requirements. Criteria for exempting a multi-family complex owner from enforcement penalties could include the owner not being able to get a hauler to provide recycling services to the complex, or the efforts the owner has made to address tenants' refusal to source separate their recyclables.

Subsection (c)(2)

Subsection (c)(2) specifies that an additional component of the recycling program may include building design standards that specify space requirements for storage of recyclables or other purposes that may assist businesses with compliance with the program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (c)(3)

Subsection (c)(3) clarifies that as part of developing a commercial recycling program a jurisdiction may consider whether exemptions are warranted for zoning requirements; lack of markets; non-generation of recyclable materials; current implementation by a business of actions that result in recycling of a significant portion of its commercial waste; or multifamily complexes that lack sufficient space to provide additional recycling bins or where the owner is unable to get a hauler to provide recycling services to the complex. This is necessary to inform jurisdictions of types of exemptions that they may deem appropriate for their commercial recycling program.

Subsection (c)(4)

Subsection (c)(4) specifies that an additional component of the recycling program may include certification requirements for self-haulers which may include, but are not limited to, requiring businesses to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (d)

Subsection (d) specifies that, in addition to the businesses defined in subsection 18836(a)(1), the businesses subject to commercial recycling may also include any other commercial entity that the jurisdiction identifies as being a source of commercial solid waste. This section is necessary to allow jurisdictions the flexibility to enact ordinances, rules or policies to make commercial recycling applicable to other commercial entities that are sources of recyclable materials within the jurisdiction and that otherwise do not meet the definition of business.

Subsection (e)

Subsection (e) specifies that a jurisdiction may determine the specific material types included in its commercial recycling program and provide a non-exclusive list of the types of materials that could be considered for inclusion. This is necessary to ensure that a jurisdiction has flexibility to target specific material types for inclusion in its commercial recycling program which, based on local conditions, may differ from other jurisdictions.

Subsection (f)

Subsection (f) specifies that if, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this Chapter, the jurisdiction will not be required to implement a new or expanded program. In the event a jurisdiction's existing recycling program does not include all businesses as defined in this regulation, or the monitoring, outreach and education requirements of this Chapter, the program will need to be revised to do so. This is necessary to protect jurisdictions that already implemented suitable commercial recycling programs from being required to implement a new program.

Subsection (g)

Subsection (g) makes it explicit that if, in order to satisfy the requirements of this Chapter, a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code section 41800 et seq. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' implementation of their commercial recycling programs, but offers relief to jurisdictions by exempting them from the statutory requirement to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.

Subsection (h)

Subsection (h) specifies that each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, monitoring, by providing updates in its electronic annual report. In addition, the jurisdiction should include in its annual report an explanation, if applicable, of enforcement efforts if the jurisdiction has implemented an enforcement program and of the rationales for any exemptions allowed by the jurisdiction in its program. This is necessary to ensure CalRecycle is provided information annually on each jurisdiction's commercial recycling program without requiring the jurisdiction to revise its Source Reduction and Recycling Element when implementing a new, or expanding an existing, commercial recycling program.

5. CalRecycle Review (section 18839)

Section 18839 specifies the oversight responsibilities of CalRecycle in ensuring a jurisdiction implements a commercial recycling program in accordance with this Chapter.

Subsection (a)

Subsection (a) specifies CalRecycle's responsibility to review, pursuant to section 41825 of the Public Resources Code, a jurisdiction's compliance with its requirements under this Chapter to implement a commercial recycling program that consists of education, outreach, and monitoring. Also, this subsection specifies the commencement date and mechanism for this review, which is important for providing lead time to affected jurisdictions. This is necessary to clarify the responsibilities of CalRecycle in reviewing a jurisdiction's compliance with its requirements under this Chapter to implement a commercial recycling program.

Subsection (b)

Subsection (b) specifies that during its review of a jurisdiction's compliance with its requirements under this Chapter, CalRecycle is required to determine whether each jurisdiction has made a good faith effort to implement its commercial recycling program. This subsection clarifies the criteria a jurisdiction is required to meet in order for CalRecycle to determine whether a "good faith effort" has been made. This subsection defines "good faith effort" as "all reasonable and feasible efforts" by a jurisdiction to implement its selected commercial recycling program. This definition mirrors the "good faith effort" standard contained in Public Resources Code subsection 41825(e). CalRecycle has extensive experience in applying this standard in evaluating the programs contained in jurisdictions' Source Reduction and Recycling Elements. This "good faith effort" standard as provided in this Subsection takes into account the numerous considerations and factors contained in Public Resources Code subsection 41825(e)(1) through (5), as applicable to the jurisdiction. In addition to these considerations and factors, this subsection specifies a non-exclusive list of some additional specific factors pertaining to commercial recycling, that CalRecycle may include in its evaluation of a jurisdiction's "good faith effort." This subsection is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program and that its efforts are fairly evaluated.

Subsection (b)(1)

Subsection (b)(1) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to, considering the extent to which the businesses are complying with subsection 18837(a), including information on the amount of disposal that is being diverted from the businesses, if available, and the number of businesses that are subscribing to service. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program that consists of outreach, education, and monitoring of businesses.

Subsection (b)(2)

Subsection (b)(2) specifies additional factors CalRecycle will consider in its evaluation of a jurisdiction's "good faith effort." These factors may include, but are not limited to, the extent to which material recovery facilities (including mixed waste processing facilities) utilized by the businesses exhibit recovery rates that, in combination with the entire set of programs and activities in a jurisdiction, are comparable to source separation, based on factors such as, but not limited to, the character and composition

of the waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, the role of that facility in the jurisdiction's overall waste diversion and recycling system, the nature and amount of feedstock processed at facilities used for waste generated in the jurisdiction, and any additional performance data, as requested and collected by CalRecycle from the material recovery facilities operators pursuant to 14 California Code of Regulations §18809.4.

Subsection (b)(3)

Subsection (b)(3) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to, considering the extent to which the jurisdiction is conducting education and outreach to businesses in accordance with this Section. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

Subsection (b)(4)

Subsection (b)(4) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to, considering the extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of compliance. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program.

Subsection (b)(5)

Subsection (b)(5) specifies that in its evaluation of a jurisdiction's "good faith effort," during its review, CalRecycle may include, but is not limited to, considering the availability of markets for collected recyclables. This is necessary to clarify criteria CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program.

Subsection (b)(6)

Subsection (b)(6) specifies that in its evaluation of a jurisdiction's "good faith effort," during its review, CalRecycle may include, but is not limited to, considering budgetary constraints of local jurisdictions. This is necessary to clarify criteria CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" implement a commercial recycling program.

Subsection (b)(7)

Subsection (b)(7) specifies that in its evaluation of a jurisdiction's "good faith effort," during its review, CalRecycle may include but is not limited to, considering a rural jurisdiction's small geographic size, low population density, or distance to markets in determining whether a rural jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to clarify criteria that CalRecycle may use in determining whether a certain type of jurisdiction is making a "good faith effort" to implement a commercial recycling program.

Subsection (c)

Subsection (c) specifies that a jurisdiction's failure to implement its commercial recycling program may be a sufficient basis for issuance of a compliance order, even if the jurisdiction has met its AB 939 50 percent per capita equivalent disposal target. If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program, CalRecycle shall issue a compliance order with a specific schedule for achieving the requirements of this Chapter. This is necessary to ensure that a jurisdiction that is not complying with the requirements to implement a commercial recycling program is issued a compliance order with a specific schedule for achieving these requirements.

Subsection (d)

Subsection (d) specifies that the compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. Also, this subsection specifies that CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order. This is necessary to identify, for the jurisdiction, which aspects of its program are not being implemented or attained, and to set a date for the jurisdiction to comply with the requirements. This is necessary to ensure each jurisdiction is meeting the requirements of this Chapter to implement a commercial recycling program.

Regulatory Alternatives

With respect to all sections of this Statement of Reasons, there are no regulatory alternatives that are sufficient to satisfy the purposes of these proposed regulations which is to clarify existing law and establish administrative procedures to efficiently and effectively implement the Department's responsibilities pursuant to the mandatory commercial recycling requirements of Section 42649, et seq, of the Public Resources Code. The Department also considered a "no action" alternative, but determined that the minimal additional clarification and procedures included in the regulations was necessary to effectuate the statute.

Technical, Theoretical, and/or Empirical Study, Reports or Documents

The Department did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of this regulation.

Attachment A – Proposed Draft Regulation to Require Commercial Businesses to Recycle

DRAFT PROPOSED REGULATORY TEXT

MANDATORY COMMERCIAL RECYCLING

TITLE 14.

DIVISION 7.

CHAPTER 9.4.

MANDATORY COMMERCIAL RECYCLING

§18835. Purpose.

This Chapter implements Mandatory Commercial Recycling pursuant to §42649 of the Public Resources Code. The purpose of the statute is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

§18836. Definitions.

- (a) The following definitions shall govern the provisions of this Chapter.
- (1) “Business” means any commercial or public entity, that generates four cubic yards or more of commercial solid waste per week, including, but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or nonprofit entity, strip mall (e.g. property complex containing two or more commercial entities), industrial facility, school, school district, California State University, community colleges, University of California, special district or a federal, state, local, regional agency or facility. For purposes of this Chapter,

“business” also includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated.

- (2) “Commercial solid waste” means all types of solid waste, including recyclable materials that are discarded from businesses as defined in subdivision (1), but does not include waste from single family residences or multifamily units of less than 5 units.
- (3) “Franchise” means any agreement between a jurisdiction and a hauler for transporting commercial solid waste.
- (4) “Hauler” means any person, commercial or public entity which collects, hauls, or transports solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll off truck, side-load, front-load, or rear-load garbage truck, or a trailer.
- (5) “Mixed Waste Processing” means processing solid waste that contains both recyclable and/or compostable materials and trash.
- (6) “Self hauler” or “self hauling” means a business that transports its own waste and/or recyclables rather than contracting with a hauler for that service.
- (7) “Source separating” or “source separation” means the process of removing recyclable materials from solid waste at the place of generation, prior to collection, and placing them into separate containers that are separately designated for recyclables.

§18837. Mandatory recycling of commercial solid waste by businesses.

- (a) On and after July 1, 2012, a business shall take at least one of the following actions in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:
 - (1) Source separating recyclable and/or compostable materials from the solid waste they are discarding and either self-hauling, subscribing to a hauler, and/or otherwise arranging for the pick-up of, the recyclable and/or compostable materials separately from the solid waste to divert them from disposal.
 - (2) Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.

- (b) To comply with §18837(a), property owners of commercial or multi-family complexes may require tenants to source separate their recyclable materials. Tenants must source separate their recyclable materials if required to by property owners of commercial or multi-family complexes.
- (c) Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section. The activities undertaken by each business pursuant to §18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance, policy, contract or agreement applicable to the collection, handling or recycling of solid waste.
- (d) Except as expressly set forth in §18837(e)(3), this Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction must comply with any local requirements that have been enacted.
- (e) This Subsection does not modify or abrogate in any manner any of the following:
 - (1) A franchise granted or extended by a city, county, city and county, or other local government agency;
 - (2) A contract, license, or permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation; or
 - (3) The existing provisions of §41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Materials sent to transformation facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

§18838. Implementation of commercial recycling program by jurisdictions.

- (a) Effective July 1, 2012, whether or not the jurisdiction has met the requirements of Section 41780, each jurisdiction shall implement a commercial recycling program appropriate for that jurisdiction which is designed to divert commercial solid waste generated by businesses and that consists of the following components:
 - (1) The commercial recycling program shall include education and outreach to businesses. The jurisdiction shall determine the types of educational and

outreach programs to insure that the program targets the components of the jurisdiction's commercial waste stream.

- (2) The commercial recycling program shall include identification and monitoring of businesses to assess if they are complying with §18837(a). If any businesses subject to these regulations are not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.
- (b) The commercial recycling program adopted pursuant to Subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses to recycle, requiring a mandatory commercial recycling program through a franchise agreement or contract, or requiring that commercial solid waste from businesses be sent to a mixed waste processing facility.
 - (c) When adopting its commercial recycling ordinance, policy, or program, a jurisdiction may also, but is not required to, consider the following:
 - (1) Enforcement consistent with a jurisdiction's authority, including, but not limited to, a penalty or fine structure that, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution.
 - (2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses with the program;
 - (3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of sufficient space in multi-family complexes to provide additional recycling bins, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste.
 - (4) Certification requirements for self-haulers which may include, but are not limited to, requiring businesses, to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program.
 - (d) The commercial recycling program shall apply to businesses, but may also apply to any other commercial entity identified by the jurisdiction as being a source of commercial solid waste.
 - (e) A jurisdiction may determine the specific material types included in its commercial recycling program, which could include, but are not limited to, paper

(including cardboard), plastics, glass, metals, organics, food waste, and non-hazardous construction and demolition.

- (f) If, prior to July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets all requirements of this Chapter, as determined by CalRecycle pursuant to §18839, the jurisdiction will not be required to implement a new or expanded program.
- (g) If, in order to satisfy the requirements of this Chapter, a jurisdiction must implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code §41800 et seq.
- (h) The jurisdiction shall include the addition or expansion of a commercial recycling program in its Annual Report required by §41821, et seq. of the Public Resources Code. Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and, if applicable, enforcement efforts, and the rationale for allowing exemptions, by providing updates in its Annual Report.

§18839. CalRecycle Review

- (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance with §18838 as part of its review of the jurisdiction's source reduction and recycling element and household hazardous waste element programs, pursuant to 14 California Code of Regulations §18772 and §41825 of the Public Resources Code.
- (b) During its review pursuant to this Section, CalRecycle shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For this purpose, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program. During its review, CalRecycle may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":
 - (1) The extent to which the businesses have complied with §18837(a), including information on the amount of solid waste that is being diverted from disposal by the businesses, if available, and on the number of businesses that are subscribing to service;
 - (2) The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, the role of that facility in the jurisdiction's overall waste diversion and recycling system, and all information, methods, and calculations, and any additional performance

data, as requested and collected by CalRecycle from the material recovery facilities operators pursuant to 14 California Code of Regulations §18809.4;

- (3) The extent to which the jurisdiction is conducting education and outreach to businesses);
 - (4) The extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of compliance;
 - (5) The availability of markets for collected recyclables;
 - (6) Budgetary constraints; and
 - (7) In the case of a rural jurisdiction, the small geographic size, low population density or distance to markets.
- (c) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program and meet the requirements of §18838, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. CalRecycle shall issue the compliance order within 30 days after making its finding of non-compliance.
- (d) The compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order.

Attachment 2:

Proposed Draft Regulation to Reduce Greenhouse Gas Emissions by Requiring Commercial Businesses to Recycle

DRAFT PROPOSED REGULATORY TEXT

MANDATORY COMMERCIAL RECYCLING

TITLE 17:	PUBLIC HEALTH
DIVISION 3.	AIR RESOURCES
CHAPTER 1.	AIR RESOURCES BOARD
ARTICLE X.	MANDATORY COMMERCIAL RECYCLING

§9XXX0. Purpose.

The purpose of this ~~A~~article is to implement the Mandatory Commercial Recycling Measure provision of the Scoping Plan adopted by the ~~state-Air Resources B~~board pursuant to §38561 of the Health and Safety Code.

§9XXX1. Definitions.

(a) Except as otherwise noted, the definitions of this ~~A~~article supplement and are governed by the definitions set forth in Chapter 2 (commencing with ~~§Section 40100~~), Part 1, Division 30 of the Public Resources Code.

(b) In addition to the definitions incorporated under subdivision (a), the following definitions shall govern the provisions of this ~~a~~Article.

- (1) "Annual Report" means the electronic report, submitted annually by a jurisdiction, summarizing its progress in reducing solid waste, as required by

§41821 of the Public Resources Code and 14 California Code of Regulations §§18794-18794.6.

(2) "CalRecycle" means the Department of Resources, Recycling and Recovery.

(3) "Jurisdiction" means a city, county, city and county, or a regional agency that is approved by CalRecycle pursuant to §40975 of the Public Resources Code.

(4) "Business" means any commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or nonprofit entity, that generates four cubic yards or more of commercial solid waste per week. For purposes of this Article, "business" also includes a multifamily residential dwelling of ~~five~~ 16 units or more that generates four cubic yards or more of commercial solid waste per week.

(5) "Commercial solid waste" means all types of solid waste, ~~including recyclable materials~~ that are generated from businesses as defined in subdivision (4) but does not include waste from single family residences or multifamily units of less than 16 units~~4~~.

(6) "Diversion" or "divert" means activities which reduce or eliminate the amount of solid waste from disposal, as defined in Public Resources Code §40124, and fulfills the requirements of §41783 of the Public Resources Code, ~~but for the purposes of this Articles does not include transformation, as defined in Public Resources Code §40201~~. Materials sent to transformation

facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

(7) "Disposal" means the final disposition of solid waste at a permitted landfill.

(8) "Franchise" means any ~~contract, license or~~ agreement between a jurisdiction and a hauler for transporting commercial solid waste.

(9) "Hauler" means any person, ~~or commercial~~ or public entity which collects, hauls, or transports solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll off truck, side-load, front-load, or rear-load garbage truck, or a trailer.

(10) "Landfill" means a permitted disposal site which accepts solid waste.

(11) "Mixed Waste Processing" means processing solid waste that contains both recyclable materials and trash and yields diversion results comparable to source separation.

(12) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place, as defined in ~~Public Resources Code §40180~~ of the Public Resources Code. ~~Recycling does not include transformation as defined in Public Resources Code §40201.~~

(13) “Recycling services” means services consistent with state or local laws or requirements, including a local ordinance or agreement, which provide for the collection and handling of recyclables.

(14) “Recycling facility” means a recycling, composting, materials recovery or re-use facility that is fully licensed, certified and eligible under federal, state and local laws and regulations and includes those facilities that receive, process, compost, and transfer to market recyclable and/or compostable materials that have been separated from the solid waste stream. The recycling facility may be located at a landfill operation site. Recycling facility includes a mixed waste processing facility.

(15) “Recyclables” and “recyclable materials” means materials that have been separated from the solid waste stream prior to disposal and returned for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place and that are not land-filled. Recyclable materials can include, but are not limited to paper, plastics, glass, metals, cardboard, organics, food waste, and construction and demolition materials.

(16) “Rural city” or “rural county” means a city or county that is located in a rural county as defined in §40184 of the Public Resources Code.

(17) “Self hauler” or “self hauling” means a business that transports its own waste and/or recyclables rather than contracting with a hauler for that service.

(18) “Source separating” or “source separation” means the process of removing recyclable materials from solid waste at the place of generation,

prior to collection, and placing them into separate containers that are separately designated for recyclables.

(19) "Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as described in §40191 of the Public Resources Code.

§9XXX2. Mandatory commercial recycling by businesses.

- a) On or before July 1, 2012, ~~the owner or operator of~~ a business, as defined in §9XXX1(b)(4), shall, consistent with local requirements, recycle its commercial solid waste by taking one of the following actions:
- (1) Source separating recyclable materials from the solid waste they are discarding and either self-hauling, or subscribing to a service that hauls, the recyclable materials separately from the solid waste to divert them from disposal; or
 - (2) Subscribing to an alternative type of recycling service that includes mixed waste processing that diverts recyclable materials from disposal and that yields diversion results comparable to source separation.
- b) If that alternative service takes waste to a transformation facility, and as long as the existing requirement in §41783 of the Public Resources Code for front-end

processing to remove recyclable materials to the maximum extent feasible is met, then utilization of that service will be in compliance with this Section. If that alternative service takes waste directly to a transformation facility without front-end processing, then utilization of that service will be in compliance with this Section, where it has been determined that those loads are of such a nature that they contain a small amount of recyclables or would contaminate the recyclables in other loads. Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section.

- c) This Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction are required to comply with any local requirements that have been enacted.
- (d) This Section does not modify or abrogate in any manner any of the following:
- (1) A franchise granted or extended by a city, county, or other local government agency;
 - (2) A ~~contract, license, or~~ permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation; or
 - (3) The right of a business to sell or exchange its recyclable materials at fair market value, for reuse or recycling , or to donate its recyclable materials to another entity for reuse or recycling as provided by **Section §41952** of the Public Resources Code. Nothing in these regulations is intended to prevent or otherwise regulate the sale or donation of recyclable

materials by the owner of such materials to a third party for purposes of reuse or recycle prior to discarding the materials.

§9XXX3. Implementation of commercial recycling program by jurisdictions.

- (a) Effective July 1, 2012, each jurisdiction shall implement a commercial recycling program which diverts commercial solid waste generated by businesses, as defined in §9XXX1(b)(4).
- (b) The commercial recycling program shall apply to businesses, as defined in §9XXX1(b)(4), but may also apply to any other commercial entity identified by the jurisdiction as being a source of recyclable materials.
- (c) A jurisdiction shall determine the specific material types included in its commercial recycling program, which could include, but are not limited to, paper, plastics, glass, metals, organics, food waste, construction and demolition and cardboard.
- (d) If, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this Article, the jurisdiction will not be required to implement a new or expanded program.
- (e) If, in order to satisfy the requirements of this Article, a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code §41800 et seq. The

jurisdiction shall include the addition or expansion of a commercial recycling program in its electronic annual report.

(f) The recycling program adopted pursuant to Subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses, as defined in §9XXX1(b)(4), to recycle, requiring a mandatory commercial recycling program through a franchise agreement or contract, or requiring that commercial solid waste from businesses be sent to a mixed waste processing facility.

~~(g) The commercial recycling program shall apply to businesses, as defined in §9XXX1(b)(4), but may also apply to any other commercial entity identified by the jurisdiction as being a source of recyclable materials.~~

~~(h)~~(g) The commercial recycling program shall include education and outreach to businesses, as defined in §9XXX1(b)(4). The jurisdiction shall determine the types of educational and outreach programs to insure that the program targets the components of the jurisdiction's commercial waste stream.

~~(i)~~(h) The commercial recycling program shall include identification and monitoring of businesses, as defined in §9XXX1(b)(4), to assess if businesses are subscribing to recycling services and participating in recycling services. If any businesses subject to these regulations are not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.

~~(j)~~(i) The recycling program may also include, but is not required to include:

(1) Enforcement consistent with a jurisdiction's authority, including, but not limited to, a penalty or fine structure that, ~~consistent with a jurisdiction's authority~~, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. Any fees or penalties generated by the enforcement program could, in the jurisdiction's discretion, shall be used to pay the costs of operation, outreach, education, and other associated program costs;

(2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses, as defined in §9XXX1 (b)(4), with the program;

(3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of storage space, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste; or

(4) Certification requirements for self-haulers which may include, but are not limited to, requiring businesses, as defined in §9XXX1 (b)(4), to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program.

~~(k)~~(i) _____ Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and if applicable enforcement efforts, by providing updates in its

electronic Annual Report required by §41821, et seq. of the Public Resources Code.

(H)(k)_____ The recycling program implemented by the jurisdiction does not limit the existing right of any business to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling. Nothing in these regulations is intended to prevent or otherwise regulate the sale or donation of recyclable materials by the owner of such materials to a third party for purposes of reuse or recycle prior to discarding the materials.

§9XXX4. CalRecycle Review

- (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance with §9XXX3 as part of its review of the jurisdiction's source reduction and recycling element and household hazardous waste element programs, pursuant to 14 California Code of Regulations §18772 and §41825 of the Public Resources Code.
- (b) CalRecycle may also review whether a jurisdiction is in compliance with §9XXX3 at any time that CalRecycle receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, its commercial recycling program.
- (c) During its review pursuant to this Section, CalRecycle shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For this purpose, "good faith effort" means all

reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program. During its review, CalRecycle may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":

- (1) the extent to which the businesses, as defined in §9XXX1(b)(4), have subscribed to recycling services, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to service;
- (2) the recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, all information, methods, and calculations, and any additional performance data, as requested by the Department from the material recovery facilities pursuant to 14 California Code of Regulations §18809.4;
- (3) the extent to which the jurisdiction is conducting education and outreach to businesses, as defined in §9XXX1(b)(4);
- (34) the extent to which the jurisdiction is monitoring businesses, as defined in §9XXX1(b)(4), and notifying those businesses that are out of compliance; ~~and~~
- (45) the availability of markets for collected recyclables;
- (6) budgetary constraints; and,

(7) in the case of a rural city or rural county as defined in §9XXX1(b)(16), the small geographic size or low population density.

A jurisdiction's failure to implement its commercial recycling ~~plan~~program may be a sufficient basis for issuance of a compliance order pursuant to ~~Public Resources Code~~ §41825 of the Public Resources Code, even if the jurisdiction has met its 50% per capita equivalent disposal target as required by §41780.05 of the Public Resources Code.

- (d) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program and meet the requirements of §9XXX3, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. CalRecycle shall issue the compliance order within 30 days after making its finding of non-compliance.
- (e) The compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order.
- (f) Pursuant to ~~Public Resources Code~~ §41850 of the Public Resources Code, CalRecycle shall hold a hearing to determine whether the jurisdiction has complied with the terms of the compliance order in §9XXX4(d). If CalRecycle determines that the jurisdiction has failed to make a good faith effort to

implement its commercial recycling program and meet the requirements of §9XXX3, CalRecycle may impose administrative civil penalties upon the jurisdiction of up to ten thousand dollars (\$10,000.00) per day until the jurisdiction implements the program as provided by §41850 of the Public Resources Code.

§9XXX5. State Air Resources Board Oversight and Enforcement

Nothing in this ~~A~~article limits the ~~state Air Resources b~~Board's authority pursuant to Division 25.5 (commencing with §38500 of the Health and Safety Code), to monitor compliance with and enforce this regulation. The ~~state Air Resources B~~Board retains its oversight role and will take any further actions necessary to implement this regulation, including but not limited to invoking its enforcement authority as described in §38580 of the Health & Safety Code.



“Commercial” Recycling Program

By Pat Quinn, County/SWA staff

For CIWMB 7/20/09

Stakeholder Workshop

Background

- SWA (City/County) Non-Exclusive Franchises
- Comparable systems/rules in adjoining cities
- Low “commercial” recycling rate
- Competing local private facilities
- SWA Board direction

For SWA, “Commercial” is ...

- Business generators
- C&D
- Multi-family (5+)

So ...

Ordinances

- SWA Business Recycling ('07)
- SWA/City/County C&D (Last winter)
- Multi-family (May '09)
- Trying for general consistency -- cities and County

Business Recycling Rule Elements

- Service subscriber: Gotta have a recycling bin and use it
- 4 CY/wk Threshold
- Recycling service by franchisee, independent recycler, or self-haul
- Implemented by County EMD (Force multiplier benefit)
- EMD funding by existing SWA franchise fee

Business Rule cont'd

- Recyclables designated by SWA GM
- Exemptions for space constraints
- Metrics:
 - Participation; up 38% in first year
 - Tonnage; up 21% in first year
 - 2-3 yr regime, so 2/3 inspected; 85% on-board
- Administrative civil penalty enforcement - CUPA
- Progressive enforcement -- 5 generators fined in 1st year; 2 fined in 2nd year

C&D Ordinances

- SWA-City-County
- SWA:
 - Certified MRFS with performance standards
 - \$500 application fee; hourly inspection fee; incentives for select status MRFs
 - Voluntary; 3 MRFs certified to date
- Companion County/City “building permit” ordinances.
County provisions:
 - Builder: Source-separate or use certified MRFs
 - CMID enforcement - Illegal haulers
 - \$250k project threshold, 0.04% permit fee, \$800 cap
 - Regional implementation issues

Multi-Family Ordinance

- SWA/some cities: 5+ unit rule is “commercial”
- Very comparable to Business Rule
- Implement via EMD
- Funding shifted from Business rule
- Exemptions, self-hauling OK
- Progressive enforcement, civil procedure – CUPA again
- Just starting implementation

Regional Efforts

- Largely consistent business and multi-family recycling ordinances for SWA, Citrus Heights, Elk Grove and Rancho Cordova
- Cities trying to piggyback on Certified MRFs
- But, consistent implementation & enforcement challenges for cities/County
- Current LTF effort to develop new regional JPA recommendations

Lessons

- Need political will and funding to implement & enforce (CUPA model)
- Need local support: industry, business, etc.
- One size won't fit all
- Regional better, more difficult -- structural issues
- Local-State tension

Contact Info

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- Pat Quinn 916-875-7082;
quinnpa@sacounty.net
- Dave Ghirardelli (C&D) 875-4557;
GhirardelliD@sacounty.net
- Marie Woodin (Business/MF) 875-8527;
WoodinM@sacounty.net

Commercial Recycling Ordinance

City of Chula Vista

AB 939 – California's Waste Management Act



50% Waste Reduction • 100% Team Effort

CITY OF
CHULA VISTA

We couldn't have done it without you!

www.chulavistaca.gov

San Diego County



www.chulavistaca.gov/clean
Map courtesy of San Diego County

Mandatory Recycling Ordinance



- A tool to achieve recycling goals
- Lays out the guidelines
- Defines the parameters.

AB 32
**The California Global Warming
Solutions Act of 2006**



Chula Vista's Mandatory Recycling Ordinance

8.25.050 Mandatory recycling.

“It shall be mandatory for all generators of residential, commercial and industrial recyclables in the city to separate from refuse, for recycling purposes, all designated recyclables and otherwise participate in recycling as described by this chapter.”

Ordinance Includes

Commercial means a site and/or business zoned or permitted for any use other than residential including, but not limited to commercial, light industrial, industrial and agricultural.

Ordinance Includes

Commercial Recyclables-- means designated recyclables...to include, but are not limited to: office paper, cardboard, glass bottles and jars, plastic bottles, aluminum, tin and bi-metal cans, and white goods from hospitality establishments.

Ordinance Includes

Designated Recyclables means ... Any materials having an economic value on the secondary materials market or that is otherwise salvageable shall be included...

Ordinance Includes

Commercial and industrial establishments shall develop their respective “in-house” recycling plans that provide for the collection of designated recyclables in conjunction with the city’s established recycling programs...

Ordinance Includes

...The City and the contract or franchise agent(s) shall assist in program development and provide technical expertise and training materials...

How the Franchised Hauler Helps

- New business calls to set up services
- AWS staff sell the recycling service with the trash service.
- If the business balks:
 - AWS staff reminds customer of mandatory recycling ordinance.
 - Then advises that the City has to be contacted if they do not sign up



City Follow Up

When AWS notifies the City that a business did not sign up for recycling services –

- City staff contact the business to set up a meeting.
- Staff assists the business in setting up their recycling program and looking for costs savings.

Non-franchised Recyclers

1. No charges for service
2. Material must have value \$0.00 and up
3. If there is a charge for service, franchised hauler must provide the collection and hauling. May haul to preferred destination of the business.

Annual Reporting

4. If recycling with a third party recycler, the business must submit an Annual Report documenting the recycling tonnages for the previous year.

City of Chula Vista Recycling Report for 2008
Due by February 27, 2009


Company Name (DBA): _____

Address: _____

Phone: _____

Report Prepared by: _____

Date: _____



Chula Vista has a mandatory recycling ordinance, CVMC 8.25. Complete this form if you are recycling with a company other than Allied Waste Services. If you recycle with Allied Waste Services then this information is not required. Return the completed form to:
 City of Chula Vista, General Services Department, Environmental Services Division,
 1800 Maxwell Road, Chula Vista, CA 91911
 or fax it to 619 397-6363. For questions call 619 691-5122.
 If you need to set up recycling services call Allied Waste Services 619 421-9400.

Waste and Recycling by Category	Recycled (Pounds)	Convert to Tons (Divide pounds by 2000 = tons)
Fiber: Paper; News, Office, Ledger, Computer, , Magazines, Telephone Books, Corrugated Cardboard, Mixed		
Glass: Empty Food & Beverage Containers; Clear (Flint), Brown, Green, other		
Metals: Empty Food & Beverage Containers; steel, tin, bi-metal (including empty aerosol and paint cans, aluminum. Scrap metals; Appliances, display racks, carts, copper or other demolition salvage.		
Plastics: Empty food & beverage containers; PET #1, HDPE #2, 5 gallon HDPE buckets. Film Plastic and other plastics.		
Yard Waste: Tree trimmings, grass clippings, non-painted and non-treated lumber, pre-consumer food waste, donated food and food products		
Construction/Demolition/Inerts: Concrete, asphalt, brick, clean dirt, lumber.		
Special Wastes: Used Motor Oil, auto batteries, tires.		
Source Reduction: Describe how this was achieved.		
Other:		
Total Tons Recycled		(T1)
Waste not recycled (use the formula below to find your annual trash generation) <ul style="list-style-type: none"> • Multiply the size of your bin (2 yard, 3 yard, 4 yard, etc) by the number of times you have it serviced per week = the number of yards of trash per week. • Multiply the yards per week by 52 weeks in a year = yards per year. • Multiply the yards per year by 110 pounds per yard = pounds per year. • Divide pounds per year by 2,000 = tons of trash generated per year Bin size X _____ pick-ups per week = _____ yards per week _____ Yards per week X 52 weeks a year = _____ yards per year _____ Yards per year X 110 lbs per yard = _____ pounds per year		
Total Waste Disposed		(T2)
Total Waste Generated (T1 + T2 = Total Waste Generated T3)		(T3)

T1 _____ + T3 = Annual Diversion Rate _____ %
 (State Mandated Recycling Goal is 50% diverted from disposal.)

If you have additional information, please attach addition pages. Keep recycling records for three years from the filing date.

Hauler Reporting

Recycling with the franchised hauler does not require reporting, as the hauler reports the tonnage collected on an monthly basis.



Enforcement

“...nothing in this chapter or its implementing regulations shall prevent the city or its contract or franchise agent(s) from efforts to obtain voluntary compliance by way of warning, notice of violation, educational or other means.”



Chula Vista's Ordinance Summary

- Defines who is governed by the ordinance, all generators
- Defines the materials to be recycled, Designated recyclables
- Requires the assistance of the franchised hauler

Chula Vista's Ordinance Summary

- Allows for third party recyclers under specific conditions
- Requires Reporting
- Provides soft enforcement with Recycling Specialists to assist with implementation

So Now What?

Build monetary incentives into the rate structures.

- Smaller trash bins, less often, lower rates
- Large trash bins, more often, higher rates
- Recycling at greatly reduced rates

Solid Waste Rates

<u>Bins Size</u>	<u>Times per Week</u>	<u>Rate</u>
2 cubic yards	1	\$ 68.17
3 cubic yards	1	\$ 92.43
4 cubic yards	1	\$ 147.22
2 cubic yards	2	\$ 172.40
3 cubic yards	2	\$ 196.01
4 cubic yards	2	\$ 259.11

Recycling Rates

<u>Bins Size</u>	<u>Times per Week</u>	<u>Rate</u>
2 cubic yards	1	\$ 48.86
3 cubic yards	1	\$ 48.86
4 cubic yards	1	\$ 48.86
2 cubic yards	2	\$ 48.86
3 cubic yards	2	\$ 48.86
4 cubic yards	2	\$ 48.86

Looking for that Win-Win Solution



- Wanted to avoid fines and penalties
- Looked for models and research information

What is a CLEAN business?



POLLUTION PREVENTION (P2)

Qualification Checklist



General MINIMUM

- a Insp
- b Kee
- c Lab
- d Pos
sint

ENERGY CONSERVATION (EC)

Qualification Checklist



General

- a Pos
- b Pos
- c Rou
wa
- d Reg
pro
- e Rou
imn
- f Sto
- g Inst

REQUIRED

- a Call (619) 409-389
- b Learn how to read

WATER CONSERVATION (WC)

Qualification Checklist



General EC MINIMUM NUMBER

LIGHTING

- a Clear lighting fixtur
- b Install dimmable oc
- c Install occupancy s
and store rooms.
- d Rearrange workspc
- e Replace all incand
- f Retrofit exit signs wi
- g Turn off lights and r
- h Upgrade existing fl
electronic ballasts.

REQUIRED

- a Learn how to read

General WC MINIMUM NUMBER

LANDSCAPE

- a Group plants with
- b Instal a water effie
- c Replace turf grass
- d Replace turf grass
- e Use ground cover c
- f Irrigate during early
- g Use dry surface cl
outdoor areas, cr

RESTROOMS

- a Instal water effie
- b Instal high efficien
- c Instal ultra low (<1
- d Instal signs in restr
- e Replace free flowi

KITCHEN

- a Instal pre-rinse val
or less at 60 psi).
- b Post sign to remind
triggers on sink fa

SOLID WASTE REDUCTION (SW)

Qualification Checklist



General SW

MINIMUM NUMBER OF MEASURES/PRACTICES REQUIRED: 5

OFFICE PAPER REDUCTION

	DATE VERIFIED	MET?
<input type="checkbox"/> a Develop routing lists for bulletins, memos, and trade journals to minimize the number of employees receiving individual copies.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> b Eliminate fax cover sheets by using stick-on fax labels.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> c Encourage employees to share phone books, repair manuals, etc. instead of ordering books for each employee.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> d For print/copy businesses, educate self-serve customers on properly sizing copies in order to minimize wasted paper.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> e For print/copy businesses, encourage self-serve customers to use double-sided copying in order to minimize the amount of paper used.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> f Keep a stack of used paper near printers and fax machines; reuse it for fax cover sheets, scratch paper, drafts, or internal memos. Have scratch paper available to customers, as well.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> g Order supplies by phone or e-mail instead of using forms.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> h Set computer/printer defaults to print double-sided copies. Require double-sided printing for multi-page documents, when possible.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> i Update/correct mailing lists used to send information to customers to avoid creating undeliverable mail.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> j Use computer software programs that allow faxing directly from computers without printing.		<input type="checkbox"/> Y <input type="checkbox"/> N
<input type="checkbox"/> k Use direct mail marketing materials that require no envelope (fold and mail).		<input type="checkbox"/> Y <input type="checkbox"/> N

Lynn France

Environmental Services Program Manager

Chula Vista - Public Works Department

1800 Maxwell Road

Chula Vista, CA 91911

619 397-6221 direct

619 397-6363 fax

Lfrance@ci.chula-vista.ca.us

Sample Mandatory Commercial Recycling Ordinance

Yvonne Hunter

**Institute for Local Government
California Climate Action Network
Cal Recycle Workshop**

June 16, 2010

About the Institute

- **Founded 1955**
- **501(c)(3) Research and education arm of:**
 - **League of California Cities**
 - **California State Association of Counties**

Program Areas:

- Climate Change
- Local Government 101
- Healthy Communities
- Public Engagement
- Land Use/Environment
- Public Service Ethics

Overview of Institute's Sample Commercial Recycling Ordinance

Development of Sample Ordinance

- Survey of cities and counties
- Interviews and lessons learned
- Review selected existing ordinances
- Prepare case stories
- Advisory committee
- Opportunities to review drafts

Elements of Sample Ordinance

- **Voluntary** adoption by local agencies
- **Flexibility to fit local conditions**
- **Background discussion of key issues**
- **Options and commentary on key provisions**

LEAD BY EXAMPLE

The recycling requirements apply to the local agency adopting the ordinance.

Key Decision Points in Ordinance

- Definition of recyclable materials
- Compost and food waste
- Include multi-family or not
- Threshold for inclusion
- Enforcement options
- C & D waste
- Special events

Lessons Learned from Examples

- Review local franchises and contracts
- Work with haulers and businesses
- Tiered pricing to encourage recycling
- Enforcement and compliance options
- Education, education and education

WHAT WE LEARNED: KEY FEATURES FOR SUCCESS

- A tiered fee structure helpful to act as incentive to recycle
- No difference between exclusive franchise and open competition, but ...
- A robust and comprehensive education program is critical

Commercial Recycling Ordinance Webinar -- Getting Started

June 30, 2010 -10:00 a.m. – 11:30 a.m.



Sample ordinance, supporting material and webinar registration available at:

www.ca-ilg.org/CommercialRecycling

Demonstrating the Climate, Financial, and Diversion Benefits of Zero Waste

A New Calculator for California Businesses

June 2010

Amity Lumper

Cascadia Consulting Group, Inc.



There are dozens of calculators out there – why another?

Climate Change - Waste U.S. ENVIRONMENTAL PROTECTION AGENCY

Climate Change Home
 What You Can Do Home
 Waste Home
 Basic Information
 Publications
 Tools
 Stakeholder Success Stories

Waste Reduction Model (WARM)

NEW VERSION: Updated November 2009
 (Version 10, 11/09)

EPA created WARM to help solid waste planners and organizations track and voluntarily report greenhouse gas emissions reductions and energy savings from several different waste management practices. WARM Online was last updated November 2009.

Use this worksheet to describe the baseline and alternative MSW management scenarios that you follow the steps below to enter your material tonnage information in the input boxes in the tables, landfill and waste transport characteristics. For information on the definition of each of the WARM data source and year of underlying life-cycle data, please see the [WARM materials definitions list](#).

Tips:

- If the listed material is not generated in your community/organization or you do not want to enter 0.
- Make sure that the total quantity generated equals the total quantity managed.
- If you have any questions, consult the [WARM User's Guide](#).

Steps 1 and 2. Baseline and Alternative Scenarios

Material	Baseline Scenario					Alternative Scenario	
	Tons Recycled	Tons Landfilled	Tons Composted	Tons Incinerated	Tons Generated	Tons Source Reduced	Tons Recycled
Aluminum Cans					N/A	0	
Steel Cans					N/A	0	
Copper Wire					N/A	0	
Glass					N/A	0	
HDPE					N/A	0	
LDPE					N/A	0	
PET					N/A	0	
Corrugated					N/A	0	

WasteWiseTool [Compatibility Mode] - Microsoft Excel

Waste Material	Year to Date Waste Reduced		Year to Date Revenues		Year to Date Avoided Disposal Costs		Year to Date Avoided Purchasing Costs		Total Year to Date Waste Reduction Savings	Gross Year to Date Waste Reduction	Net Year to Date Waste Reduction	30 Yr TOTAL GHG Emission Reduction Factors from Waste Recycling	30 Yr TOTAL GHG Emission Reduction Factors from Waste Recycling Compared to Landfilling (MTCSE)
	Quantity Reduced (lb/yr)	Value Prevention Activities	Quantity Recycled (lb/yr)	Revenue	Recycling Prevention	Recycling Revenue	Recycling Costs	Recycling Savings					
Paper (Type unknown)									-107654418		-107654418	-0.064438637	-0.064438637
Corrugated									-107654418		-107654418	-0.064438637	-0.064438637
Metals*									-107654418		-107654418	-0.064438637	-0.064438637
Metals*									-107654418		-107654418	-0.064438637	-0.064438637



NERC | Northeast Recycling Council

Estimating the Environmental Benefits of Source Reduction, Reuse and Recycling

Updated by Northeast Recycling Council, Inc. (NERC) and Abt Associates, Inc.
 © April 2009

Worksheet 2. Environmental Impacts
 Estimates of the Environmental Impacts of Recycling

The following tables summarize the estimated environmental benefits of source reduction, reuse and recycling and provide comparison figures to put these estimates in context.

Date of Calculator Analysis:

Reporting Year	Tons Recycled	Tons Source Reduced/Reused	Tons Landfilled	Tons Incinerated/Waste-To-Energy	Total Tons Disposed
Aluminum Cans	0.00	0.00	0.00	0.00	0.00
Steel Cans	0.00	0.00	0.00	0.00	0.00
Glass	0.00	0.00	0.00	0.00	0.00
HDPE	0.00	0.00	0.00	0.00	0.00
LDPE	0.00	0.00	0.00	0.00	0.00

NOTE: If you have trouble with label formatting, see instructions

Material Unit Converter

The sheet provides a calculator based on source weights for some typical materials and an office paper weight calculator. The unit weight values may be used to determine the weight of materials purchased and manufactured when any information on the number of units is available. Please note that these values should be determined as an approximation only. And the user is encouraged to utilize actual material weight values where possible. The user can select the appropriate information below to obtain actual material weight values where possible. The user can select the appropriate information below to obtain actual material weight values where possible. The user can select the appropriate information below to obtain actual material weight values where possible.

Office Paper Weight Calculator

The calculator will determine the approximate weight of one ream (500 sheets) of office paper based on specifications entered by the user. The user must enter the dimensions and grade of paper (lb). Only standard U.S. and metric units are allowed. Note that standard office paper is considered to be 8.5" x 11" 20 lb grade.

Paper Dimensions (inches):
 Width: Height:

Weight of One Ream (lb):

Weight of One Sheet (lb):

Total Weight of Paper (lb):

Material Unit Converter Table

Material Type	Example Material	Weight (lb)	Unit Conversion Factor
Aluminum Cans	Aluminum Can	0.016	1 can = 0.016 lb
Steel Cans	Steel Can	0.016	1 can = 0.016 lb
Copper Wire	10-gauge wire	3.48	1 lb = 28.35 g
Glass	12.5-gal glass jar	12.5	1 gal = 12.5 lb
HDPE	12.5-gal HDPE jar	12.5	1 gal = 12.5 lb
LDPE	12.5-gal LDPE jar	12.5	1 gal = 12.5 lb
PET	12.5-gal PET jar	12.5	1 gal = 12.5 lb
Corrugated	12.5-gal corrugated	12.5	1 gal = 12.5 lb



California's Commercial Climate Calculator

Motivation & Goals

- AB32 requires commercial and multi-family sector recycling
- CalRecycle provides an easy-to-use calculator to show benefits of waste reduction and diversion:



Dollars saved

Tons of resources returned
to the economy



Greenhouse gas emissions reduced



Developing the Calculator

Process & Considerations

- Existing calculator research
- Stakeholder engagement
 - 20 initial phone interviews
 - 12 first-round beta tests
 - 9 second-round beta tests
 - 30 additional feedback reports
- Inter-agency collaboration
 - ARB and UC Berkeley: COOLCalifornia



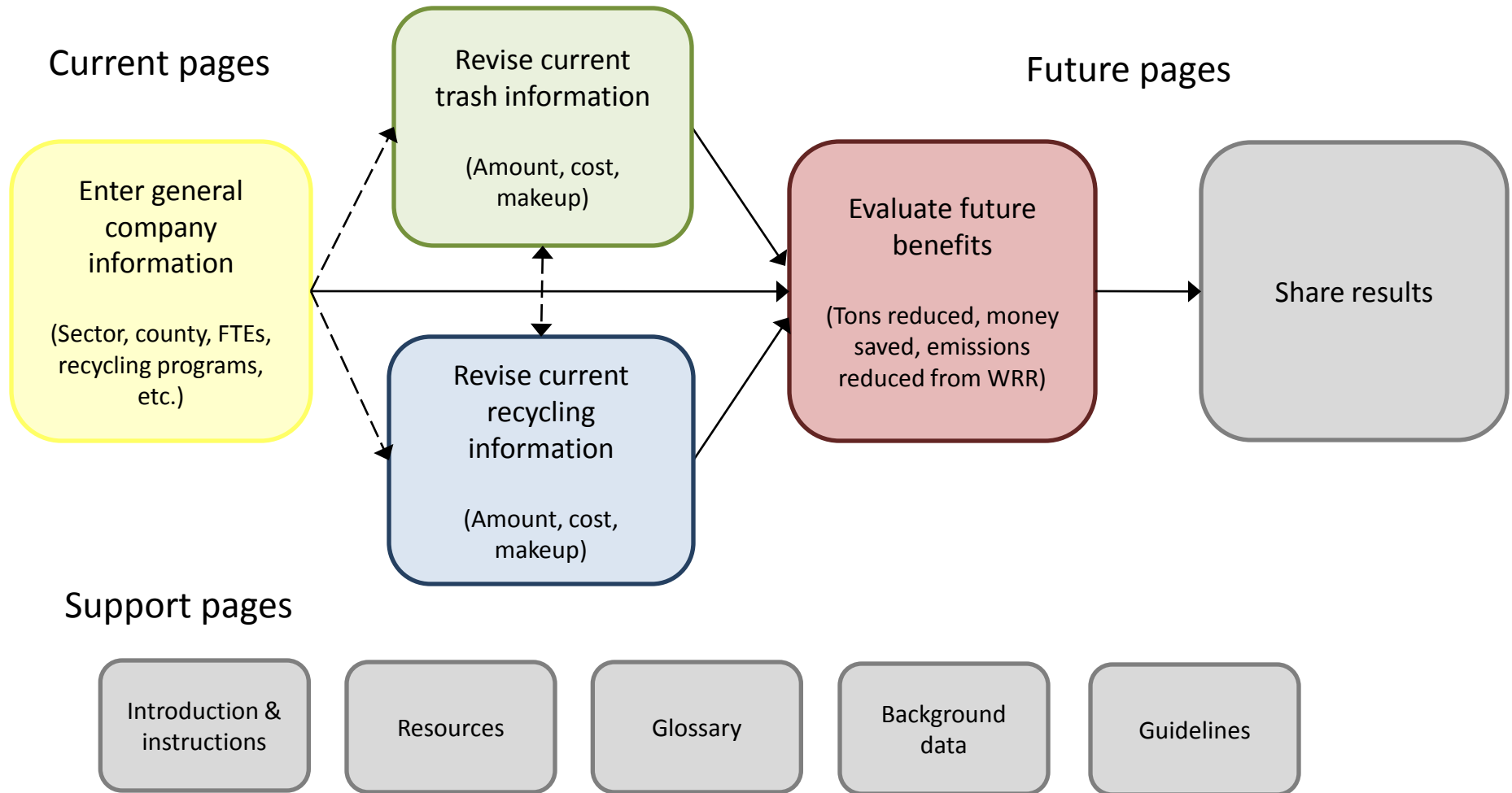
Calculator Basics

Features & Data

- Unique features
 - Flexibility
 - Users
 - Data inputs
 - Transparency
 - One-stop calculator
 - Tons, cost, GHG
 - Resources, case studies
 - CA and regionally specific
- Default data sources
 - CA waste studies
 - Sector-specific
 - Quantity and composition
 - Statewide cost study
 - WARM+CARB research

Calculator Overview

User Steps



Case Studies

Real-world Examples

- Sector: Distribution Center
- Location: Irvine (Orange County)
- Employees: 64 FTEs
- Recycling Program: Cardboard only
- Access to information: None
- Results (annual):
 - Trash: 141 tons and \$22,000
 - Recycling: 10 tons and \$429
 - Benefits:
 - \$700 avoided disposal
 - 33MT CO₂e
 - 6% recycling rate



Case Studies

Real-world Examples

- Sector: Multi-family
- Location: Walnut Creek (Contra Costa County)
- Units: 12 MF Units
- Recycling Program: None
- Access to information:
 - Has trash information only
 - 1, 2 cubic yard container, 100% full, 2 pickups/week
- Results (annual):
 - Trash: 18 tons and \$7,000



Lessons Learned

- Upfront research pays off
- Calculator meets needs of a wide range of users
- Future opportunities exist for integrating new source data
- Collaboration with other agencies is essential



Thanks!

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AGENDA

STAKEHOLDER WORKSHOP MANDATORY COMMERCIAL RECYCLING

Monday, July 20, 2009
Thursday, August 6, 2009

9:30 a.m. – 4:30 p.m.

TIME	TOPIC	DESCRIPTION
9:30 – 10:00 a.m.	Welcome Remarks	Welcome workshop participants, review workshop agenda, provide background information, update on related legislation and related projects, and outline desired outcomes
10:00 – 10:30 a.m.	Local Government Example of Mandatory Commercial Recycling	Overview of local ordinance, including accomplishments and results of the program, lessons learned, potential obstacles, anything they would do differently and time for questions
10:35 – 10:45 a.m.	Stakeholder Feedback on Regulatory Issues and Approaches – <i>Introduction</i>	
10:45 a.m.– 12:00 p.m.	Stakeholder Feedback on Regulatory Issues and Approaches -- <i>Program Design</i> (Conceptual Regulatory Options 1 &7)	Target materials, what constitutes recycling, etc. <ul style="list-style-type: none">• Breakout Group Discussion
12:00 –1:00 p.m.	Break	Information about local food choices will be provided.
1:00 – 1:30 p.m.	Reporting out from morning breakout groups	
1:40 – 2:30 p.m.	Stakeholder Feedback on Regulatory Issues and Approaches – <i>Program Design</i> (Conceptual Regulatory Options 2-6)	Thresholds for businesses, multifamily, mobile home parks, C&D, and self-haul, exemptions, etc. <ul style="list-style-type: none">• Breakout Group Discussion
2:30 --2:45 p.m.	Break	
2:45– 3:30 p.m.	Stakeholder Feedback on Regulatory Issues and Approaches – <i>Enforcement</i> (Conceptual Regulatory Option 8)	Role of state, local government, service providers, etc., incentives, fees/fines, reporting, monitoring <ul style="list-style-type: none">• Breakout Group Discussion
3:30 – 4:30 p.m.	Afternoon Report Out & Wrap-up	

Please submit your feedback:

- 1) In-person during workshops;
- 2) Webinar participation on July 20th, 2009;
- 3) By electronic mail– Tharper@ciwmb.ca.gov; and
- 4) By written correspondence – CIWMB, P.O. Box 4025, Sacramento, CA 95812-4025, Attention: Tracey Harper.

Desired workshop outcomes:

- Provide information to stakeholders on the implementation of mandatory commercial recycling
- Gather stakeholder feedback on key regulatory and implementation issues and related approaches
- Provide a forum for dialogue between and amongst stakeholder groups and regulatory entities to raise issues of concern and questions related to implementation of mandatory commercial recycling

Mandatory Commercial Recycling Workshop

White Paper

Issued by CIWMB Staff

July 10, 2009

For Use At Stakeholder Workshops:

July 20, 2009 (Sacramento)

August 6, 2009 (Diamond Bar)

The material contained in this paper has not been reviewed or approved by the CIWMB's Board. Statements in the paper do not necessarily reflect any policy direction, opinion, or determination by the Board. This paper is intended solely to provide background information for and stimulate discussion at the July 20 and August 6, 2009, stakeholder workshops.

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I. INTRODUCTION

Under the AB 32 Global Warming Solutions Act Scoping Plan, adopted by the California Air Resources Board in December 2008, the California Integrated Waste Management Board (CIWMB) is charged with developing regulations to implement a mandatory commercial recycling measure. The measure must achieve emissions reductions of at least 5 million metric tons of carbon dioxide equivalents. The Board is holding two public workshops on July 20 and August 6, 2009, to solicit stakeholder input on a number of issues that will need to be addressed in the formal rulemaking for this measure, which is slated to begin late in 2009. To facilitate the discussion at these workshops, this white paper covers:

- Overview of Existing Mandatory Commercial Recycling Programs,
- Policy Issues
 - Materials to be covered by the measure
 - Thresholds: What Types and Sizes of Businesses Should be Required to Recycle?
 - Definition of Recycling
 - Enforcement
 - Miscellaneous Implementation Issues
- Conceptual Regulatory Options

AB 32 Background

California produces roughly 1.4 percent of the world's, and 6.2 percent of the total U.S., greenhouse gases. The landmark California Global Warming Solutions Act of 2006, also known as AB 32, established the first-in-the-world comprehensive program of regulatory and market mechanisms to achieve real, quantifiable, cost-effective reductions of greenhouse gasses.

The AB 32 Scoping Plan contains a number of "Recycling and Waste Management" measures including Mandatory Commercial Recycling. California already has a long track record of reducing greenhouse gas emissions by turning waste into resources, exemplified by the estimated 2007 statewide waste diversion rate from landfills of 58 percent (which exceeds the current 50 percent mandate). This has a significant greenhouse gas impact because traditional recyclable materials have significant intrinsic energy value that displaces fossil fuel energy requirements when these materials are introduced back into the manufacturing cycle. This in turn reduces energy use and greenhouse gas emissions from multiple phases of product production, including extraction of raw materials, preprocessing, and manufacturing.

Most of the focus of recycling programs implemented by California jurisdictions over the last two decades has been on the residential sector, with only a few local mandatory commercial recycling programs (Appendix 1). The commercial recycling measure in the AB 32 Scoping Plan focuses on increased commercial waste diversion. There are over 2 million commercial businesses in California, and they generate over half of all solid waste.

To illustrate how the commercial sector could achieve the AB 32 Scoping Plan target of 5 million metric tons of carbon dioxide equivalent emissions reductions (MMTCO₂e) for commercial recycling, consider the following example. In 2006, the amount of potentially recyclable materials from businesses with 100 or more employees (i.e., about 24,000 out of the 2,000,000 commercial businesses), combined with multi-family complexes consisting of more than five units and mobile home parks, totaled over 10 million tons. Of this amount, cardboard, lumber, glass, plastic, paper and metals constituted approximately 5.5 million tons. If these selected businesses and multi-family complexes were able to divert half of these waste materials (i.e., 2.7 million tons), this would realize estimated GHG emissions reductions of over 5 MMTCO₂e per year.

Authority Issue

In initial drafts of the Scoping Plan, the commercial recycling measure focused on a voluntary approach. However, after significant stakeholder feedback regarding concerns that allowing businesses to voluntarily implement programs might not result in the needed greenhouse gas emission reductions, the CIWMB worked with the Air Resources Board to modify the measure to a mandatory commercial recycling approach, which the Air Resources Board ultimately adopted in the AB 32 Scoping Plan.

Under the Scoping Plan, the Air Resources Board considers the CIWMB as the lead agency responsible for developing regulations to implement the mandatory commercial recycling measure due to the CIWMB's existing mandates and programs to divert waste from landfills. Even so, some stakeholders have questioned whether the CIWMB has statutory authority to do so. The CIWMB and Air Resources Board are working collaboratively on this issue. Several pieces of pending legislation (see next section) currently have language that would provide the CIWMB authority to adopt these and other Scoping Plan regulations. However, should these bills not pass this year, the CIWMB and Air Resources Board will partner to adopt a regulation package. In either case, pursuant to the AB 32 Scoping Plan, the regulations would be adopted by January 1, 2011.

Past and Pending Legislation

Currently there are several pending legislative bills related to commercial recycling:

- AB 479 (Chesbro) would require businesses who generate more than 4 cubic yards of waste and recyclables per week to participate in the locally available

recycling program. It would also require local governments in counties over 200,000 population to adopt a commercial recycling ordinance.

- SB 25 (Padilla) also includes a provision for commercial recycling requiring local governments to implement a commercial recycling ordinance as well as requiring businesses to recycle.
- AB 478 (Chesbro) includes a provision that the Air Resources Board work with the CIWMB in developing regulations to include rules for the reduction of greenhouse gas emissions from solid waste reduction and recycling.
- AB 473 (Blumenfeld) requires the owner of a multifamily dwelling, consisting of 5 or more units, to arrange for recycling services.

Passage of these bills may or may not impact how the measure is developed and implemented. The informal stakeholder process will proceed on schedule with the development of the mandatory commercial recycling measure. If any of these bills are enacted, the CIWMB will modify this process appropriately.

During several past legislative sessions several bills addressing the commercial waste sector have been introduced. Appendix 2 contains a listing of these bills, a summary of the provisions and, if applicable, the veto message.

II. OVERVIEW OF EXISTING MANDATORY COMMERCIAL RECYCLING PROGRAMS

A few California cities and counties have already implemented mandatory commercial recycling programs that target the commercial or business sector as the largest untapped waste stream for recovery. However, with respect to overall policy and program design, they vary in a number of fundamental factors. For example, who is affected by the ordinance? What constitutes compliance? Are specific materials targeted for recycling? What are the roles of the local government, businesses, haulers/service providers, etc? A summary of example ordinances from ten California jurisdictions and 5 other U.S. cities and counties is provided in Appendix 1. The following summarizes some of the commonalities and differences among these ordinances:

Requirements

- Typically, the generators are required to subscribe to specific services provided by a jurisdiction's franchise hauler or permitted hauler.
- Most of the ordinances place the requirements on the generators; however, one ordinance places the requirement on the permitted haulers within the jurisdiction.

Target Sectors

- Most of the ordinances target all commercial/businesses including multi-family generators unless multi-family accounts are included in a residential collection.
- One ordinance establishes different requirements for different business types (bars/restaurants vs. offices)

Thresholds

- Some ordinances do not have any threshold and others have a threshold by volume generated (4 or 6 cubic yards), square footage of the property, numbers of the units in multi-family complex (4 or 5 units), or percentage of waste generation.

Exemptions

- All of the ordinances listed in Attachment 1 have some kind of exemption for the target generators.
- Examples of the exemptions are self hauling, subscribing to a recycling service from a third party recycler, space limitation (or violating another municipal code if a generator tries to comply with the requirements), vacant property, no generation of recyclable materials, and/or if the cost of recycling is more than the cost of disposal.

Target Materials

- Some ordinances allow certain target generators (such as offices) to recycle only specific recyclable materials; however, typically there is no difference in required recyclable materials for any target generators in most of the ordinances.
- Some ordinances do not mention construction and demolition (C&D) waste recycling if a jurisdiction already adopted a separate C&D ordinance. However, some ordinances include C&D debris in the list of recyclable materials even if there is a separate C&D ordinance (sometimes a commercial recycling ordinance will refer to the existing C&D ordinance). In that case, the threshold may be different for a non-C&D generator.
- Most of the ordinances do not include food waste or organics in the list of required recyclable materials collection. However; some jurisdictions included food waste if a generator generates enough material to collect.

Performance Metrics

- Reporting and performance requirements vary widely. Some ordinances have no quantitative measure of effectiveness or success. Others have specified metrics,

such as number of commercial recycling subscriptions, diversion tonnage or rates, disposal data and technical assistance provided. Some ordinances require the generators to submit a recycling plan. Most jurisdictions require a regular report (quarterly, semi-annually or annually) from the service providers in their jurisdiction to monitor and evaluate the implementation of the ordinance.

Implementation

- Some jurisdictions have exclusive franchise haulers and yet allow generators to use a third-party recycler as long as the service is free. Some jurisdictions have non-exclusive franchise haulers or licensed haulers.
- Most of the ordinances allow businesses to self-haul their recyclables and include a clause regarding the “Rancho Mirage case” to allow generators to donate or sell the recyclables.
- Many of the jurisdictions utilize staff, enforcement officers, etc. to go out to the generators to educate them on the program and ensure that generators are participating.
- Funding sources for implementation vary from hauler fees, AB939 fee, general fund, or direct fee to the generators.
- All of the jurisdictions in Attachment 1 have extensive outreach efforts as a part of implementation of the ordinance.
 - Some ordinances require an owner and/or generator to provide containers, signage and written recycling requirements on site.
 - Some jurisdictions require their haulers to provide outreach to the target generators and conduct a waste assessment if necessary.
 - Most of the jurisdictions use a web page as a tool for outreach along with direct mail, brochures, booklets etc.
 - Keys to successful implementation of mandatory commercial recycling appear to include on-going outreach to the target generators and the amount of resources and time that a jurisdiction can dedicate.

Enforcement

- In one jurisdiction, the licensed haulers are responsible for ensuring that the target generators comply with the requirements.
- However, most of the jurisdictions use their own code inspectors or recycling coordinators to conduct an on-site inspection.
- Usually, the jurisdictions take a technical assistance approach for compliance rather than issuing a fine or violation notice immediately.
 - Some jurisdictions wait a year or so before starting to enforce the requirements.
 - There are some jurisdictions that require commercial generators to submit a recycling plan or self-haul certification form.

- For a violation of the requirements, the amount of fines varies from jurisdiction to jurisdiction.
- Another approach to issuing penalties that one jurisdiction uses involves the suspension or revocation of business licenses and/or the issuance of a nuisance abatement assessment lien on a violator.

III. POLICY ISSUES

In developing this regulation, Board staff is seeking feedback regarding what level of specificity the regulation should have in prescribing programs, how it can provide flexibility for jurisdictions and businesses to determine the most cost-effective approaches for their geographic and business conditions, and how to provide for enforcement and for measuring achievement of the greenhouse gas emission and disposal reductions. For example, the regulation could allow for local flexibility but require that businesses of a certain size need to obtain recycling services and that local jurisdictions must develop, implement and enforce an ordinance that mandates commercial recycling. Or the regulation might require that the Board would review local jurisdiction's implementation of their ordinance during the Board review of their AB 939 programs.

This section describes the following outstanding policy issues:

- Materials
- Target Sectors
- Thresholds
- What Constitutes Participation and Recycling
- Enforcement
- Miscellaneous and Implementation Issues

Section IV provides conceptual regulatory options to address these issues, along with an initial listing of associated pros and cons.

Materials

The mandatory commercial recycling measure in the AB 32 Scoping Plan identifies six material types to be targeted and diverted in sufficient quantities to achieve the approximately 5 MMTCO₂e in emissions reductions. These material types include:

- Cardboard
- Lumber
- Metals
- Paper
- Glass, and
- Plastic

According to the CIWMB's 2004 Waste Characterization Study, materials that are commonly recycled and/or compostable but that continue to be disposed in landfills comprise roughly 60% of the waste stream. These material types include the six material types listed above, as well as food, yard trimmings, and construction and demolition debris such as concrete. Disposal of the six material types totaled 5.5 million tons for businesses of greater than 100 employees, multi-family complexes, and mobile home parks. If one half of this material were recycled, it would equate to 2.7 million tons of recyclable material, which results in about 5.5 MMTCO_{2e} reduction of greenhouse gas.

One approach to the issue of what materials should be specified in the regulation is to require that all programs to address these six material types. Another option is to make the regulation general by not specifying materials and simply require that businesses must comply with their local recycling program. In this way, jurisdictions and service providers might have a freer hand in determining the most cost-effective program while still achieving the disposal reductions necessary to reduce statewide emissions by 5 MMTCO_{2e}.

If materials are specified in the regulation, then an additional point of discussion is whether or not to specify food waste. Over 3.5 million tons of food waste are disposed annually by the commercial sector. If food waste was added to the materials list to be diverted by mandatory commercial recycling programs, and one half of this material was recycled, this would equal 1.75 million tons of food waste or about 1-2 MMTCO_{2e} greenhouse gas emission reductions. At this time, there is not sufficient infrastructure to handle the quantity of food waste, if all commercial recycling programs targeted food waste for diversion (the current organics management infrastructure handles an estimated 4.5 million tons annually, so adding 1.75 million tons of food waste would represent about a 40 percent increase). However, there are specific areas of the state that do have successful commercial food waste diversion programs, such as San Francisco and Stockton. A more flexible approach regarding material types is to allow food waste diversion to be considered as complying with the commercial recycling measure. This could be accomplished by specifying food waste as an "eligible" material.

Target Sectors

Some approaches to mandatory commercial recycling include specific types of businesses and exclude certain types of businesses. Other approaches dictate that all businesses, regardless of the amount of materials either generated or disposed or number of employees, need to fully participate in a recycling program. The following are some options to consider for commercial businesses, multi-family units and mobile home parks.

Commercial Business

For the general curbside business customer, the County of Sacramento and other jurisdictions utilize four cubic yards of waste generation as a threshold for requiring businesses to recycle. The City of Rancho Cordova estimates that approximately seventy percent of generators in the business sector are required to recycle using a four cubic yard threshold. The County of San Diego utilizes a 6 cubic yard waste generation threshold. San Francisco, on the other hand, requires each person and business within the City and County limits to participate fully in the recycling program.

Self-haul businesses would necessarily complicate the approach to mandatory commercial recycling when utilizing a specific threshold to determine who is required to participate in the program. To deal with this, some jurisdictions have policies that involve requiring self-haul commercial sector customers to utilize drop off materials at other recycling facilities, and in some cases they support this policy with enforcement at the landfill (see "Enforcement" below).

Multi-Family

The intent of mandatory commercial recycling programs encompassing the multi-family sector is to provide recycling services where they may not already be in existence. Jurisdictions with ordinances encompassing the multi-family sector have utilized various thresholds. In general, the threshold ranges from three to five units, above which the multi-family units would be required to participate in the mandatory commercial recycling program. Below that threshold, the presumption is that the residential recycling service would already have been fully implemented. However, this may vary depending on the type of service that the multi-family sector has experienced prior to the implementation of a mandatory program.

Mobile Home Parks

The way in which mobile home parks are treated in solid waste programs differs from one jurisdiction to the next and sometimes within the same jurisdiction. Mobile home parks in one jurisdiction are treated as residential areas. In another jurisdiction, a similar mobile home park may be treated as one large business. Without acknowledging the variety of ways that mobile home residents are treated, the regulation may have unforeseen results. How to enforce mandatory recycling in mobile home parks may be a challenge due to the variety of ways in which mobile home parks are treated.

Construction and Demolition Materials Generators

Some jurisdictions with mandatory commercial recycling ordinances do not mention construction and demolition (C&D) waste recycling if they already have an adopted, separate C&D ordinance. However, some jurisdictions do include C&D on the list of covered recyclable materials, even if they already have an ordinance and corresponding special program targeting C&D generators. Sometimes the threshold may be different

for a C&D generator versus other segments of the targeted business sectors, e.g., general, multi-family, mobile home, etc.

C&D waste materials are usually handled quite differently from general waste and recyclables. The generator is typically not at a permanent location, the waste materials tend to be heavier and bulky, the collection infrastructure includes larger bins and vehicles, and the processing is done separate from other recyclables. While these materials account for a large percentage of waste generation, they are generally – but not totally -- inert and thus do not contribute to greenhouse gas emissions. One exception is lumber that is often mixed in with the C&D materials but is one of the targeted material types, which if recycled would provide significant greenhouse gas emission reductions. The question remains, should lumber be included as one of the material types in this regulation, and if so, how.

Self-Haul

Some businesses choose not to subscribe to commercial waste or recycling collection programs when they are given the option and instead “self-haul” materials to a landfill or recycling facility. It may be that in the business location curbside services are not available. It may also be that in their jurisdiction there is an option to self-haul versus pay for the collection services, even if those services are available. Many of the ordinances require that self-haulers participate in the mandatory recycling program.

Thresholds

Some approaches to mandatory commercial recycling include a specific quantitative threshold of waste generation or waste disposal, over which businesses need to comply with the program. Waste generation includes garbage as well as recyclable materials, while waste disposed only includes material that is disposed, not recycled. For example, many of the ordinances specify that commercial businesses (including multifamily and mobile home parks that are collected on the commercial route) that generate more than 4 cubic yards are required to participate. Another approach could focus on setting the threshold based upon the number of employees. Other approaches dictate that all businesses, regardless of the amount of materials either generated or disposed or number of employees, need to fully participate in a recycling program.

What Constitutes Participation and Recycling

In many areas of the state, commercial recycling services have long been available, but many businesses have not chosen to avail themselves of these services. As a result, some approaches to mandatory commercial recycling simply involve requiring

businesses to participate or take advantage of the recycling services that are available in their city or county. Other approaches include mandatory recycling of certain material types or set diversion goals. In addition, recycling itself can be accomplished in many ways, including separating recyclable materials for collection, commingling them together but separate from non-recyclables, or mixing recyclables and non-recyclables together for collection. Consequently, there are several ways to design an overall regulation and/or local ordinances to address requirements regarding participation and recycling services.

Requirements Placed on Businesses to Participate

Approach 1: Some programs require that the business actively conduct some separation of recyclable materials from the general waste or garbage. The program may target a specific material type such as paper or cardboard or the program may dictate that all recyclables are to be commingled into a separate container from the garbage. The business is required to contact the local service provider and arrange for recycling service. The business is required to follow the recycling program guidelines by depositing recyclable materials into the correct containers. The host jurisdiction or service provider of this program would most likely implement an extensive education and outreach program to ensure the proper source segregation of the materials.

Approach 2: Other programs may not require any specific materials separation. Instead they may establish diversion goals for businesses or set disposal bans for targeted material types and require the businesses to participate in recycling services that help to meet these mandates.

Recycling Using Processing Infrastructure

Approach 3: Some programs set up processing infrastructure that works in tandem with business participation described in Approach 1. For example, targeted material types or commingled materials that businesses have segregated from their garbage are collected by the hauler and taken to a “clean” materials recycling facility (MRF) for processing. A “clean” MRF involves processing, mechanically or by hand, the recyclable materials to segregate them into the various commodities. Segregated commodities may go directly to a secondary materials broker.

Approach 4: Some programs do not rely on business participation because they do not require businesses to sort material at all. Instead, the hauler collects material which is then processed to sort out the recyclable materials from the mixed waste stream. These programs use a “dirty” MRF for processing. A “dirty” MRF segregates those materials which are recyclable out of the mixed waste stream. There is usually less outreach and educational aspects to the program, as compared with business participation approaches described above.

Approach 5: Some jurisdictions are now considering a ‘wet/dry’ stream process where there are two containers available, one container for wet waste and one for dry waste.

A statewide regulation that allows for such disparate views of what constitutes participation and recycling may need to be flexible and focus on the end result, e.g. the quantities and qualities of secondary materials that are produced from each system. If a “dirty” MRF commercial recycling program diverts comparable quantities and qualities of secondary materials as a source separated program that requires business participation, then the performance of the “dirty” MRF program may be considered comparable to the source separated program.

Enforcement

Enforcement is one of the most difficult and controversial issues to address in developing a mandatory commercial recycling regulation. What type of enforcement, if any, should be included in a mandatory commercial recycling regulation? There are various approaches to the enforcement process and assessing penalties for failure to comply with any applicable mandatory commercial recycling program requirements. Major questions include whether the statewide regulation should require local jurisdictions of a specified size to adopt and implement an ordinance, but leave the details regarding enforcement and penalties to the local ordinances? In this case, should the role of the state be to ensure that the local jurisdiction has implemented its ordinance? Or should the state have a more direct role in enforcement and in setting penalty levels? Or should the regulation rely on self-regulation by participating businesses?

There are numerous variations on how enforcement might be performed at the local level. In some cases, the local government participates with the hauler(s) by accompanying them on the collection route. The local government representative may conduct visual inspections of the bins to determine if there are certain levels of contaminants, such as recyclables in the garbage or garbage in the recyclables. If certain levels, as specified in the applicable ordinance, are detected then enforcement may be initiated immediately. In other cases, the local government may take a more measured approach by first sending representatives out to businesses to encourage recycling and provide technical assistance. If the business participates in the recycling program, no further interaction with the local government representative is necessary. In either of these situations, the jurisdiction might allow a substantial grace period during which staff engages the business community to inform them about the need to recycle. The jurisdiction then would monitor performance and engage in some type of progressive enforcement (e.g., warnings, formal communications, and formal enforcement and penalties/fines). One reason to take this approach in which fines are used as a last resort is that compliance with the recycling program is the desired outcome, not the collection of fines. A third variation on enforcement of a mandatory

commercial recycling program could place responsibility for compliance upon the hauler(s). In this circumstance the hauler(s) could be required to develop a recycling plan showing how the recyclables will be diverted and how the material will be tracked to demonstrate compliance. In those circumstances, the hauler may be provided a financial incentive to recycle as opposed to dispose materials. If specific performance measurements are not achieved, the jurisdiction may utilize its authority to levy fines against the hauler or withhold payments designed to reward high levels of recycling.

At the other end of the spectrum, enforcement could rely on business/generator self-regulation or generator self-regulation coupled with a state or local jurisdiction audit function. In the case of self-regulation, a jurisdiction may pass an ordinance that requires the generators to segregate the recyclables from general refuse and provide reports (quarterly, biannually, annually) on the quantities of materials recycled. Or the jurisdiction might require the hauler to provide a report instead of the individual businesses. An additional aspect to self-regulation by businesses could be to provide an audit role for state or local government, such as reviewing reports and conducting random site visits to audit for compliance.

In contrast to local enforcement or business/generator self-regulation, another approach would involve a more direct enforcement role for the state. The state also could be charged with assisting local jurisdictions in their enforcement efforts, or even with auditing the performance of local enforcement programs. Finally, the state may assess local implementation of mandatory commercial recycling ordinances as part of the AB 939 review process.

Regarding state level enforcement and as discussed earlier in this paper, if legislation is not enacted that provides the CIWMB with explicit authority to implement the regulation, then the CIWMB and Air Resources Board will work together to pass the regulation. If the Air Resources Board is required to adopt the regulation per its authority under AB 32, then the Air Resources Board would likely also enforce the regulation. Under the Air Resources Board the enforcement could be more severe and penalties could be higher and more aggressive.

Miscellaneous Implementation Issues

Outreach and Education

One common theme in existing program implementation (Appendix 1) is reliance on outreach and education to inform businesses about the need to recycle. Many programs also include hands-on technical assistance, through a visit from local jurisdiction staff or a consultant, to show specifically how recycling can be accomplished at a particular business. The amount of time and resources to implement such a program varies greatly. In some cases businesses are required to provide education, signage and training to their employees. In other cases the hauler may have that responsibility. All of the jurisdictions listed in Appendix 1 implement extensive outreach

efforts to support a mandatory commercial recycling ordinance and program. Keys to successful implementation of mandatory commercial recycling appear to include on-going outreach to the target generators and the amount of resources and time that a jurisdiction can dedicate to enforcement.

Funding

As always, funding activities related to mandatory commercial recycling are an issue. The funding necessary to implement a mandatory commercial recycling program largely depends upon who the mandate is on, generator or hauler, as well as how many businesses are located within the jurisdiction. In some cases, several jurisdiction staff may be involved in providing technical assistance, while in others the hauler is providing that function. In some jurisdictions the hauler pays a fee for the jurisdiction to implement the program, while in others the hauler conducts those activities related to implementation such as site visits, technical assistance, and outreach. The general fund or franchise fees may supply the funds for implementation in other jurisdictions. Another funding option would be a direct fee on the generators of the materials.

Measuring the Overall Effectiveness of the Regulation

As the mandatory commercial recycling measure must achieve reductions of 5 MMTCO_{2e}, how should this be measured? Options to consider in determining how to measure this include:

- The CIWMB uses tools such as waste characterization studies of key material types, the US EPA “WARM” model, the AB 32 “Community Protocol” (still under development), or other models and tools to periodically assess changes in generation, disposal, and associated emissions.
- Requiring local jurisdictions to use the same or related tools to measure emissions changes associated with program implementation and report results to the CIWMB.

IV. CONCEPTUAL REGULATORY LANGUAGE

This section attempts to take the discussion in Section III and translate those issues into more specific “conceptual regulatory language” and an initial listing of associated pros and cons, for the purpose of stimulating focused discussion at the workshops. CIWMB staff recognizes that there may be some overlap among these options and will continue to refine them, and that there some obvious options may not be included. Therefore CIWMB staff is soliciting feedback on these options and their pros and cons and whether additional concepts should be included. This feedback will be summarized and reported to the Board in September. Actual draft regulatory language will be developed and brought to the Board in approximately the December timeframe for consideration of initiating the formal rulemaking.

Materials and Target Sectors

Option 1: All businesses must participate in the locally available commercial recycling program by placing all ‘covered’ materials in the appropriate receptacle for collection and recycling.

- **Pros:**
 - Flexible. While it requires businesses to fully participate in the program offered by their local commercial recycling service provider, it does not specify which materials must be recycled. This leaves the decision on what must be recycled to the local jurisdiction and service provider.
 - May be more effective than prescribing specific material types for diversion, because the jurisdiction and/or service provider are in a position to know which materials are generated locally and what markets are demanding locally for secondary materials.
 - Provides stronger authority for locals by requiring this at the state level.
- **Cons:**
 - If the regulation does not specify the material types that need to be targeted, then there could be less assurance of achieving the reductions in the six material types that have been targeted in the Commercial Recycling Measure in the Scoping Plan.

Option 2: All businesses must participate in the locally available commercial recycling program by placing the following materials, at a minimum, in the appropriate receptacle for collection and recycling: cardboard, lumber, metals, paper, glass and plastic.

- **Pros:**
 - By being more prescriptive, the quantity of materials being recycled under this option may be more readily estimable.
 - Places focus on these six material types and that keeping them out of landfills can help to significantly reduce GHG emissions.
- **Cons:**
 - Local conditions may not be considered. There may be other material types that are more readily generated and recyclable than the six material types originally anticipated as part of the program. This may have a limiting effect on the total quantity of materials that may be recycled.
 - Does not recognize the wide variety of the types of businesses and types of materials generated that exist in jurisdictions.
 - Local efforts to divert the prescribed materials may not be as effective in overall diversion as if the material list were left to the host jurisdiction and service provider.

Option 3: All businesses must recycle the following materials at a minimum: cardboard, lumber, metals, paper, glass, plastic and food waste.

- **Pros:** This option is more prescriptive than option 1 or 2 in that a specific list of material types to be recycled also includes food waste, which should result in more material being recycled than option 2. It would recognize the existence of commercial food waste recycling programs, thus allowing jurisdictions to receive credit for their food waste recycling programs. By recognizing and including food waste in the list of materials to be recycled, this may also encourage more commercial food waste programs to be implemented.
- **Cons:** Insufficient processing capability exists to handle all commercial generated food waste at this time. Therefore, the inclusion of this material type to be recycled may not recognize this and, in a worst case scenario, may lead to material collected at the curb for food waste recycling that is instead disposed.

Thresholds for Businesses

Option 1: All businesses shall participate fully in the commercial recycling program available through the service provider or by self-hauling the material to available recycling facilities.

- **Pros:**
 - Simple to interpret as each and every business in the state would be required to fully participate in whatever program is available, as in the case of San Francisco's program.
 - Simpler to estimate the tons of materials that could be diverted.
 - Although the recycling infrastructure may be insufficient to handle such a substantial increase in diverted recyclable material, this scenario could provide regulatory certainty sufficient to motivate an infusion of capital to provide infrastructure to handle the processing of this material.
- **Cons:**
 - Insufficient infrastructure may be an issue at this time to handle the increase in volume of materials for recycling. It is unclear if the commodities markets would be capable of handling the increase of secondary materials that would be diverted under this scenario.
 - It would be detrimental to the statewide commercial recycling program if material collected for recycling were to be disposed of in landfills due to an oversupply and insufficient storage capacity for recyclables.

Option 2: Businesses with over 100 employees shall participate fully in the commercial recycling program available to them through the service provider or by self-hauling the material to available recycling facilities.

- **Pros:**

- This option would result in over 24,000 businesses being required to participate in the commercial recycling program. It would focus the efforts on businesses with significant quantities of materials to warrant the investment of resources to divert the materials.

- **Cons:**

- This regulatory option would not provide flexibility for the local program to target specific businesses that may not have 100 employees but which may generate substantial quantities of recyclable material.

Option 3: Businesses generating over 4 cubic yards of material per week shall be required to fully participate in the locally available commercial recycling program or by self-hauling the material to available recycling facilities.

- **Pros:**

- This option has been implemented by jurisdictions such as the City of Rancho Cordova, and it appears to target approximately seventy percent of businesses which presumably generate a majority of the materials. Some jurisdictions have determined a four cubic yard waste generated rate to be the level that warrants the resources devoted to diverting materials.
- Excluding businesses that generate less than four cubic yards of material weekly may allow jurisdictions and service providers to focus on the businesses that generate the most material.

- **Cons:**

- By utilizing a waste generation rate as opposed to a waste disposed rate, some businesses may not understand that the threshold applies to not only the level of garbage service to which they subscribe, but also the amount of recyclables generated.
- This provision would allow many businesses who generated less than four cubic yards to continue disposing recyclable materials, thus not achieving the highest GHG emission reductions possible.
- Also, businesses may find it confusing to hear messages about the need to recycle to reduce GHG emissions, yet only some businesses, not all, would be required to recycle.

Option 4: Businesses that generate over six cubic yards of material per week shall be required to fully participate in the locally available commercial recycling program or by self-hauling the material to available recycling facilities.

- **Pros:**

- Jurisdictions that are financially challenged would be able to deploy resources to the highest volume generators.

- **Cons:**
 - Presumably the higher the volume generation threshold for requiring businesses to recycle, the number of businesses that will have to recycle will be lower. This will result in less material being recycled and consequently less GHG emission reductions.

Thresholds for Multifamily

Option 1: All multi-family units must participate in the locally available recycling program, either through residential or commercial type service.

- **Pros:**
 - The local service provider and host jurisdiction determines, given local conditions, whether a multi-family complex should be provided residential, or cart, type recycling services or commercial, or bin, type recycling services. This would allow for jurisdictions in consultation with their service provider to determine the best way to meet the local challenges.
- **Cons:**
 - It can be confusing as to what recycling services are available to multi-family housing units. This concept would not clarify what number of units that would place the multi-family sector to within the commercial type program. Instead, it would be left to local interpretation, which may lead to confusion when neighboring jurisdictions have differing thresholds. This could lead to confusion on the part of multi-family tenants and owners.

Option 2: Multi-family units of three or more dwellings must participate in the commercial recycling program.

- **Pros:**
 - Setting a statewide standard for multi-family housing thresholds would provide consistency across the state, thereby alleviating confusion as to which multi-family dwellings are required to recycle.
- **Cons:**
 - Some jurisdictions may choose to require each dwelling, no matter the size, to recycle, such as in San Francisco. Providing a higher threshold may result in less material being recycled than no threshold at all, thereby reducing the amount of GHG emission reductions.

Option 3: Multi-family units of four or more dwellings must participate in the commercial recycling program.

- **Pros:**
 - Setting a statewide standard for multi-family housing thresholds would provide consistency across the state, thereby alleviating confusion as to which multi-family dwellings are or are not required to recycle.
- **Cons:**
 - Some jurisdictions may choose to require each dwelling, no matter the size, to recycle, such as San Francisco. Providing a higher threshold may result in less material being recycled than no threshold at all, thereby reducing the amount of GHG emission reductions.

Thresholds for Mobile Home Parks

Option 1: Residents of mobile home parks shall fully participate in the locally available recycling program.

- **Pros:**
 - Without a specific threshold, all residents would be required to recycle. This would eliminate some confusion since it would be a statewide standard.
- **Cons:**
 - If there is no existing recycling program, this option would not increase the level of recycling.

Option 2: Residents of mobile home parks, 4 or more units in size, must fully participate in the locally available recycling program.

- **Pros:**
 - This concept would set a statewide standard, requiring a consistent interpretation of how the regulation applies to mobile home parks. In that way all mobile home parks (whether previously seen as residential and provided service, treated as commercial with or without recycling, or self-hauled by the mobile home park owner or manager) would all be required to provide consistent opportunities for their residents to recycle.
- **Cons:**
 - Mobile home parks are treated differently throughout the state and sometimes within the same jurisdiction. This regulatory approach would

not recognize this difference in approaches. Some mobile home park residents are already provided a high level of residential type curbside recycling service. Under this regulatory option, an unintended result may be that some residents recycling service would be reduced, such as replacing the residential curbside cart service with the requirement for the resident to take the recyclable materials themselves to a centrally located commercial bin. This could result in fewer recyclables being collected.

Thresholds for Construction and Demolition

Option 1: All commercially generated recyclable materials including construction and demolition waste materials must be processed for recycling to the extent this service is available.

- **Pros:**
 - Consistent with the statewide trend to require even more generators of construction and demolition materials to recycle. This concept would support and complement any jurisdiction adopted construction and demolition materials ordinance.

- **Cons:**
 - There may be insufficient infrastructure capacity to process all of the materials that could be collected through this provision. That circumstance could result in an increased risk that some materials collected for recycling may eventually be disposed.
 - Also, some jurisdiction programs require a lesser amount of material to be targeted for recycling. This regulatory concept would not allow for differing levels of recycling.

Option 2: Businesses generating construction and demolition materials must comply with the locally adopted construction and demolition materials ordinance and/or program.

- **Pros:**
 - This concept would support and complement any jurisdiction adopted construction and demolition materials ordinance and program.

- **Cons:**

- If there were no existing construction and demolition recycling program, this regulatory concept would not require anything more than the status quo.

Thresholds for Self-Haul

Option 1: All generators of commercial waste including those businesses that self-haul materials must participate in the local program to divert all recyclable materials.

- **Pros:**
 - Very simple approach.
- **Cons:**
 - Businesses that currently self-haul materials may do so for a variety of reasons this simple approach would ignore. It may be that recycling opportunities are minimal or non-existent.

Option 2: Those businesses that choose to self-haul materials and haul a specified amount of materials (such as one cubic yard per load) must take their materials to a recycling facility.

- **Pros:**
 - Very simple approach.
- **Cons:**
 - This approach would be harder to enforce.

Recycling Definition

Option 1: Only materials that are processed through a 'clean' MRF or commingled recyclables processing facility or a generator separated program, are considered to be compliant with the mandate to recycle.

- **Pros:**
 - This regulatory approach would require materials be handled in a way that reduces contamination and therefore may result in a higher percentage of materials being recycled as compared with 'dirty' MRF processing.
- **Cons:**
 - This approach would not allow programs that involve 'dirty' MRF processing to be considered as compliant with the regulation. This would

fail to account for facilities representing large capital investments to be included in the compliant system or the materials that are recycled.

Option 2: Materials that are processed through a 'clean' MRF or commingled recyclables processing facility or a 'dirty' MRF or a generator separated program, are considered to be compliant with the mandate to recycle.

- **Pros:**
 - This regulatory approach would provide flexibility based upon the local infrastructure.
- **Cons:**
 - This approach could increase contamination of the materials if single stream and 'dirty' MRFing are allowed.

Enforcement

Option 1: To the extent commercial recycling opportunities exist a business must fully participate in the program or become subject to fines of up to \$[to be determined] per day.

- **Pros:**
 - A fine will garner attention and may motivate businesses that would otherwise not recycle.
 - This would allow fines to be levied by either the state or local jurisdiction.
- **Cons:**
 - Implementation of an enforcement system that levies fines can involve a significant amount of time and resources that could otherwise be spent conducting outreach and technical assistance.
 - Because this is not specific as to whether the fines would be levied at the local or state level, confusion and duplicity could occur.

Option 2: To the extent commercial recycling opportunities exist, a business must fully participate in the program. The jurisdiction within which the business resides shall monitor and enforce the requirement to recycle. The CIWMB will audit all reports and conduct spot checks as necessary to ensure compliance with this requirement.

- **Pros:**
 - Places responsibility to recycle on the generator and the responsibility to ensure businesses are participating on the local jurisdiction, with the state acting as a backstop to the regulation.
- **Cons:**
 - This provision could require resources at the local and state level to fully implement this requirement.

Option 3: To the extent commercial recycling opportunities exist, a business must fully participate in the program. The franchise hauler is responsible for enforcing the ordinance. The franchise hauler would report cases to the jurisdiction. The jurisdiction will conduct spot checks as necessary to ensure compliance with this requirement.

- **Pros:**
 - Places responsibility to recycle on the generator, the responsibility to ensure businesses are participating on the hauler, and the jurisdiction assesses penalties as needed.
 - Allows flexibility at the local level to design and implement the ordinance.
- **Cons:**
 - This provision could require resources at the local level to fully implement this requirement.
 - This requirement might not work in jurisdictions that do not have a franchise or permitted hauler.

Option 4: To the extent commercial recycling opportunities exist, a business must fully participate in the program. The jurisdiction is responsible for enforcing the ordinance.

- **Pros:**
 - This option is similar to Option 2 but does not have an oversight role for the state. It places responsibility to recycle on the generator, the responsibility to ensure businesses are participating on the jurisdiction and provides flexibility at the local level to design and implement the ordinance.
- **Cons:**
 - This provision could require resources at the local level to fully implement this requirement.

Option 5: To the extent commercial recycling opportunities exist, a business must fully participate in the program. The State is responsible for enforcing the ordinance.

- **Pros:**
 - Places responsibility to recycle on the generator and the responsibility to ensure businesses are participating on the state.
- **Cons:**
 - This provision could require resources at the state level to fully implement this requirement.

APPENDIX 1: SUMMARY OF EXISTING ORDINANCES

Jurisdiction	"Recycling" Definition: MRF, Dirty MRF, other	Materials Covered	Thresholds: Business/Multi-family/Mobile	Enforcement /exemption	Performance Metric (goal, reporting)	Funding	Type of Franchise	Outreach
CA: Arcadia	Do Not do dirty MRF. Def. of "Recycling" does not specify any source separation requirement.	Glass bottles and jars, any food or beverage container, aluminum cans, foil pie tins, steel or bi metal cans plastic, newspaper, cardboard, office paper, mixed paper, wood waste	All commercial accounts included. Multi-family complexes with commercial service is included under definition of commercial business.	The haulers are responsible for compliance. For businesses that are in compliance, the City can consider suspending or revoking the applicable business license and or put a nuisance abatement assessment lien. Exemption: Businesses can subscribe other (non-City hauler's) recycling services.	The haulers report to the City on the diversion data. Any recycling company or waste hauler (non-City hauler) also report as well as a strategy and methodology for increasing diversion and recycling to the City.	Hauler fees	Four licensed haulers provide commercial collection services.	Any recycling company or waste hauler in the City to recycle and educate customers about the need to recycle.
Chula Vista	Def. of "Recycling" does not specify any source separation requirement.	Designated recyclables or materials designated by the City Manager for recovery and reuse.	All generators (small and large) must separate all designated recyclables from refuse and participate in recycling as described	If a business is not recycling or refuses recycling services from our franchise hauler, City Recycling Specialists go to the business and explain the ordinance, what materials they have that can be recycled and usually get them set up with a recycling bin - adjusting their trash service accordingly. Exemption:	No goals, but recycling specialists go out and make sure the business is maximizing recycling. Annual reporting requirement only if commercial or industrial hauling is performed by a third party.	AB 939 fee on solid waste services.	Exclusive franchise hauler.	Recycling specialists go out and make sure the business is maximizing recycling. Employee training can be done. A voluntary clean business program is now offered, with 5 verified businesses now participating.

Jurisdiction	"Recycling" Definition: MRF, Dirty MRF, other	Materials Covered	Thresholds: Business/Multi-family/Mobile	Enforcement /exemption	Performance Metric (goal, reporting)	Funding	Type of Franchise	Outreach
				vacant property and self-haul.				
Fresno	Def. of "Recycling" does not specify any source separation requirement.	Paper, OCC, plastic, glass, metal, appliances	Every business and multi-family complex, there is no threshold.	The City has four code enforcement officers to enforce the mandatory commercial program.	Subscription to a recycling collection service.	The hauler performs audits twice a year to all commercial account. Contamination is reviewed and container sizes are evaluated	Four haulers (non-exclusive franchise)	City staff guide and educate businesses toward zero waste strategies, providing 1,207 personalized waste audits in 2007. The City has 5 staff that provide outreach materials and free business audits.
Pleasant Hill	Does not use a dirty MRF	For multifamily complexes, cardboard recycling only. For business generators, plastic, paper, glass.	All commercial generators and multifamily complexes	The hauler's recycling coordinator contacts every commercial generator. In case of non-compliance, the City is notified and the City staff contacts the generator. Exemption for self hauler as well as no generation of recyclables.	No goal. The franchise hauler has to provide a recycling coordinator for the City to implement the commercial recycling program.	Franchise fee	Exclusive Franchise hauler	The hauler's recycling coordinator performs waste audits (over 50 audits in 2007), sends letter, calls & meets with businesses, schools & multi-family complexes
Poway	No definition of "Recycling"	debris box materials; commercial cardboard; bar and restaurant glass; complete commercial green waste; office paper and other business recycling	All commercial generators, no threshold. Multifamily is included.	Currently no enforcement of the program. Exemption: generators must prove that they are recycling materials via some other ways.	No specific performance metric	The program cost is included in the rate structure, which is a tiered structure with significant incentive to recycle.	shall use the services of the franchisee having the exclusive franchise for collecting solid waste, recyclables, yard waste and other compostables	The franchise hauler is required to conduct outreach, perform onsite waste audits, and assist business with setting up recycling options, as a part of their franchise agreement.
Sacramento	Def. of "Recycling" does not specify any source separation requirement.	All food or beverage service establishments: aluminum and steel containers, glass bottles and containers, plastics, cardboard and	Applies to all business and non-residential properties that subscribe 4 cubic yard or greater per week garbage service. Multi-family with five or more unit per	Hazardous material and food inspectors check for compliance. Exemption: A self-hauling form is filled out that certifies that	Businesses have to submit a detailed plan about on-site recycling. Haulers report quarterly on recycling tonnages and the destination of the	Franchise hauler fees (\$500 per truck annually)	City haulers, non-exclusive franchise haulers, authorized recycling collectors, or self haul	Each owner and/or generator at each business has to provide containers for recycling, signage(s), and written recycling requirements

Jurisdiction	"Recycling" Definition: MRF, Dirty MRF, other	Materials Covered	Thresholds: Business/Multi-family/Mobile	Enforcement /exemption	Performance Metric (goal, reporting)	Funding	Type of Franchise	Outreach
		boxes. All other businesses: paper, plastic, aluminum cans, scrap metal, wood pallets.	parcel has to comply with the requirements.	all self-hauling activities. Exempt if space limitation on site is an issue or if the compliance with the ordinance will result in a violation of a zoning code. Up to \$1000 /day fine for incompliance.	recyclables. Waste haulers required to submit Recycling Plans; city staff review quarterly hauler reports, conduct on-site inspections and can audit hauler records			on site. SWA provides a handbook, sample signage, and other information. Over 10,000 DM were mailed out.
San Diego	Def. of "Recycling" does not specify any source separation requirement.	All papers, cardboard, plastic and glass bottles and jars, metal cans, and also other materials for which markets exist. Businesses that collect enough materials such as scrap metal, pallets, or food waste may be encouraged to recycle those materials.	Effective date for all City-serviced residential and multifamily customers: Jan 1, 2008; Phase approach for commercial customers, by size: 20,000 square feet or more, 10,000 square feet or more on and for all businesses. For multifamily 100 units or more, for 50 or more, for all complexes unless they have an exemption.	Solid waste code enforcement officers work in concert with recycling staff. 6 cubic yards per week or less of generation of recyclables and refuse, then it is exempt. A business may also apply for an exemption if they lack space to recycle, or if they generate no recyclables.	Haulers must provide an annual report. Staff targets those with low service levels of recycling, and informs them of the ordinance and offers assistance. If service levels don't increase, staff can take enforcement actions.	the recycling enterprise fund, an AB 939 fee A direct fee for multifamily complexes	Non- exclusive franchise system. The City also provides collection service in certain areas.	The party who sets up the recycling program is also responsible for educating tenants or occupants annually, upon occupancy, or when changes to the program occur. Technical assistance to businesses, events and venues is also provided by City staff. There are guidelines for appropriate containers and signage.
Rancho Cordova	Def. of "Recycling" does not specify any source separation requirement.	Paper, cardboard, chip board, metal cans, plastics #1-7, glass, aseptic packaging, small scrap metal	All businesses and multi-family complexes (with 5 or more units) that generate equal to more than 4 yards/week of solid waste	No penalties on non-participating generators until 01/01/10. Fines after that. Penalties on non-participating franchised waste haulers as of 4/1/09	Commercial generators must submit a Recycling Plan to the City and enter into Recycling Service Agreement with a franchised hauler/ authorized recycler or complete a Self-Haul Certification Form and self haul to an appropriate	General Fund	3 Non Exclusive franchise haulers and 11 authorized recyclers.	City letter to all Covered Generators City web-site information Compliance/information booklet Business Waste Audit Program

Jurisdiction	"Recycling" Definition: MRF, Dirty MRF, other	Materials Covered	Thresholds: Business/Multi-family/Mobile	Enforcement /exemption	Performance Metric (goal, reporting)	Funding	Type of Franchise	Outreach
					facility. Required quarterly reporting by haulers.			
City and County of San Francisco	The ordinance was adopted on June 16, 2009 and is not available online yet.	Almost all recyclables (ex. paper, bottles, cans and plastic, etc.) and compostables.	All--applicable to everyone. No threshold. Multi-family is included; there is no threshold.	Drivers will leave tags when they see the wrong material in trash, recycling or composting containers. Other Recology employees may look as can SFE, DPW and DPH City staff. Exemptions include a space waiver and small generator fines are capped at \$100. Mixing of materials at multi-tenant buildings will not be enforced until July 1, 2011.	100% compliance is the goal. On-site inspection for reviewing compliance.	Existing funding will be used, in addition to fines and fees that will provide funding.	Permit system for haulers.	SFE will do broad outreach on the ordinance in an effort to make every person in SF aware of it. The City will send letters to businesses and apartment owners. Recology will include info in bills and send letters to small property owners and hang flyers on containers as they re-label them.
Alameda Unincorporated county	No mandatory commercial recycling Landfill ban of plant debris Approved: 1/2//09. Effective: 3/1/09 Warnings issued:10/1/09 Citations issued:1/2010	Plant Debris Landfill Ban	Commercial Landscapers, Gardeners and Self-Haulers and Property /Facility Managers	Keeping plant debris separate from other materials or placement in separate bins/boxes at generation point. A citation will be issued to the business owner if the load is contaminated.	Compliance plans by solid waste and facility operators and solid waste collectors.	Measure D: for Funding, outreach and promotion. AB939 for Enforcement.	Franchise hauler (WMAC)	Positive outreach and education promotion to commercial landscaper, gardeners and property managers.
Cambridge, MA	Definition is not specified in the ordinance.	Office paper, aluminum, waste oil, newspaper, glass containers, storage batteries, magazines,	All commercial establishments (all non-residential building) have to recycle more than 5% of waste generated on-site.	Exempt if there is storage space limitation, provided all other options have been exhausted and	Each commercial establishment and each landlord must submit a Recycling Plan that includes a waste audit,	General Fund	All commercial establishments are required to inform to their employees and customers about the recycling requirements.	Mostly website info, flyers sent upon request or dropped off by inspectors, some community presentations

Jurisdiction	"Recycling" Definition: MRF, Dirty MRF, other	Materials Covered	Thresholds: Business/Multi-family/Mobile	Enforcement /exemption	Performance Metric (goal, reporting)	Funding	Type of Franchise	Outreach
		plastic containers, scrap metal, corrugated cardboard, leaves and yard waste, wood waste, ferrous cans	Multifamily complexes are included in residential curbside recycling service.	documented. If failed to comply with the requirements, administrative penalties could be assessed.	description of recycling process on-site, process of how recyclables are collected and transport to the market, and education plan for the tenants/employees.			
Chicago, Ill	Dirty MRF (post-collection) is allowed if the generator has a space limitation for setting more than two containers. However, the hauler has to use a facility with min. of 60% recovery rate of uncontaminated paper	Paper, cardboard, aluminum, steel, wood, plastic	Offices, commercial establishments, high density residential buildings and apartments with more than 4 units.	Inspection by site visit, for a violation, the inspector will be back within 30 days to follow up. Up to \$100/day fine (it will be revised to \$1000/day) Allowable waiver: economic hardship, space limitation, or generating only one Recyclable Material.	25% recycling goal for haulers and recycling service providers. The haulers and recyclers have to develop a program to notify their customer(s) of contamination problems. A semi-annual report from the haulers and recyclers is required.	General fund	Permitted by City and State	Dept of Environment prepares and provides a public education and technical assistance program.
Honolulu, HI	No definition of "Recycling"	Newspaper, cardboard, office paper, aluminum, glass, and plastics (slightly different depending on the type of generators)	Bars and restaurants are required to recycle glass containers; office buildings (including government offices) are required to recycle paper; and businesses that generate large amounts of food waste, are required to recycle that waste. Multifamily units are not included. Disposal bans and restrictions on high volume recyclable materials, including green waste, cardboard, tires,	Monitor by inspection of banned and restricted waste at the disposal sites. If found, the hauler is banned from using the site for two weeks. Exemption: if the cost of recycling is more than the disposal, the generator could be exempt from the requirements.	For businesses that are affected by office paper recycling, food waste recycling and glass recycling, a compliance form is sent to be filled out and randomly inspected.	Surcharge on the tipping fee (12%)		The City staff provide technical assistance to the businesses. Also there is the Partnership for the Environment is a coalition of businesses coordinated by the City & County of Honolulu which offers technical assistance and peer consulting.

Jurisdiction	"Recycling" Definition: MRF, Dirty MRF, other	Materials Covered	Thresholds: Business/Multi-family/Mobile	Enforcement /exemption	Performance Metric (goal, reporting)	Funding	Type of Franchise	Outreach
			auto batteries, white goods and scrap metals, are enforced at the City's disposal sites					
Portland, OR		Cardboard, glass bottles and jars, newspapers and magazines, mixed paper, plastic bottles and tubs, scrap metal, tin and aluminum cans, yard trimmings Glass must be separated from all recyclable paper materials For food-generating businesses, food scraps and soiled paper need to be separated for composting.	All businesses are required to recycle; also food generating businesses would be responsible for separating food scraps and paper for composting. Multifamily also recycle all materials accepted by the program.		Businesses must recycle at least 50% of their waste. The commercial recycling goal is 75% (currently it's at 63%).		No franchise hauler, haulers operate by a permit	The program has been promoted through local media.
Seattle, WA	No mandatory commercial recycling Landfill ban of significant amount of paper, cardboard, yard trimmings.	The following materials are prohibited from commercial trash: significant amount of paper, cardboard, yard trimmings.	The ordinance (this is not a mandatory recycling ordinance) is applicable to residential, multifamily, commercial and self haul customers. Free recycling for multifamily customers. Some flexibility for hotels.	The penalty phase started one year after the implementation of the program. Incompliance would be more than 10% of such material in trash by visual inspection. Two warnings, then \$50 surcharge to haul the material away. So far, 18 fines were collected. Exemption: space limitation for containers.	60% diversion goal.	One full time commercial business inspector has been hired. Funded through solid waste rates		The City contracts with Resource Venture, a program of the Greater Seattle Chamber of Commerce, to provide free waste reduction and recycling technical assistance to Seattle businesses.

ATTACHMENT 2: LEGISLATION

2009

AB 473 (Blumenfeld)

Solid Waste: Multifamily Dwellings

Sponsor: Author

Status: Senate Floor

This bill would require an owner of a multifamily dwelling, defined as a residential facility that consists of 5 or more living units, on and after July 1, 2010, to arrange for recycling services that are appropriate for the multifamily dwelling, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste.

AB 478 (Chesbro)

Solid Waste: Recycling

Sponsor: Author

Status: Senate Appropriations

This bill includes a provision that the Air Resources Board work with the CIWMB in developing regulations to include rules for the reduction of greenhouse gas emissions from solid waste reduction and recycling.

AB 479 (Chesbro)

Solid Waste: Diversion

Sponsor: CAW

Status: Senate Environmental Quality

This bill would require owners or operators of businesses that contract for solid waste services and generate more than four cubic yards of solid waste and recyclable materials per week to arrange for recycling services consistent with local and state requirements and to the extent that the service is "reasonably available."

On or before January 1, 2011, this bill would require each city, county, solid waste authority, or joint powers authority located within a county with a population of 200,000 or more to adopt a commercial recycling ordinance. In addition, specifies that the bill would not limit the authority of a local agency to adopt, implement, or enforce a local commercial recycling ordinance that is more stringent or limit the authority of a local agency in a county of less than 200,000.

SB 25 (Padilla)

Solid Waste: Diversion

Sponsor: Author

Status: Assembly Natural Resources

Requires the owner or operator of a business that contracts for waste services and generates more than four cubic yards of total waste and recyclable materials per week, shall arrange for recycling services applicable to the extent that these services are offered and reasonably available from a local service provider.

Establishes commercial recycling requirements that:

- A. Require, by January 1, 2012, each city, county, solid waste authority, or other joint powers authority located within a county with a population of greater than 200,000 or more shall adopt a commercial recycling ordinance. The ordinance, at a minimum, must include:
 - (1) Requirements that ensure a business provides for recycling of its waste.
 - (2) Educational, implementation, and enforcement provisions.
 - (3) The existing right of a business to sell or donate its recyclable materials.
- B. Define a "business" as a commercial entity operated by a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized for profit or nonprofit, and multifamily housing.
- C. Specify that this bill does not limit the authority of a local agency to adopt, implement, or enforce a local commercial recycling ordinance that is more stringent or comprehensive than the requirements of this section or limit the authority of a local agency in a county with a population of less than 200,000 to require commercial recycling.
- D. Specify that this bill does not affect in any manner a franchise granted or extended by a city, county, or other local government agency or contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local government agency in effect immediately preceding January 1, 2011.

2008

AB 548 (Levine)

Solid Waste: Multifamily Dwellings

Sponsor: Californians Against Waste

Status: Vetoed

This bill would have required owners of multifamily dwellings, defined as residential facilities consisting of five or more units, to arrange for recycling services for residents,

as appropriate and as consistent with state and local laws or requirements, by July 1, 2008.

AB 548 Veto Message:

To the Members of the California State Assembly:

I am returning Assembly Bill 548 without my signature.

This bill would require owners of multifamily dwellings to arrange for recycling services for residents consistent with state and local laws.

This is the third time I have vetoed legislation on this topic. I support efforts to reduce the amount of solid waste going to the state's landfills, but this bill places requirements directly on the owner/operators of multifamily dwellings causing significant cost for the private owners of these properties. Additionally, local governments already have the authority to mandate the action envisioned by this bill. I encourage the Integrated Waste Management Board to continue in its efforts to provide adequate tools and resources to local jurisdictions in order to make available increased recycling opportunities for multifamily dwelling residents.

2006

AB 2206 (Montañez)

Recycling: Multifamily Dwellings

Sponsor: Author

Status: Vetoed

This bill would have required CIWMB to develop a model ordinance relating to multifamily waste diversion, suitable for local agency modification and adoption, and a model notification document that owners of multifamily dwellings could modify and provide to tenants to fulfill an obligation to provide tenants with specified information on solid waste diversion and recycling. Furthermore, this bill would have required local jurisdictions to report to CIWMB on the progress of solid waste diversion programs at multifamily dwellings and allow CIWMB to consider these multifamily recycling programs when evaluating a jurisdiction's overall progress towards its solid waste diversion goals.

Veto Message:

To the Members of the California State Assembly:

I am returning without my signature.

The goal of this bill is to increase waste reduction and recycling at multifamily dwellings in California, as multifamily residents are underserved compared to single family residents in regards to recycling opportunities

While I support efforts to reduce the amount of solid waste going to our landfills, the mandates in this measure are overly prescriptive and create significant state, local and private compliance costs. While I cannot sign this bill, I encourage the Integrated Waste Management Board to continue in its efforts provide adequate tools and resources to local jurisdictions in order to make available increased recycling opportunities for multifamily dwelling residents.

For this reason, I am unable to support this measure.

2005

AB 399 (Montañez)

Recycling

Sponsor: Author

Status: Vetoed

This bill would have established requirements for recycling programs at multifamily dwellings in the state. This bill would have required CIWMB, the solid waste and recycling industry, local governments, and property owners and managers to take specified actions to encourage recycling at multifamily properties.

AB 399 Veto Message:

To the Members of the California State Assembly:

I am returning Assembly Bill 399 without my signature.

While the goals of this bill are laudable, the mandates in the measure are overly prescriptive and create significant state, local and private compliance costs. Additionally, this bill is inconsistent with the Integrated Waste Management Act, which expressly grants local governments discretion over what types of programs are used to achieve the state's diversion goals.

While I cannot sign this bill, I encourage the Integrated Waste Management Board to provide adequate tools and resources to local jurisdictions to implement multifamily recycling programs.

**Proposed Regulation for Mandatory Commercial Recycling
45-day Public Comment Period
Comment Matrix**

Comment Number	Commenter Affiliation	Summary of Comment	CalRecycle Response	Revision Needed
W-01-01	California Association of REALTORS®, Apartment Association of Greater Los Angeles, San Diego County Apartment Association and Santa Barbara Rental Property Association	A financial hardship exemption is necessary to assure that the regulations do not adversely and unfairly impact small, minority and family-owned businesses.	CalRecycle disagrees that this change is needed. Jurisdictions may provide for exemptions that meet their local situations. CalRecycle does not have the authority to require that jurisdictions must implement a financial hardship exemption as is being suggested.	No
W-01-02		Owners should not be held responsible for the actions of their tenants who may not comply with recycling regulations.	No change is needed because the regulation does not make owners responsible for enforcing.	No
W-01-03		When developing compliance criteria for enforcement programs, a jurisdiction must consider a multi-family complex owner's effort to comply with recycling requirements.	CalRecycle disagrees that this change is needed. The regulation states that enforcement is permissive but not required. Jurisdictions are also provided the ability to offer exemptions as they deem appropriate. CalRecycle does not have the authority to require that jurisdictions enact enforcement programs or that they consider or include the exemptions or criteria that are being suggested. CalRecycle will review, through the annual report process, exemptions that are provided by jurisdictions. This oversight should help to ensure that challenges that multifamily owners face are adequately addressed.	No
W-02-01	Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force and Council Member, City of Rosemead	<i>Business</i> - The proposed definition should exclude industry facility/industrial facilities.	CalRecycle disagrees that this change is needed. Industrial waste is already excluded in the definition of commercial solid waste. However, industrial facilities that generate recyclables, such as paper, metal, etc., are included in the definition of businesses. CalRecycle will develop a FAQ to provide this guidance.	No

W-02-02		<i>Commercial Solid Waste</i> - The proposed definition is inconsistent with the one called for by the AB 341 [PRC 42649.1 (b)].	CalRecycle disagrees that this change is needed, but to provide more clarity agrees to add a phrase that industrial waste is excluded, consistent with the PRC.	Yes (non-subst.)
W-02-03		<i>Mixed Waste Processing</i> - The term "processing" needs to be defined. Is processing limited only to physical separation or waste materials or does it include chemical, biological, or any combination of these processes?	CalRecycle disagrees that a definition of "processing" is needed. This provision refers to material recovery and mixed waste facilities that typically use physical means of separation (such as manual, mechanical, optical, etc.), not chemical or biological processing.	No
W-02-04		<i>Source Separating</i> - Does the process include removal of all or some of the recyclable materials, or is it limited only to those materials listed in the jurisdiction's Source Reduction and Recycling Element, the local agency's recycling ordinance, or other undefined programs?	To allow maximum flexibility for businesses and jurisdictions, the regulation does not set a specified amount or type of recyclables including compostables. The regulation does allow jurisdictions to determine specific material types. The amount or type of recyclables removed is not limited to a jurisdiction's Source Reduction and Recycling Element or recycling ordinance.	No
W-02-05		<i>Mixed Waste Processing</i> - Requirement is self-contradictory since mixed waste processing does not yield diversion results that are comparable to source separation. There is no baseline to compare results; proposal must clearly define how to measure so that jurisdictions are not penalized.	<p>CalRecycle will revise this section to reflect the exact language in AB 341 in order to avoid the impression that it is somehow changing the standard in statute. However, as explained below, the additional language in the previous draft that resulted in this comment was not intended to change the standard in statute, but was simply designed to reflect the reality of how this requirement would be implemented.</p> <p>Subsection (a)(2) specifies a method that a business may take to meet the requirement of this Chapter to recycle the business's commercial solid waste: by subscribing to a recycling service that may include mixed waste processing that diverts recyclable and/or compostable materials from disposal, yielding diversion results comparable to source separation.</p> <p>In reality, however, there is not sufficient data or standards available to make a comparison to source separation, and therefore CalRecycle is not establishing such a threshold at this time. The language in the existing statute has been interpreted differently by various stakeholders regarding whether or not it establishes a particular threshold for mixed waste processing. On its</p>	Yes (non-subst.)

face, the statute clearly does not do so. Instead, statute has provided a subjective standard to be evaluated on a case-by-case basis that allows flexibility for compliance. While Subsection 42649.2(b)(2) allows for a recycling service that may include mixed waste processing comparable to source separation as part of that recycling service, by using the term “may” instead of “shall” in this section, it does not require it. That is, mixed waste processing is not necessarily required and therefore a recycling service can include other programmatic aspects. Thus, the recycling service may include more than just mixed waste recycling (consistent with the “may” in statute), but also emphasizes the need for the overall recycling service to yield comparable results to the other compliance alternative in (b)(1) (source separation). Mixed waste processing is intended here to include a myriad of processes to recover recyclable and/or compostable materials from solid waste. This Subsection is not intended to change marketplace dynamics or express a preference for any particular diversion activity, program or process over another. It is intended to provide local governments with flexibility in designing programs specific to their community.

While no single quantitative recovery rate standard exists, the section does establish an expectation that overall diversion results from a recycling service that includes mixed waste processing, and that may include other programs and activities, will be comparable to the overall diversion results of recycling services that rely on source-separated processing of recyclables, and that may also include other programs and activities. In lieu of a quantitative standard, CalRecycle will review jurisdiction compliance on a case-by-case basis using the “good faith effort” standard as already provided in statute (See PRC 41825(e)). As part of its evaluation of local jurisdiction program implementation, the diversion performance of a particular facility may be considered by CalRecycle to see if the facility’s recovery appears to be significantly low (also see section 18839(b)). In this case CalRecycle would

			<p>take into account relevant factors such as, but not limited to, the character and composition of the solid waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, and the nature and amount of feedstock processed at facilities used for solid waste generated in the jurisdiction. That is, CalRecycle would conduct a case-by-case qualitative evaluation in the context of the entire set of programs in a jurisdiction, whether the facilities involved are mixed waste processing or single-stream material recovery facilities.</p> <p>Additionally, businesses that choose to subscribe to a recycling service are not required by statute to determine if a mixed waste processing facility that is part of that service is yielding comparable results (e.g., they do not have to survey facilities and ask for recovery data).</p> <p>As for whether or not CalRecycle should develop a quantitative standard of what constitutes “comparable to source separation” for mixed waste processing, CalRecycle has committed to working on this issue in the future. Prior to the formal rulemaking, this was the subject of considerable discussion and controversy. A working group convened by CalRecycle determined that there is not sufficient information at this time to promulgate such a standard. This is due in part because of variations in feedstock, processing technologies, residuals composition, lack of reporting, etc. However, CalRecycle recognizes that future work is needed on this issue as part of its other work on AB 341 (report on how to meet 75% diversion) and that this may lead to future rulemakings that establish performance requirements for mixed waste processing facilities.</p>	
W-02-06		<p>"...front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible" change possible to feasible to be consistent w/PRC 41783(a)(2)</p>	<p>CalRecycle agrees and has revised the regulation accordingly.</p>	<p>Yes (non-Subst.)</p>

W-02-07		Proposed regulations must clearly recognize that a jurisdiction has no means to enforce the requirements of this Section on public entities, including, but not limited to, federal, state, and regional governments, school districts, state colleges, and universities, etc.	CalRecycle disagrees that this change is needed. The regulations state that enforcement by jurisdictions is permissive but not required. In addition, CalRecycle recognizes that jurisdictions do not have authority to take enforcement actions against schools. However, jurisdictions are required to provide education and outreach to public entities and monitor if they are recycling. This is further addressed in both the FSOR and FAQs. Jurisdictions are only required to provide education, outreach and monitoring to these entities to inform them of the state law to recycle and how they can recycle in the jurisdiction.	No
W-02-08		The difference between a mixed waste processing facility and a MRF needs to be defined.	CalRecycle disagrees that this change is needed because it would be impossible to account for the range of variability in processing facilities and the distinction is not necessary for understanding the regulation. For example, many MRFs use a variety of technology and many MRFS take in many different variations of single streams and mixed solid waste, e.g., wet/dry streams, mixed solid waste, etc. (see CalRecycle's 2006 MRF study for more information on this wide variety).	No
W-02-09		Expand to include the availability of composting facilities and markets for compost.	CalRecycle disagrees that this change is needed. Section 18839(b)(5) addresses the availability of markets in general and that would take into account availability of markets for organics materials. CalRecycle will develop a FAQ to further clarify that consideration of organics markets is included. No change is necessary to the regulations.	No
W-02-10		Proposed regulations need to address the processes that may be used by CalRecycle to verify the accuracy of the "information" received prior to subjecting the jurisdiction to additional tasks.	CalRecycle disagrees that this change is needed. This provision simply clarifies that CalRecycle is using the same process that has been used for the AB 939 reviews for many years.	No

W-03-01	Harvest Power	As CalRecycle progresses through the regulatory process, anaerobic digestion, as well as composting, is called out as an accepted and recommended diversion method. It would be helpful if AD could be added to the list of acceptable alternatives: "reuse, recycle, compost, anaerobically digest, or otherwise divert..."	CalRecycle disagrees that this change is needed. The regulation is designed so it does not state a preference for any type of waste diversion technology. The regulation states in general that businesses may utilize a variety of actions to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal. CalRecycle will include a FAQ that clarifies that various technologies, such as anaerobic digestion, windrow composting, etc., are technologies that can be utilized to divert commercial solid waste.	No
W-03-02		CalRecycle should encourage communities to implement a mandatory commercial organics recycling ordinance, in addition to other recyclables. This will better enable communities and the state to meet and exceed the 75% diversion rate with appropriate technologies and processes.	CalRecycle disagrees that this change is needed. CalRecycle will share examples of communities that implement mandatory commercial organics recycling ordinances and continue to promote organics diversion using a variety of approaches, as well as best management practices to maximize diversion.	No
W-03-03		In providing direction to local agencies on enforcement and compliance with Section 18837(a)(2), CalRecycle should encourage attention to the superior diversion results achievable with source separation of organics. -- MCR regulation includes use of mixed waste processing facilities if alone or in combination with other programs...yields diversion results comparable to source reduction, but they find such programs to have high contamination of organics.	CalRecycle disagrees that this change is needed. CalRecycle continues to promote organics diversion using a variety of approaches, as well as best management practices to maximize diversion. CalRecycle will continue to provide information, tools and outreach on this topic. The regulation is designed to provide businesses and jurisdiction flexibility in designing programs that best meet their needs, infrastructure and resources.	No
W-04-01	CA Restaurant Association	Will CalRecycle promulgate rules that hold building owners accountable for commercial recycling services? Building owners control waste services for an enormous number of retail stores in CA. To hold companies responsible for waste they do not control is unreasonable.	CalRecycle concludes that no additional rule is needed, because the regulation already requires businesses (including property complexes containing two or more entities and multi-family complexes) to provide a recycling program for tenants. Tenants are responsible for participating in the recycling program.	No
W-04-02		Many buildings lack space to recycle materials. The regulations should provide exemptions for tenants where the building owner cannot or will not provide space for recycling services.	CalRecycle disagrees that this change is needed. The regulations already provide local jurisdictions with the ability to assess and determine the need for exemptions, including for space constraints. Local jurisdictions would work with tenants and building owners to assess space constraints. CalRecycle does not have the authority to require that jurisdictions must consider or include the	No

			exemptions or criteria that are being suggested.	
W-04-03		National retailers cannot implement a "one size fits all approach" to recycling due to variability in recycling and waste collection across jurisdictions (e.g., materials accepted). We hope CalRecycle rules will clearly acknowledge these gaps to facilitate not only customer education but also help retailer partner's (employees) education and compliance activities.	CalRecycle concurs that maximum flexibility and customer education are critical but disagrees that a change is needed. The regulation already is designed to provide maximum flexibility to businesses and local jurisdictions due to the variability in infrastructure, markets, etc. CalRecycle will continue to provide education and assistance to businesses and jurisdictions to help them implement a recycling program that best meets their needs.	No
W-04-04		Request that CalRecycle clearly delineate what criteria will be used to determine compliance when using a mixed waste processing facility.	See Comment W-02-05	No
W-04-05		Many restaurant patrons enjoy their food and beverages at work, home and in location other than our stores. We have found residential and commercial recycling programs are incongruent. How or will the rulemaking process address these issues?	CalRecycle disagrees that this change is needed. This regulation only addresses solid waste generated at the business. CalRecycle can develop a FAQ that addresses that the regulation is focused on diverting the recyclable material that the business would have disposed of.	No
W-04-06		Suggest CalRecycle include formal language in the rules that encourage local jurisdictions to provide a substantial grace period for enforcement. An extension of the education-only enforcement period would be helpful.	CalRecycle disagrees that this change is needed. The regulation already allows local jurisdictions the flexibility to phase in program implementation. This is also addressed in the FSOR and FAQs. Additionally, jurisdictions are not required to implement an enforcement program. For those jurisdictions that do implement enforcement, CalRecycle's experience has been that these jurisdictions focused first on education and did not immediately begin enforcement efforts when their mandatory program started.	No
W-05-01	Allan Company	Change Chapter 9.4 heading to "Mandatory Commercial Recycling of Commercial Solid Waste" to be consistent with AB 341	CalRecycle does not see the need to change the title of the regulation. This issue was discussed during the informal rulemaking and at that time CalRecycle decided to change the heading of Subsection 18837 to "Mandatory recycling of commercial solid waste by businesses."	No

W-05-02		Change the first sentence of the Purpose to "mandatory commercial recycling of commercial solid waste" to be consistent w/AB341	CalRecycle does not see the need to change the purpose statement of the regulation.	No
W-05-03		Definition of "self-hauler" or "self-hauling" to be consistent w/AB341. Suggests: "Self-hauler" or "self-hauling" means a business that transports <u>hauls</u> its own <u>commercial solid waste</u> and/or <u>recyclables</u> <u>recyclable materials</u> rather than contracting with a hauler for that service.	CalRecycle disagrees that this change is needed. CalRecycle considers the words "transport" and "haul" to be equivalent, but is using transport to avoid confusion with other uses of the term "hauling." CalRecycle added the word "recyclables" to clarify the provisions in PRC 42649.2(b)(1), which refer to self-hauling of recyclables.	No
W-05-04		Definition for source separation differs from that in 14 CCR 17402.5(b)(4) -- recommend that this be revised to either include reference to the existing definition of source separated found at CCR 17402.5(b)(4) or include the entire existing definition. Suggests: 18837(a)On or after July 1, 2012, a business shall take at least one of the following actions in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal. (1) Source <u>separate</u> separating recyclable and/or compostable materials from solid waste they are discarding and either self-hauling, subscribing subscribe to a hauler, and/or <u>basic level of recycling service that includes collection, self-hauling, or other arrangements</u> otherwise arranging for the pick-up of the recyclable and/or compostable materials separately from the solid waste to divert them from disposal.	CalRecycle disagrees that this change is needed because the two definitions do not conflict with each other. 14 CCR 17402.5(b)(4) is written within the context of determining whether a processing facility needs a solid waste facility permit, which is not applicable to businesses' determining how to comply with the requirements.	No
W-05-05		Recommend changes to bring proposed regulation text into conformity with statute. Suggests: 18837(e) This Chapter Subsection does not modify, <u>limit</u> , or abrogate in any manner any of the following: <u>(3)The existing right of a business to sell or donate its recyclable materials;</u> or (4)	Although it is not necessary to repeat statute verbatim, CalRecycle agrees that the provision in AB 341 should be included in this section to avoid creating the impression that the regulation is not consistent with statute. CalRecycle also will develop a FAQ to clarify that businesses are still allowed to donate or sell their recyclables as stated in statute.	Yes (non-subst.)
W-05-06		Definitions for self-hauler or self-hauling in 18836 and 18837 are inconsistent with AB341 - regulations cannot restrict or enlarge the scope of a statute.	CalRecycle disagrees that this change is needed. See responses to Comment W-05-03.	No

W-06-01	Association of CA Recycling Industries	Urge CalRecycle to eliminate any reference to exclusive recycling franchise agreements for commercial and multifamily property owners -- as proposed, they would act as a disincentive to the recycling of these materials because of the consequential loss of their economic value. Local jurisdictions should be encouraged to promote free market competition for recyclables	CalRecycle disagrees that this change is needed re: franchise agreements. Many jurisdictions have exclusive franchise agreements and allow self-hauling and independent recycling, but as stated in the FSOR, the regulations do not specify a preference for any type of recycling activity or system. It is not in CalRecycle's purview to limit jurisdictions' ability to utilize franchises, etc. The regulation addresses the flexibility that businesses have to utilize a variety of recycling activities.	No
W-07-01	Californians Against Waste	The regulation currently allows businesses to comply with the program by "subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation." This is substantively different and weaker than the language in AB 341, which allows businesses to "subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation". The language in the regulation and ISOR might be interpreted to be weaker than the language in statute. For instance, statute requires that the business subscribe to a "recycling service," which would not include a transformation facility. Furthermore, the broader "systems" approach described in the regulation might imply that a generator may do something other than that which is allowed in statute.	See response to Comment W-02-05.	Yes (non-subst.)

W-07-02		<p><i>Transformation</i> –PRC 40180 states "recycling does not include transformation" Section 18837(e)(3) of the regulation accurately, but unnecessarily, states that the regulation does not modify existing statutory requirements for transformation facilities. In describing this section, the ISOR says that "Subsection (e)(3) clarifies that interpretation of the provisions of Public Resources Code section 41783 are not affected by this regulation. <u>Commercial solid waste may be taken to a transformation facility, as long as the existing requirement in Public Resources Code section 41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met. For example front-end processing includes source-separating recyclables or processing material at a mixed waste processing facility.</u> The subsection clarifies that there is no change to the existing provisions of section 41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent."</p> <p>This sends a confusing mixed message about whether a business needs to subscribe to recycling if its garbage goes to one of the state's three transformation facilities.</p>	<p>CalRecycle disagrees that this change is needed. As noted by the commenter, the regulation is accurate. In addition, the regulation clarifies that a business does need to subscribe to a recycling service and that materials sent to one of the state's three transformation facilities must meet the front-end processing requirements.</p>	No
W-07-03		<p>The CERF factor does not properly account for the greenhouse gas benefits of composting the organic fraction of the commercial waste stream because it does not attribute any benefit to avoided landfill emissions. Therefore, the CERF understates greenhouse gas benefits of composting.</p>	<p>This comment is outside the scope of the regulation.</p>	No
W-07-04	<p>Nick Lapis with CAW: Verbal comment received 1/17/2012</p>	<p>18837e3</p> <p>Transformation provisions – While regulations are admittedly accurate, need to clarify that generators still need to comply with regulations, i.e., to source-</p>	<p>CalRecycle disagrees that this change is needed, but added a phrase to provide clarity.</p>	Yes (non-subst.)

		separate or subscribe to recycling service. PRC 40180 states "recycling does not include transformation"		
W-08-01	City of San Jose	Do condominium, townhomes, and mobile home parks that use individual carts rather than bins for solid waste and recycling need to be monitored and reported under this bill?	Statute and the regulation give jurisdictions flexibility to design their own program so no change is necessary to the regulation. CalRecycle will develop a FAQ clarifying that if condominiums, townhomes, and mobile homes are considered single family residences by the jurisdictions, then they would not be subject to the requirements. However, jurisdictions are allowed to implement more stringent requirements.	No
W-08-02		Proposed regulation indicates that public entities, including schools, special districts or a federal, state local, regional agency or facilities are included in the definition of a business. How will a jurisdiction enforce AB 341 with these entities when they have no means to enforce over these entities?	See response to Comment W-02-07.	No
W-08-03		Is there a difference between MRF and mixed waste processing facility? The definitions should be clarified to indicate this.	See responses to Comments W-02-08	No
W-08-04		Confirm that industrial wastes will not be included as a part of this requirement and the definitions should be clarified to explicitly exclude this.	See responses to Comments W-02-01 and W-02-02	Yes (non-subst.)—W-02-02 No—W-02-01
W-08-05		Is reporting outreach & good-faith efforts required when jurisdiction diversion is 75% or more? Is outreach to be directed at only those businesses and multi-family dwellings regulated?	Nothing in statute or the regulation relieves a jurisdiction of its obligations once it exceeds a certain level of diversion. CalRecycle will develop a FAQ clarifying that whether a jurisdiction has exceeded the 50% diversion requirement, or has exceeded 75%, it is still required to report on its education/outreach/monitoring efforts relative to commercial recycling in its electronic annual report, in addition to reporting on other AB 939 programs.	No

W-08-06		Will jurisdictions need to report a total number for businesses & multi-family dwellings regulated or only for those not in compliance?	The regulation does not need to be specific on this point because of the flexibility allowed in statute and regulation. What is reported will depend on the information that the jurisdiction has available based upon the program it has developed. Ideally, it would be helpful if the jurisdiction knows how many total businesses are included and how many are not recycling.	No
W-08-07		Need to define <i>mixed waste processing</i> . What source separation rate is used for comparison? "Subscribing to a recycling service that includes mixed waste processing as part of a system in combination with other programs..." What is meant by "as part of a system in combination...?"	See responses to Comments W-02-05	No
W-09-01	American Forest & Paper Association	Request CalRecycle encourage jurisdictions to avoid relying on exclusive franchise agreements or requirements that business recyclables be diverted to mixed waste processing facilities that could interfere with markets for recovered paper.	See response to Comment W-06-01	No
W-09-02		Supports CalRecycle's efforts to focus on recycling education & outreach to businesses and has helpful related resources.	No response needed.	No
W-10-01	Cal Chamber, CA Grocers Assn, CA League of Food Processors, and CA Manufacturers & Tech Assn.	Suggest an extension of the education-only enforcement period.	CalRecycle disagrees that this change is needed. The regulation already allows local jurisdictions the flexibility to phase in program implementation. This is also addressed in the FSOR and FAQs. Additionally, jurisdictions are not required to implement an enforcement program. For those jurisdictions that do implement enforcement, CalRecycle's experience has been that these jurisdictions focused first on education and did not immediately begin enforcement efforts when their mandatory program started.	No
W-10-02		A clarification on what constitutes <i>comparable</i> , w/respect to mixed waste processing, would assist businesses in compliance with the regulation.	See responses to Comments W-02-05	No
W-11-01	SWANA	<i>Business</i> - The proposed definition should exclude industry facility/industrial facilities to be consistent w/17225.12 of title 14	See response to Comment W-02-01	No

W-11-02		<i>Commercial Solid Waste</i> - The proposed definition is inconsistent with the one called for by the AB 341 [PRC 42649.1 (b)] - should exclude "industrial waste"	See response to Comment W-02-02	Yes (non-subst.)
W-11-03		<i>Mixed waste processing</i> - clarify if "processing" includes chemical, biological or a combination	See response to Comment W-02-03	No
W-11-04		<i>Source separation</i> should include removal of compostable materials. Also, does it require removal of all or some recyclables or just jurisdiction's SRRE or recycling ordinance	See response to Comment W-02-04	No
W-11-05		18839(b)(2) Material recovery facility should be defined – specifically, clarification is needed to determine whether there is a difference between material recovery facility and mixed waste processing facility?	See response to Comment W-02-08	No
W-11-06		Mixed waste processing does not yield comparable diversion as source separation - should provide guidance on how to enforce	See response to Comment W-02-05	No
W-11-07		"...front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible" change possible to feasible to be consistent w/PRC 41783(a)(2)	See response to Comment W-02-06	Yes (non-subst.)
W-11-08		Jurisdictions have no means to enforce requirements of this section on public entities	See response to Comment W-02-07	No
W-11-09		Expand to include availability of composting facilities and markets for compost	See response to Comment W-02-09	No
W-11-10		Address process for CalRecycle verification of accuracy of information received.	See response to Comment W-02-10	No

W-12-01	Waste Management	Single stream vs. mixed waste processing – inconsistency with AB341 and regulation. Specifically, "...mixed waste processing must achieve diversion results comparable to source reduction processing - NOT that the overall recycling service (that may include mixed waste processing) that yields diversion results comparable to source separation." There is no standard or procedure for comparability" between mixed waste and single stream processing.	See responses to Comment W-02-05	No
W-12-02		18838(b) – request that language be changed to be consistent with statute, i.e., to include "to go through either a source separated or".....	CalRecycle agrees with the proposed revision because it more closely mirrors statute.	Yes (non-subst.)
W-12-03		If a business collecting street sweepings generally has 3 cubic yard bin refuse service, but sometimes has a 6 cubic yard bin and street sweepings are not in the covered materials by the local jurisdiction, is the business expected to recycle them?	It is not necessary for the regulation to address all wastestreams, and the regulation allows jurisdictions to address issues such as street sweepings in their individual programs. The diversion of street sweepings will depend on if there are programs that the business can utilize, such as composting. CalRecycle will add a FAQ that addresses businesses that generate street sweepings. The FAQ will address that the business will need to coordinate with the local jurisdiction.	No
W-13-01	American Biogas	As CalRecycle progresses through the regulatory process, anaerobic digestion, as well as composting, is called out as an accepted and recommended diversion method. It would be helpful if AD could be added to the list of acceptable alternatives: "reuse, recycle, compost, anaerobically digest, or otherwise divert..."	See response to Comment W-03-01	No
W-13-02		Anaerobic digestion, as well as composting, should be specifically called out as an accepted and recommended diversion method.	See response to Comment W-03-01	No

W-13-03		CalRecycle should encourage attention to the superior diversion results achievable with source separation of organics. -- MCR regulation includes use of mixed waste processing facilities if alone or in combination with other programs...yields diversion results comparable to source reduction, but they find such programs to have high contamination of organics.	CalRecycle disagrees that this change is needed. The regulation is designed to provide businesses and jurisdiction flexibility in designing programs that best meet their needs, infrastructure and resources. CalRecycle will continue to promote various approaches to diverting organic materials.	No
W-14-01	West Coast Chapter of the Institute of Scrap Recycling Industries	Without clarity, jurisdictions and businesses will not have a clear and consistent understanding as to how businesses may divert their non-discarded recyclable material to independent recycling services rather than to haulers.	See response to Comment W-05-05	Yes (non-subst.)
W-14-02		No authority to mandate diversion of compostables; remove from regulation.	CalRecycle does have authority to include compostables as Statutes added to the Code by AB341 contemplate composting as an element of this program and its goals.	No
W-14-03		Change to "Mandatory Recycling of Commercial Solid Waste" to be consistent w/AB341	See responses to Comments W-05-01 and W-05-02	No
W-14-04		Definition of "source separating" inconsistent w/Title 14 Section 17402.5(4)	See response to Comment W-05-04	No
W-14-05		Definition of "self hauler" or "self hauling" to be consistent w/AB341	See response to Comment W-05-03	No
W-14-06		Right to sell or donate inconsistent w/AB341	See response to Comment W-05-05	Yes (non-subst.)
W-15-01	City of Sunnyvale	MRF - "SMaRT" diversion is at 19%, soon to be 25%; proof that mixed waste processing can provide compliance.	No response needed; the comment states that mixed waste processing can and should be included as an option for jurisdictions.	No
W-16-01	Gaia Strategies/InSinkErator	Regulation should reflect a positive consideration of the past, present and future use of food waste disposer in both multi-family residences and food service establishments. Also provided LCA of food scraps & UK policy statement re disposer use.	CalRecycle disagrees that this change is needed. The regulations are designed to not state a preference for any type of waste diversion technology.	No
W-17-01	CCRA	Supports as described	No response needed	No

W-18-01	ESJPA	Suggests that evaluation of good faith efforts in 18839(c) also reference the requirements of PRC 41850 that identifies additional parameters related to good faith efforts.	CalRecycle disagrees that this change is needed because it is already included through statute. Staff will develop a FAQ that addresses the fact that CalRecycle’s review of a jurisdiction’s compliance will be done as part of its review of the jurisdiction’s AB 939 programs pursuant to PRC 41825. As part of that AB 939 program review the good faith effort determination is based upon the parameters identified in PRC 41850, and PRC 42649.3(i) also provides additional parameters related to good faith effort for assessing implementation of each jurisdiction’s selected commercial recycling program.	No
W-18-02		Monitoring of all businesses would require additional staff resources, which is not feasible; especially since most jurisdictions have had to reduce staff during these economic times. Proposed language in 18838(a) is intended to allow jurisdictions to implement programs that meet local needs and work within existing infrastructures and resources. ESJPA has discussed with CalRecycle alternative strategies for rural areas that include requesting businesses to self report compliance, phased in implementation, and that a jurisdiction can still achieve compliance or good faith efforts even if it cannot demonstrate that all businesses have been monitored.	No specific change is being requested. Jurisdictions are allowed the flexibility to design and implement programs that meet local needs, infrastructure and resources. Rural areas may have unique approaches for monitoring businesses and CalRecycle will continue to work with the ESJPA and rural jurisdictions to develop approaches that are appropriate for rural areas, including the development of a model rural commercial education, outreach, and monitoring program.	No
W-19-01	Contract Services Admin Trust Fund	Motion Picture Association of America requests CalRecycle adopt a regulation that recognizes the difficulty of recycling at remote locations.	CalRecycle disagrees that this change is needed. CalRecycle recommends that it be a standard practice for a company to contact the local jurisdiction in advance of when a remote shoot is located to assess what material can be readily recycled and what cannot. Local jurisdictions are accustomed to short duration events due to their experience working with large venue events.	No

W-19-02		<p>Logistical problems may be encountered in location shooting; suggest amending the definition of business to exempt from the requirement to contract with a waste hauler with mixed waste processing for waste generation that occurs off-site or that is short-term in duration.</p>	<p>CalRecycle disagrees that this change is needed. Statute does not allow CalRecycle to preclude certain businesses from recycling. Amending the definition to exempt the requirement to recycle would discourage any attempt at recycling in these situations. CalRecycle understands the potential challenges of this situation and will develop a FAQ and guidance for local jurisdictions so they are aware of these potential situations with remote sites.</p>	No
W-20-01	<p>Michael Theroux, Teru Talk Public Hearing, 12/13/11</p>	<p>There aren't enough composters (facilities) to manage the increase in the amount of compostables, specifically commercially collected and managed manures and bedding materials, anticipated by this regulation.</p>	<p>While there is some extra capacity at a statewide level in the existing composting infrastructure, there may be regional demands for expanded capacity to handle commercially collected organics. CalRecycle acknowledges that additional facilities are needed to manage manure and bedding materials from horse breeding operations. Development of additional facilities to handle organic materials is not within the scope of this regulatory package, so no changes are necessary. CalRecycle is considering policies and programs to facilitate development of additional facilities, but in public discussions separate from this rulemaking.</p>	No



November 21, 2011

Marshall Graham
Materials Management and Local Assistance Division
California Department of Water Resources Recycling and Recovery
P.O. Box 4025
Sacramento, California 95812-4025

RE: Title 14; Division 7; Chapter 9.4 - Mandatory Commercial Recycling Regulation

Dear Ms. Graham:

Thank you for the opportunity to participate in the public process to develop mandatory commercial recycling regulations. The California Association of REALTORS®, the Apartment Association of Greater Los Angeles, the San Diego County Apartment Association and the Santa Barbara Rental Property Association support reasonable recycling programs and look forward to working with you to develop a workable commercial recycling regulation for multifamily housing. In proposing new regulations, CalRecycle must take into account their impact upon small, minority and family-owned businesses to assure that the proposed requirements do not create a significant adverse economic impact on both housing and small business within the state.

Unfortunately, the proposed regulations do not adequately take these impacts into account. We respectfully request that the following issues be addressed by the mandatory commercial recycling regulations:

- 1. A financial hardship exemption is necessary to assure that the regulations do not adversely and unfairly impact small, minority and family-owned businesses.** Multifamily complexes comprising 5 to 15 units are considered small businesses, and are often owned by seniors on fixed incomes, minorities and families of modest means. These regulations must include a financial hardship exemption from recycling requirements, to address the fact that these recycling services could result in a significant cost increase to such businesses, either due to space limitations that require substantial property renovations or due to a significant increase in costs for providing solid waste removal services.
- 2. Owners should not be held responsible for the actions of their tenants who may not comply with recycling regulations.** The proposed regulation subjects multifamily property owners and their agents to additional liability, exposing owners to a local jurisdiction's enforcement penalties, regardless of their good faith efforts to comply with recycling requirements. It is imperative that a "safe harbor" provision be added to the regulations to protect multifamily property owners who, through no fault of their own, are unable to comply with a jurisdiction's requirement due to tenant's refusal to adhere to the applicable recycling requirements.
- 3. When developing compliance criteria for enforcement programs, a jurisdiction must consider a multi-family complex owner's effort to comply with recycling requirements.** Criteria for exempting a multi-family complex owner from enforcement penalties should include a waste hauler's refusal to provide recycling services to the complex. Due to the unique nature of multifamily properties, even if adequate recycling services are available, some waste haulers refuse to service small complexes. As currently drafted, the regulation will penalize many self-managed small or unique properties that cannot effectively comply and will unintentionally remain in violation of the recycling requirements.

Thank you for your consideration. The California Association of REALTORS®, Apartment Association of Greater Los Angeles, San Diego County Apartment Association and Santa Barbara Rental Property Association look forward to working with CalRecycle to develop a fair cost-effective recycling regulation for multifamily housing that will not adversely impact small business and housing throughout the state.



GAIL FARBER, CHAIR
MARGARET CLARK, VICE CHAIR

LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE
900 SOUTH FREMONT AVENUE, ALHAMBRA, CALIFORNIA 91803-1331
P.O. BOX 1460, ALHAMBRA, CALIFORNIA 91802-1460
www.lacountyiswmtf.org

December 7, 2011

Ms. Teri Wion

Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025, MS – 13A
Sacramento, CA 95812-4025

Dear Ms. Wion:

COMMENTS REGARDING A PROPOSED DRAFT REGULATION TO REQUIRE COMMERCIAL BUSINESSES TO RECYCLE

The Los Angeles County Integrated Waste Management Task Force (Task Force) appreciates the opportunity to review and comment on the Department of Resources Recycling and Recovery's (CalRecycle's) proposed draft mandatory commercial recycling (MCR) regulations released for the initial 45-day comment period on October 28, 2011. The following is offered:

§18836. Definitions.

- **§18836(a)(1) – Business** – Pursuant to Section 42649.1 (b) of the Public Resources Code (PRC) and Sections 17225.12 & 17225.35 of Title 14 of the California Code of Regulations (CCR), the proposed definition *should* exclude the “industry facility”/industrial facilities as further discussed in the Subdivision (a)(2)'s comments.
- **§18836(a)(2) – Commercial Solid Waste** – The proposed regulations define “Commercial solid waste” as “all types of solid waste, including recyclable materials that are discarded from businesses as defined in subdivision (1) but does not include waste from single family residences or multifamily units of less than 5 units.” The proposed definition is inconsistent with the one called for by the AB 341 [PRC 42649.1 (b)], which defines “Commercial solid waste” as having “the same meaning as defined in Section 17225.12 of Title 14 of the California Code of Regulations.” Section 17225.12 of Title 14 of the CCR defines “Commercial Solid Wastes” to “*include all types of solid wastes generated by stores, offices and other commercial sources, excluding residences, and excluding industrial wastes*” (emphasis added). Further, Section 17225.35 of Title 14 of the CCR defines “Industrial Wastes” to “include all types of solid wastes and semi-solid waste which result from industrial processes and manufacturing operations.”

Based on the foregoing, clearly there is an inconsistency between the proposed definition and the one specified by AB 341. To eliminate this inconsistency, the proposed definition needs to be revised to read as follows: “Commercial Solid Waste means all types of solid waste, including recyclable materials that are discarded from businesses as defined in subdivision (1), but does not include waste from single family residences or multifamily units of less than 5 units, **and excludes waste generated from industrial processes and manufacturing operations**” (addition).

- **§18836(a)(5) – Mixed Waste Processing** – The proposal defines “Mixed Waste Processing” to mean “processing solid waste that contains both recyclable and/or compostable materials and trash.” The term “processing” needs to be defined. Is “processing” limited only to physical separation of waste materials or does it include chemical, biological, or any combination of these processes?
- **§18836(a)(7) – Source Separating or Source Separation** – The proposed regulations define “Source Separation” to mean “the process of removing recyclable materials from solid waste at the place of generation....” Does the process include removal of **all** or **some** of the recyclable materials, or is it limited only to those materials listed in the jurisdiction’s **Source Reduction and Recycling Element**, the local agency’s **recycling ordinance**, or other **undefined programs**? This issue needs to be addressed by the proposed regulations. Further, the proposed definition should be expanded to include “compostable materials”.

§18837. Mandatory recycling of commercial solid waste by businesses.

- **§18837(a)(2)**
“Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.”

This section’s program requirement is self-contradictory since mixed waste processing does not yield diversion results that are comparable to source separation. Moreover, there is no baseline to compare the results of mix waste processing alone or in combination with other programs, activities, or processes to that of source separation. Since local jurisdictions are being held responsible for enforcement of the program by the proposed regulations, then the proposal must clearly define how to do so. Additionally, jurisdictions cannot be penalized if this concern is not appropriately addressed by the proposed regulations [see Section 18839 and Subdivisions 42649.3 (g), (h) and (i) of the PRC].

- **§18837(e)(3)** – Pursuant to Subdivision 41783 (a) (2) of the PRC, the last word in this paragraph needs to be revised from “possible” to “feasible.”

§18838. Implementation of commercial recycling program by jurisdictions.

As provided by Subsection 18836(a)(1) and Section 18839 of the proposed regulations and pursuant to Subdivisions 42649.3 (g), (h), and (i), the proposed regulations must clearly recognize that a jurisdiction has no means to enforce the requirements of this Section on public entities including, but not limited to, federal, state, and regional governments, school districts, state colleges, and universities, etc. This limitation must be recognized by the proposed regulations.

§ 18839. CalRecycle Review

- This Section needs to be expanded to include appropriate provisions to address the comments/concerns listed under Subdivision 18837(a)(2) and Section 18838.
- Subdivision 18839(b)(2) – The term “materials recovery facilities” needs to be defined. Further, the proposed regulations need to specifically define the difference between a “mixed waste processing facility” and a “material recovery facility.”
- Subdivision 18839(b)(5) – Expand to include the availability of composting facilities and markets for compost.
- Pursuant to Subdivision 42649.3 (h) of the PRC, CalRecycle “may also review whether a jurisdiction is in compliance with this section at any time that the department receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, a commercial recycling program.” The proposed regulations need to address the process or processes that may be used by CalRecycle to verify the accuracy of the “information” received prior to subjecting the jurisdiction to additional tasks.

Pursuant to the California Integrated Waste Management Act of 1989 (Assembly Bill 939, as amended) and Chapter 3.67 of the Los Angeles County Code, the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated, cost-effective, and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-

Ms. Terri Wion
December 7, 2011
Page 4

Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies

Thank you for the consideration of our comments. We look forward to continue working constructively with CalRecycle on this and other related issues. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at MikeMohajer@yahoo.com or (909) 592-1147.

Sincerely,



Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste management Task Force and
Council Member, City of Rosemead

GA/CM:ts

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cc: CalRecycle (Caroll Mortenson, Mark E. Leary, Cara Morgan, Brenda Smyth)
California State Association of Counties
League of California Cities
League of California Cities, Los Angeles County Division
Contract Cities Association
Independent Cities Association
Municipal Management Assistants of Southern California
Each Member of the County of Los Angeles Board of Supervisors
Each City Mayor and City Manager in the County of Los Angeles
South Bay Cities Council of Governments
San Gabriel Valley Council of Governments
Gateway Cities Counsel of Governments
South California Association of Governments
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task Force



December 9, 2011

Teri Wion
CalRecycle
1001 I Street
PO Box 4025
Sacramento, CA 95812-4025

Dear Ms Wion,

Thank you for the opportunity to comment on the Proposed Regulation for Mandatory Commercial Recycling Rulemaking package. Harvest Power is encouraged by language including the organic portion of the commercial recyclables. Not only will this more rapidly decrease GHG emissions, it will also encourage the development of infrastructure in California to recycle this organic material to create energy and soil amendments.

About Harvest Power

Through innovative technologies and unparalleled industry experience, Harvest Power, Inc. (dba in California as Harvest Organics, Inc.) is ushering in a new era of organic waste recycling. We develop, build, own and operate state-of-the-art facilities that produce renewable energy and soil enhancement products from discarded organic materials. By harvesting these valuable resources, we enable communities and businesses to increase their energy independence, reduce their environmental impact and reliably manage their organic waste. In California, Harvest owns and operates Tulare County Compost and Biomass, Inc. and will be developing additional composting facilities and anaerobic digesters to divert organic materials statewide.

Comments on Proposed Regulations

Harvest appreciates the consistent leadership of CalRecycle on the use of composting and anaerobic digestion to handle diverted organic materials. We support the regulatory package and can provide outlets for the separated organics portion of the diverted materials. Anaerobic digestion facilities, coupled with composting, are an effective method of processing commercial organic materials and the most efficient method for reducing greenhouse gas emissions. When organic materials are landfilled, even where landfill gas capture systems are in place, there are still considerable methane emissions during the first four or five years of operations of a cell, and the capture systems never capture 100% of the LFG. By contrast, anaerobic digesters can capture all the methane from decomposition of organic materials in just 14 to 28 days.

Given the important and effective role anaerobic digestion can play in achieving AB 341 goals, we respectfully suggest that as CalRecycle moves through the regulatory process, anaerobic digestion, as well as composting, is called out as an accepted and recommended diversion method. The language of the proposed §18837(a) does not specifically name anaerobic digestion as a potential avenue for compliance, but would appear to allow it under the catchall requirement that a business "otherwise divert commercial solid waste from disposal." It would be helpful if anaerobic digestion could be added to the list of acceptable



Page 2

alternatives: "reuse, recycle, compost, anaerobically digest, or otherwise divert" At a minimum, CalRecycle should clarify the acceptability of anaerobic digestion when it issues the final regulatory package.

CalRecycle should also encourage communities to implement a mandatory commercial *organics* recycling ordinance, in addition to other recyclables. This will better enable communities and the state to meet, and exceed, the 75% diversion rate with appropriate technologies and processes.

Finally, we note that proposed §18837(a)(2) specifically authorizes diversion through mixed waste processing, IF the process "alone or in combination with other programs, activities or processes... [yields] diversion results comparable to source separation." We observe that that separation of organics from a totally un-presorted MSW stream will yield highly contaminated organics that may not be suitable for digestion or composting and must therefore be landfilled. Therefore, whatever the merits of mixed waste processing for improving diversion rates on conventional recyclables (glass, plastics, metals, and paper), it is much less effective for organics and therefore undercuts AB 341 and other California policy objectives around maximizing landfill diversion and reducing GHGs. Source separation of organics creates greater assurance that a higher percentage of the material is diverted and the resulting product is marketable as an organic soil amendment. In providing direction to local agencies on enforcement and compliance with §18837(a)(2), CalRecycle should encourage attention to the superior diversion results achievable with source separation of organics.

Harvest Power looks forward to working with CalRecycle to develop the final regulatory package, and provide anaerobic and composting facilities to assist California to meeting the diversion goals.

If you have any questions, please do not hesitate to contact me at 510-847-0038.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Novick".

Linda Novick
Project Manager



December 12, 2011

Caroll Mortensen
Director, CalRecycle
1001 I St.
Sacramento, CA 95814



**SUBJECT: PROPOSED REGUALTION FOR MANDATORY COMMERCIAL
RECYCLING RULEMAKING – PUBLIC HEARING DECEMBER 13,
2011**

Dear Director Mortensen,

On behalf of the nearly 22,000 members of the California Restaurant Association, we thank you for the opportunity to comment on the Department of Resources, Recycling and Recovery's (CalRecycle) proposed draft Mandatory Commercial Recycling regulation (MCR) pursuant to the recent passage of AB 341 (Chesbro).

As authorized under AB 341, CalRecycle is charged with developing regulations to implement a mandatory commercial recycling program in California that will achieve 5 million metric tons of carbon dioxide equivalent (MMTCO₂E) reductions by 2020.

We appreciate the open dialogue of the process to date as we have been extensively engaged in the rulemaking process. We believe that it is important that any new regulations aimed toward achieving the mandated recycling goals be viewed through the lens of the economy and the existing financial struggles that California restaurants continue to face.

We have a number of remaining concerns that we would like you to consider addressing.

- Will Cal Recycle promulgate rules that hold building owners accountable for commercial recycling services? We feel building owners must be included in the compliance chain to achieve results. Building owners control waste services for an enormous number of retail stores in California. To hold companies responsible for waste they do not control is unreasonable. In addition, many buildings lack space to recycle waste materials. We feel the regulations should provide exemptions for tenants where the building owner cannot or will not provide space for recycling services.
- Recycling and waste collection is highly variable across jurisdictions as recycling services are incongruent and the types of materials accepted into local programs vary widely. For national retailers in particular, they cannot implement a "one size fits all approach" to recycling. We hope Cal Recycle will develop rules that clearly acknowledge

PREPARE TO BE INSPIRED.

621 Capitol Mall, Suite 2000 Sacramento, CA 95814 T: 800.765.4842 F: 916.447.6182 www.calrest.org

these gaps to facilitate not only customer education but also help retailer partner's (employees) education and compliance activities.

- Additionally, the rulemaking mentions that mixed waste processing can be used to meet the recycling requirement, as long as it "yield(s) diversion results comparable to source separation". We suggest Cal Recycle clearly delineate what criteria will be used to determine compliance.
- Many restaurant patrons enjoy their food and beverages at work, home and in locations other than our stores. We have found residential and commercial recycling programs are incongruent. How or will the rulemaking process address these issues?
- Given the lack of enforcement on building owners who control waste services, implementing recycling programs for companies will be difficult to achieve by July 1, 2012. We suggest Cal Recycle include formal language in the rules that encourage local jurisdictions to provide a substantial grace period for enforcement. While we acknowledge the incorporated flexibilities for businesses, more can be done to ensure compliance in an effective manner to reduce the risk of incurring penalties. We believe an extension of the education-only enforcement period would be helpful so that businesses can adjust to the mandatory recycling programs adopted by their jurisdiction without the fear of more stringent enforcement options in early years.

We appreciate the opportunity to comment on the proposed regulations and look forward to continuing to collaborate so that together we can be a partner in helping California achieve its recycling goals through an efficient, cost-effective recycling program. We are hopeful that continued collaboration will result in a final regulation that provides the restaurant community with clear, simply-understood, and realistic instructions for compliance.

The California restaurant industry is the second largest private employer in the state and we believe it is imperative to have a recycling program that meets the environmental goals set by the Legislature while, at the same time, providing the most flexibility to business to adapt during these challenging economic times.

Thank you for your consideration of our concerns.

Sincerely,



Matt Sutton
Senior Legislative Director



ALLAN COMPANY

Dealers in Primary and Secondary Paper Making Fibers

December 12, 2011

VIA EMAIL ONLY

Marshalle Graham / Teri Wion
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025, MS-13A
Sacramento, CA 95812-4025
E-mail: climatechange@calrecycle.ca.gov

**RE: PROPOSED REGULATIONS TO
REQUIRE COMMERCIAL BUSINESSES TO RECYCLE**

Dear Mr. Graham and Ms. Wion:

I write on behalf of Allan Company to comment upon the proposed regulation that would require commercial businesses to recycle. Allan Company was founded more than 48 years ago in Baldwin Park, California, and since that time has become one of the premier recycling companies in the nation. The company currently markets approximately 1.2 million tons of recyclable materials annually, sells recyclable materials to hundreds of mills worldwide, and provides recycling programs to over 2,000 commercial accounts, numerous governmental bodies and local jurisdictions, among others.

Allan Company is a longstanding member of the Institute of Scrap Recycling Industries (ISRI) and the Association of California Recycling Industries (ACRI).

Allan Company appreciates the opportunity to comment on the proposed regulation and respectfully provides the comments and recommendations below.

Introduction

As presently drafted, the proposed regulatory text contains a number of provisions that are inconsistent with AB 341 (Chesbro, stats. 2011, ch. 476) and various portions of the

proposed regulatory text (e.g. §§ 18836 and 18837) restrict or enlarge the scope of the statute. It is well settled that a regulation cannot restrict or enlarge the scope of a statute; and in exercising its quasi-legislative powers, an administrative agency may not substitute its judgment for that of the legislature.¹

Headings and Proposed Regulatory Text, Generally

Chapter, section, paragraph, and other headings used in the proposed regulatory text must be revised to conform to the statutory text. It is particularly important because often these elements of the text are used to guide, instruct, and influence the construction and interpretation of the regulation by the reader. Without identifying each and every inconsistency, we provide the following examples to illustrate the point:

- The heading of Chapter 9.4 should be changed from “MANDATORY COMMERCIAL RECYCLING” to “MANDATORY COMMERCIAL RECYCLING [OF COMMERCIAL SOLID WASTE](#)”
- The first sentence of §18835 (Purpose) should be changed as follows: “This Chapter implements the Mandatory Commercial Recycling [of Commercial Solid Waste](#) regulation pursuant to §42649 of the Public Resources Code.”

§ 18837. Definitions.

The definitions found in the proposed regulatory text at §§ 18836(a)(6) and (7) are different from those contained in the statute and existing regulation. Such differences give rise to ambiguities and introduce uncertainty that will likely lead to interpretive inconsistencies and confusion.

¹ 2 Cal. Jur. 3d Administrative Law § 255 citing *Kerr's Catering Service v. Department of Indus. Relations*, 57 Cal. 2d 319, 19 Cal. Rptr. 492, 369 P.2d 20, 44 Lab. Cas. (CCH) P 50466 (1962); *Bearden v. U.S. Borax, Inc.*, 138 Cal. App. 4th 429, 41 Cal. Rptr. 3d 482, 179 L.R.R.M. (BNA) 2993 (2d Dist. 2006); *Home Depot, U.S.A., Inc. v. Contractors' State License Bd.*, 41 Cal. App. 4th 1592, 49 Cal. Rptr. 2d 302 (4th Dist. 1996); *Cleveland Chiropractic College v. State Bd. of Chiropractic Examiners*, 11 Cal. App. 3d 25, 89 Cal. Rptr. 572 (2d Dist. 1970); *City and County of San Francisco v. Ballard*, 136 Cal. App. 4th 381, 39 Cal. Rptr. 3d 1 (1st Dist. 2006).

With regard to the definition of “self hauler” or “self hauling” found in subsection (a)(6), we recommend the following change in order to effectuate the intention of AB 341:

(a)(6) “Self hauler” or “self hauling” means a business that ~~transports~~ hauls its own commercial solid waste and/or ~~recyclables~~ recyclable materials rather than contracting ~~with a hauler~~ for that service.

Next, subsection (a)(7) appears to propose a *new* definition for “source separating” or “source separation” that varies from an *existing* definition found at 14 CCR §17402.5(b)(4).² The conflicting definitions—the proposed and the existing—would each be found in different chapters of Division 7, Title 14, and as a result will likely lead to inconsistent construction, interpretation, application, and usage.

Moreover, the existing definition has been in use for many years and is the basis for various parts of the regulatory framework (e.g. LEA Advisory #58³).

The Initial Statement of Reasons provides no justification for the introduction of a new definition in Subsection (a)(7). There appears to be little, if any, need for a new definition that varies from the existing definition, and it is worth noting that although the statute referred to source separating material, a definition was not provided.

For the reasons stated, and in order to minimize the likelihood of confusion for regulators and the regulated community, we recommend that the proposed regulatory text be revised to either include reference to the *existing* definition of “source separated” found at 14 CCR § 17402.5(b)(4) or include the entire *existing* definition in place of the new one.

² “Source Separated” means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. 14 CCR § 17402.5(b)(4).

³ <http://www.calrecycle.ca.gov/LEA/Advisories/58/>

§ 18837. Mandatory Recycling of Commercial Solid Waste by Businesses.

Great care was taken in AB 341 to protect the existing right of a business to sell or donate its recyclable materials (i.e. paper, plastic, glass, metal, etc.) to independent recyclers. This market-based element—allowing a business to *sell* or *donate* recyclables—is an essential component of AB 341. Without it, the positive work already being performed by businesses and recyclers would be disrupted. Unfortunately, the proposed regulatory text introduces unrelated subject matter (e.g. compostable material), and disregards this important safeguard and other key provisions of the statute.

By way of example, the proposed regulation at § 18837(e)(1) utterly fails to include the express protections found in AB 341 mentioned above; but instead includes protection for franchises. Left unchanged, the proposed regulation would send the wrong message to the regulated community—that franchises are to be given greater weight than the right of a business to sell or donate its recyclable materials. Such a result is inconsistent with AB 341, and would restrict the statute, disrupt existing commercial recycling transactions, and effectively substitute the judgment of CalRecycle for that of the legislature, all in contravention of existing law.

Moreover, the Initial Statement of Reasons justifies the result in § 18837(e)(1) of the proposed regulatory text as follows (emphasis added):

Subsection (e)(1)

Subsection (e)(1) specifies that a franchise agreement granted or extended by a city, county, or other local government agency cannot be modified or abrogated by section 18837. This is *necessary to assure* franchisees that this *section does not modify or abrogate* a franchise agreement granted by local government. *This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing franchise agreement.*

For similar reasons, it is essential that *Subsection (e)(1) likewise protect the existing right of a business to sell or donate its recyclable materials.* It is necessary to include the express protection for the existing right of a business to sell or donate its recyclable materials in order to assure businesses and recyclers that this section does not modify, limit, or abrogate such rights. Mirroring the text of AB 341 with regard to this provision will offer protection to businesses and recyclers from the threat of unforeseen and

disruptive changes to existing business relationships that serve and benefit the statute's intent. The author of AB 341 included this important protection alongside the protection for franchises, and CalRecycle must not leave it out.

The recommended changes found below reflect our effort and intention to bring the proposed regulatory text into conformity with the statute, and we respectfully request that the following changes be made to § 18837 of the proposed regulations:

- (a) On and after July 1, 2012, a business shall take at least one of the following actions ~~in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:~~
 - (1) Source separate ~~separating~~ recyclable ~~and/or compostable~~ materials from the solid waste ~~they are discarding~~ and ~~either self-hauling, subscribing~~ subscribe to a ~~hauler, and/or~~ basic level of recycling service that includes collection, self-hauling, or other arrangements ~~otherwise arranging~~ for the pick-up of the recyclable ~~and/or compostable~~ materials ~~separately from the solid waste to divert them from disposal.~~
 - (2) Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.
- (b) To comply with §18837(a), property owners of commercial or multi-family complexes may require tenants to source separate their recyclable materials. Tenants must source separate their recyclable materials if required to by property owners of commercial or multi-family complexes.
- (c) Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section. The activities undertaken by each business pursuant to §18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance, policy, contract or agreement applicable to the collection, handling or recycling of solid waste.

- (d) Except as expressly set forth in §18837(e)(3), this Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction must comply with any local requirements that have been enacted.
- (e) This ~~Chapter Subsection~~ does not modify, limit, or abrogate in any manner any of the following:
- (1) A franchise granted or extended by a city, county, city and county, or other local government agency;
 - (2) A contract, license, or permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation; ~~or~~
 - (3) The existing right of a business to sell or donate its recyclable materials; or
 - (4) The existing provisions of §41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Materials sent to transformation facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

Conclusion

In summary, the proposed regulation is inconsistent with scope and intent of AB 341 (Chesbro, Ch. 476, Stats. 2011), improperly restricts or enlarges the scope of the statute, and do not provide clarity to businesses, haulers, recyclers, or local jurisdictions. By bringing the proposed regulation into conformity with AB 341, CalRecycle will fittingly clarify and protect the important role that independent recyclers play in carrying out the purpose and intent of AB 341.

We thank you for your consideration of our comments and recommendations, and we welcome the opportunity to further discuss the proposed regulation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nenad Trifunovic". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nenad Trifunovic
General Counsel

cc: The Honorable Wesley Chesbro
Mark Murray, Executive Director
Californians Against Waste
Katherine S. Brandenburg
The Flanigan Law Firm
Jeff Johnson, President
Association of California Recycling Industries (ACRI)
Jason A. Young, CEO
Allan Company



Association of California Recycling Industries

December 12, 2011

Ms. Teri Wion
California Department of Resources Recycling and Recovery
P.O. Box 4025, MS-13A
Sacramento, CA 95812-4025

RE: Proposed Regulations to Require Commercial Businesses to Recycle

Dear Ms. Wion:

On behalf of the Association of California Recycling Industries (ACRI), I am writing to urge that the regulations that are currently under consideration regarding AB 341 eliminate any reference to exclusive recycling franchise agreements for commercial and multifamily property owners. If the regulations are approved as currently proposed, they would act as a disincentive to the recycling of these materials because of the consequential loss of their economic value.

ACRI is a nonprofit trade association comprised of recycling businesses throughout California. ACRI was founded in order to help protect the rights of independent recyclers, and its members are committed to promoting free-market competition for recyclable materials.

ACRI appreciates the opportunity to comment on the proposed regulation and concurs with the comments and changes proposed by our fellow trade association, the West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI).

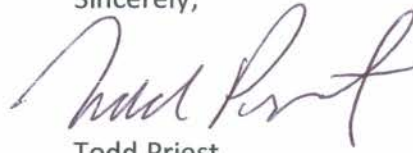
AB 341 made a legislative declaration that it is a policy goal of the State of California that not less than 75% of solid waste generated by source reduced, recycled, or composed by the year 2020. To best meet these demands, local jurisdictions should be encouraged to promote free market competition for recyclable materials whereas a restricted franchise agreement would negatively impact these to business and property owners therefore inhibiting the goals established under AB 341. It has been our experience that more competition, not less, will increase the commercial recycling rate and help achieve the laudable aims of AB 341.

Marshalle Graham
December 12, 2011

By bringing the draft regulations into conformity with AB 341, CalRecycle will acknowledge and protect the important contributions that all recyclers make toward achieving the goals of AB 341.

We thank you for your consideration of our comments and recommendations, and we welcome the opportunity to further discuss the proposed regulation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Todd Priest".

Todd Priest

cc: The Honorable Westley Chesbro

From: Nick Lapis [mailto:nicklapis@cawrecycles.org]
Sent: Monday, December 12, 2011 4:57 PM
To: Levenson, Howard
Cc: bsmlyth@ciwmb.ca.gov; Climate Change CalRecycle; murray@cawrecycles.org;
scottsmithline@cawrecycles.org
Subject: Commercial Recycling Comments

Howard,

Below are some comments on the proposed commercial recycling regulations. They are in line with comments we have made in public testimony, so I believe you are familiar with all of these issues.

- **Mixed Waste Processing.** CalRecycle should conform the regulation to the statutory language on mixed waste processing.

The regulation currently allow businesses to comply with the program by “subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.” This is substantively different and weaker than the language in AB 341, which allows businesses to “subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation”. The language in the regulation and ISOR might be interpreted to be weaker than the language in statute. For instance, statute requires that the business subscribe to a “recycling service,” which would not include a transformation facility. Furthermore, the broader “systems” approach described in the regulation might imply that a generator may do something other than that which is allowed in statute.

- **Transformation.** The regulations and ISOR need to clarify that a generator whose waste goes to a transformation facility still needs to comply with this regulation (by source separating their waste or subscribing to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation).

Section §18837 (e) (3) of the regulation accurately, but unnecessarily, states that the regulation does not modify existing statutory requirements for transformation facilities. In describing this section, the ISOR says that “Subsection (e)(3) clarifies that interpretation of the provisions of Public Resources Code section 41783 are not affected by this regulation. Commercial solid waste may be taken to a transformation facility, as long as the existing requirement in Public Resources Code section 41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met. For example front-end processing includes source-separating recyclables or processing material at a mixed waste processing facility. The subsection clarifies that there is no change to the existing provisions of section 41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent.”

This sends a confusing mixed message about whether a business needs to subscribe to recycling if its garbage goes to one of the state’s three transformation facilities. Nowhere in AB 341 does it say that sending material to transformation facility satisfies the generator’s recycling obligation, and the statutory definition of recycling specifically says that “recycling does not include transformation” (PRC §40180). Moreover, it is quite possible that a facility could meet all

the requirements of PRC §41783 but not, by itself, meet the requirements of the regulation. This is very unclear and needs to be made explicit in both the regulation and the ISOR.

- **Compost Emission Reduction Factor (CERF).** The CERF that was developed by the Air Resources Board to measure the greenhouse gas reductions achieved through this regulation inaccurately understates the greenhouse gas benefit of composting and needs to be modified.

The CERF factor does not properly account for the greenhouse gas benefits of composting the organic fraction of the commercial waste stream because it does not attribute any benefit to avoided landfill emissions. This significant benefit had previously been included (qualitatively and quantitatively) in almost every analysis of the emission reduction potential of this technology (including in work done by CalRecycle, ARB, US EPA, the Climate Action Team, the ETAAC, the Climate Action Reserve, ICLEI, several universities, and many others). Not only does this set a bad precedent for compost emissions accounting by undercutting the benefits of the technology, but it also undercuts local government efforts to include organics in a commercial recycling program.

Please let me know if we can provide any additional information.

Nick Lapis
Legislative Coordinator
Californians Against Waste
916.443.5422 (office)
415.845.6335 (cell)
916.443.3912 (fax)
www.cawrecycles.org

December 12, 2012

Teri Won
Materials Management and Local Assistance Division
California Department of Resources, Recycling and Recovery
PO Box 4025
Sacramento, CA 98512

Re: Comments to Proposed Mandatory Commercial Recycling Regulations

Definitions

Do condominiums, townhomes, and mobile home parks that use individual carts rather than bins for solid waste and recycling need to be monitored and reported under this bill?

The proposed regulation seems to indicate that, public entities, including schools, special district or a federal, state, local, regional agency or facilities are included in the definition of a business. How will a local jurisdiction enforce AB341 with these entities when the local jurisdiction has no means to enforce over these entities located with the local's geographic limits?

Is there a difference between material recovery facility and mixed waste processing facility? The definitions should be clarified to indicate this.

We assume that industrial wastes will not be included as part of this requirement, please confirm. The definition should be clarified to explicitly exclude this.

Reporting Outreach Efforts

If a jurisdiction is achieving 75% diversion or greater, does the jurisdiction need to identify outreach and other "good faith efforts" (as described in 42649.3)? Is the "outreach" that needs to be reported limited to outreach that is directed at businesses and MFDs regulated under AB341?

Business/MFD Count

Will jurisdictions need to report a total number (and units per development count) for all businesses and MFDs regulated under AB341 or only a count for those that are not in compliance?

MRF Sort vs. Source Separation

In San Jose we use mixed waste processing for both our MFD and commercial entities and are very interested in learning what the final language will be on this. Because we rely heavily on these programs for high diversion and have franchise agreements and

finances based on this, the language around this is of great importance to us. Therefore, we believe that in addition to the items below a clarification to what is meant by mixed waste processing is needed.

For the purpose of determining whether a businesses and MFD regulated under AB341 is "recycling" by subscribing to a program that sorts the material at a MRF (for example), what source separation rate % will be used for the comparison?

It appears the draft language in the bill allows a jurisdiction to comply with AB341 by requiring waste to go through a mixed processing system that diverts material from disposal. However, in the FAQs it says "Subscribing to a recycling service that includes mixed waste processing as part of a system in combination with other programs, activities or processes that diverts recyclable materials from disposal and yields diversion results comparable to source separation." What is meant by "as part of a system in combination ..."

Thank you for the opportunity to provide comments to the proposed regulation. San Jose is the third largest city in the state and supports the goals of AB341. We would welcome any other opportunity to provide input to the bill and encourage you to seek us out if the need should arise. Please feel free to contact us with any questions.

Respectfully,



Kristina McCaffrey
Environmental Services Specialist
City of San Jose
November 8, 2011



American Forest & Paper Association

December 12, 2011

Ms. Teri Wion
California Department of Resources Recycling and Recovery
P.O. Box 4025, MS-13A
Sacramento, CA 95812-4025

Re: Mandatory Commercial Recycling

Dear Ms. Wion:

The American Forest & Paper Association (AF&PA) appreciates the opportunity to comment on CalRecycle's proposed regulations to implement the mandatory commercial recycling provisions of AB 341 that was signed on October 6th by Governor Brown. AF&PA encourages efforts by state and local governments to promote recycling that complement our industry's aggressive goals and record of success in increasing diversion of recyclable paper.

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. Our companies make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP. Industry companies produce about \$175 billion in products annually and employ nearly 900,000 people. The industry meets a payroll of approximately \$50 billion and is among the top 10 manufacturing sector employers in 48 states. In California, our industry employs more than 54,000 individuals and operates 489 manufacturing facilities. The estimated state and local taxes paid by the forest products industry totals \$318 million annually.

Recycling is one of the nation's great environmental success stories and AF&PA is a leader in promoting the recovery of fiber for reprocessing and reuse in the paper industry. In 2010, a record 63.5 percent of the paper consumed in the U.S. was recovered for recycling. In fact, paper recovery has increased 77 percent since 1990. Paper recycling reuses a renewable resource that sequesters carbon and helps reduce greenhouse gas emissions. In addition, in 2010 the amount of paper that was recovered for recycling saved 170 million cubic yards of landfill space.

In keeping with the forest products industry's legacy as a leader in sustainability, AF&PA has announced a new initiative called *Better Practices, Better Planet 2020: Continuing AF&PA's Commitment to Sustainability*. This comprehensive set of quantifiable sustainability goals is the most extensive to date for a major U.S. manufacturing industry. As part of *Better Practices, Better Planet 2020*, the industry has set a goal to further increase paper recovery for recycling to exceed 70 percent by 2020 and will be working with communities, businesses and schools to reach this goal.

CalRecycle has asked for comments on the proposed implementation of Chapter 12.8 Statutes of 2011 [Chesbro, AB 341].

AF&PA recognizes the importance of recycling, which is why our industry has voluntarily spent considerable resources – and working with our partners in the states –building the infrastructure to recover and recycle our products.

AF&PA shares CalRecycle's goals of increasing recovery rates and reducing the amount of recyclable products going to landfills. We urge Cal Recycle to be mindful of the current high recovery rates for paper, and recognize the essential role that competitive markets for recovered paper have played in achieving those high recovery rates. In working toward the state's 75 percent recovery goal, we request CalRecycle encourage cities and counties in California to avoid relying on exclusive franchise agreements or requirements that business recyclables be diverted to mixed waste processing facilities (as allowed in Section 18838 of the regulation) that could interfere with markets for recovered paper and prevent California from achieving its recovery goal.

California's ambitious 75 percent recovery goal will be achievable only through constructive partnerships between businesses, CalRecycle, local governments, and environmental groups.

AF&PA supports CalRecycle's efforts to focus on recycling education and outreach to businesses. AF&PA has a number of resources to help encourage and promote recycling in the workplace, schools and communities, including guides to starting a recycling program and lesson plans for classroom use. AF&PA also sponsors an annual Recycling Awards program to honor outstanding businesses, communities and schools for their successful recycling programs with a monetary prize and national media recognition. Case studies and details of these award-winning programs are highlighted on the paperrecycles.org website, along with additional recycling information, statistics and a variety of other resources.

Please do not hesitate to contact me if you have questions or our legislative advocate in California Kathy Lynch at (916) 443-0202 or lynch@lynchlobby.com. Thank you for your consideration.

Regards,



Cathy Foley
Group Vice President, Paper

cc: Ms. Caroll Mortensen, Director, CalRecycle



December 12, 2011

Caroll Mortensen
Director, CalRecycle
1001 I St.
Sacramento, CA 95814

**SUBJECT: PROPOSED REGULATION FOR MANDATORY COMMERCIAL RECYCLING
RULEMAKING – PUBLIC HEARING DECEMBER 13, 2011**

Dear Director Mortensen,

On behalf of the above-listed entities, we thank you for the opportunity to comment on the Department of Resources, Recycling and Recovery's (CalRecycle) proposed draft Mandatory Commercial Recycling regulation (MCR) pursuant to the recent passage of AB 341 (Chesbro).

As authorized under AB 341, CalRecycle is charged with developing regulations to implement a mandatory commercial recycling program in California that will achieve 5 million metric tons of carbon dioxide equivalent (MMT_{CO2E}) reductions by 2020.

As representatives of businesses that will be impacted by promulgation of the MCR, we have been extensively engaged in the rulemaking process. As expressed in past commentaries, the business community is not opposed to doing its part to increase the recycling rates. It is important however, that any new regulations aimed toward achieving these goals be viewed through the lens of the economy and the existing financial struggles that California businesses continue to face. Regulations must be carefully crafted to minimize impact on the business community. In keeping this in mind, we are pleased that the current draft MCR provides a tenable approach for businesses to reach the state's environmental goals. We acknowledge that the draft incorporates certain flexibilities for businesses and we primarily appreciate that it sets a waste diversion *goal* rather than imposing an onerous mandate.

Additionally, we find other workable provisions in the current MCR iteration that:

- Promote recycling manufacturing facilities in California. We believe recycling facilities are vital assets in waste diversion in the state, as they provide employment and present statewide economic potential.
- Provide parity by clarifying the definition of „business“ to include commercial businesses and public entities.
- Allow for exemption consideration due to space limitations, zoning requirements, lack of markets, and other unintended logistical challenges to the implementation of the regulations.
- Clarify that local governments and jurisdictions are charged with implementation and monitoring of a commercial recycling program that fits *their existing programs and resources*. Provisions further clarify that the programs shall consist of education, outreach and monitoring of businesses.

- Do not impose a mandate and provide flexibility for local jurisdictions in setting waste diversion requirements above the 50% threshold.

While we acknowledge the incorporated flexibilities for businesses, more can be done to ensure compliance in an effective manner to reduce the risk of incurring penalties. We suggest an extension of the education-only enforcement period so that businesses can adjust to the mandatory recycling programs adopted by their jurisdiction without the fear of more stringent enforcement options in early years.

Moreover, we request that the CalRecycle delineates the term “comparable” as it appears on section 18837(a) subsection (2): “Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results *comparable* to source separation.” A clarification on what constitutes *comparable* would assist businesses in compliance with the regulation.

As the Department moves forward with implementation of the MCR and codification of AB 341, we hope to continue to collaborate with staff to ensure that the regulation provides businesses with clear, simply-understood, and realistic instructions for compliance. We hope such collaborative effort will result in an efficient and cost-effective recycling program that not only achieves the environmental goals set by the legislature but also, provides the most flexibility to businesses to adapt during these difficult economic times.

If you have any questions, please feel free to contact Brenda Coleman with the CalChamber at 916-444-6670 or Brenda.Coleman@calchamber.com.

Sincerely,

Brenda Coleman
California Chamber of Commerce



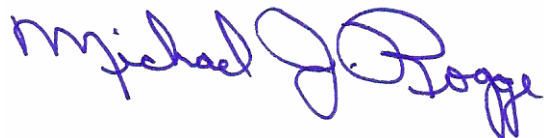
John Larrera
California League of Food Processors



Kara Bush
California Grocers Association



Mike Rogge
California Manufacturers & Technology
Association





SWANA[®]

SOLID WASTE ASSOCIATION
of North America

CALIFORNIA CHAPTERS

FOUNDING

SIERRA

GOLDRUSH

LEGISLATIVE TASK FORCE

www.swanacal-leg.org

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December 9, 2011

Teri Wion

Materials Management and Local Assistance Division
California Department of Resources, Recycling, and Recovery
P.O. Box 4025
Sacramento, CA 95812

RE: Proposed Mandatory Commercial Recycling Regulations

Dear Ms. Wion

The Solid Waste Management Association of North America (SWANA), the largest association of solid waste professionals (7,700 members), is committed to advancing the practices of environmentally and economically sound management of municipal solid waste. On behalf of the SWANA California Chapters (over 900 members) and as the Chair of their Legislative Task Force (LTF) I want to express our appreciation for the opportunity to comment on the proposed mandatory commercial recycling regulations.

The SWANA LTF offers the following comments:

Section 18836. Definitions

The SWANA LTF believes that the definitions contained in the proposed regulation can and should be modified to be more consistent with the authorizing statute.

18836(a)(1) – Business / 18836(a)(2) – Commercial Solid Waste

SWANA believes that the definition of “business” in proposed Section 18836(a)(1) and the definition of “commercial solid waste” in proposed Section 18836(a)(2) inappropriately apply to industrial facilities for the following reasons:

1. Section 42649.1(b) of the Public Resources code specifically holds that the definition of “commercial solid waste” in the mandatory commercial recycling program to have the same meaning as Section 17225.12 of Title 14 of the California Code of Regulations.
2. Section 17225.12 of Title 14 of the California Code of Regulations defines “commercial solid waste” as “all types of solid wastes generated by stores, offices and other commercial sources, excluding residences, **and excluding industrial wastes** (emphasis added).”

3. “Industrial Wastes” are defined in Section 17225.35 of Title 14 of the California Code of Regulations as “all types of solid waste and semi-solid waste which result from industrial processes and manufacturing operations.

Based on the requirements of the authorizing statute, SWANA recommends the following changes to the proposed regulation:

1. The words “industrial facility” should be removed from Section 18836(a)(1).
2. Section 18836(a)(2) should be amended to exclude industrial wastes.

18836(a)(5) – Mixed Waste Processing

Section 18836(a)(5), which contains the definition of the term “mixed waste processing”, needs to clarify whether “processing” includes physical separation of waste materials, or also chemical, biological, or any combination of these processes.

18836(a)(7) – Source Separation

Section 18836(a)(7), which contains the definition of “source separating”, needs to be expanded and clarified. First, the definition should be expanded to include the removal of compostable materials. Compostable materials are included in the definition of “mixed waste processing” found in Section 18836(a)(5) and the inclusion would be more consistent with the findings and declarations contained in AB 32 (2006, Nunez) and AB 341 (2011, Chesbro). Second, there needs to be clarification as to whether the source separation process requires removal of all or some of the recyclable materials, or whether it is limited to the jurisdiction’s Source Reduction and Recycling Element or recycling ordinance.

Additional Definitions

The term “material recovery facility” used in Section 18839(b)(2) should be defined – specifically, clarification is needed to determine whether there is a difference between a “mixed waste processing facility” and a “material recovery facility”.

Section 18837. Mandatory recycling of commercial solid waste by businesses

The SWANA LTF believes that 18837(a)(2), which allows mixed waste processing alone or in combination with other programs as long as it yields results comparable to source separation, to be self-contradictory.

Mixed-waste processing does not yield diversion results that are comparable to source separation. In addition, the local governments that will be responsible for enforcement of the program have been provided no guidance on how to enforce this provision. If jurisdictions are going to be subject to enforcement actions based on their own enforcement efforts, then the regulations should provide guidance on how to enforce this provision.

Lastly, SWANA recommends that the last word in Section 18837(e)(3) be changed from “possible” to “feasible” because it is more consistent with Section 41783(a)(2) of the Public Resources Code and provides the appropriate level of flexibility to local jurisdictions.

Section 18838. Implementation of commercial recycling program by jurisdictions

The proposed regulations need to clearly recognize that local jurisdictions have no means to enforce requirements of this section on public entities, including, but not limited to, federal, state, and regional governments, school districts, special districts, state colleges and universities.

Section 18839. CalRecycle Review

The SWANA LTF believes that several clarifications should be made to this section. Specifically, we recommend the following changes:

1. Section 18839(b)(5) should be expanded to include the availability of composting facilities and markets for compost.
2. Pursuant to Subdivision 42649.3 (h) of the PRC, CalRecycle “may also review whether a jurisdiction is in compliance with this section at any time that the department receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, a commercial recycling program.” The proposed regulations needs to address the process or processes that may be used by CalRecycle to verify the accuracy of the “information” received prior to subjecting the jurisdiction to additional tasks.
3. This section needs to address the concerns raised in our comments on Sections 18837(a)(2) and 18838.

The LTF appreciates your consideration of our concerns and requested changes to the proposed mandatory commercial recycling regulations. Should you have any questions regarding our comments and requests please contact Jason Schmelzer, our legislative and regulatory advocate in Sacramento, at 916-446-4656.

Respectfully,



William Merry, Chair
Legislative Task Force
Solid Waste Association of North America, California Chapters

cc. Caroll Mortensen – Director, CalRecycle
Assemblyman Wes Chesbro



WASTE MANAGEMENT

Public Affairs
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Sacramento, CA 95814
916/552-5859
916/448-2470Fax

December 12, 2011

Marshalle Graham
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025

Via Email: climatechange@calrecycle.ca.gov

Subject: Waste Management Comments on Proposed Mandatory Commercial Recycling Regulations

Dear Marshalle:

Thank you for the opportunity to comment on the proposed Mandatory Commercial Recycling Regulations (Proposed Regulations) for which the public comment deadline is 5:00 PM on December 12, 2011. Waste Management (WM) provides comprehensive waste collection, recycling, disposal, energy recovery services throughout California. Waste Management supports the proposed regulations, but requests that they be amended to conform to the provisions of recently enacted AB 341 (Chesbro).

Single Stream vs. Mixed Waste Processing

WM is expanding its recycling and resource recovery operations to help the businesses we serve meet the requirements of these proposed regulations. WM made the strategic decision some time ago to focus on providing single-stream recycling services to the residences and businesses we serve in California. WM does not primarily utilize or rely on mixed waste processing to recover recyclables from the residences and businesses we serve. Rather, WM largely relies on single-stream recycling where recyclable materials are separated from refuse at the point of generation and collected in a separate container or containers. The recyclable materials are further processed at a single-stream Materials Recovery Facility (MRF) with recovery rates typically exceeding 90% for the separated single stream materials. When considering to total waste stream, recycling rates of 30% or more are not atypical.

Mixed waste processing, on the other hand, has a much higher level of recyclable material contamination and it is much more difficult to separate recyclables from the waste stream at a

mixed waste processing facility. Our experience has led us to believe that mixed waste processing typically results in less than 15% recovery – usually less than 10% recovery. Higher

levels of recovery are only possible to achieve at a mixed waste processing facility with a concerted effort and higher levels of processing line employees, more sophisticated equipment and longer processing times. Even so, greater than 20% recovery of mixed waste processing is very difficult (and expensive) to achieve – thus bringing the cost and recovery rates of mixed waste processing into alignment with source separated processing.

Single stream processing has several advantages over mixed waste processing:

- More paper grades may be collected, including junk mail, telephone books and mixed residential paper.
- Compared to mixed waste recycling, the public is much more informed about waste reduction issues and typically feels more “ownership” of and involvement in a recycling program. This typically results in higher recycling rates.
- Less recyclable materials are missed by the sorting processes.
- Recyclable materials are less contaminated and, thus, easier to market.
- A much greater range of recyclable materials are collected and processed.
- Source reduction is much easier to emphasize.
- Fewer worker health and safety concerns.
- Fewer odor problems.

On the other hand, Single Stream collection and processing has some disadvantages as compared to mixed waste processing – principally related to the cost of operations and education and commitment of waste generators in the service area.

- Higher Initial capital cost for:
 - Separate carts for recyclable materials and refuse
 - Different collection vehicles
 - More expensive processing facility
- More difficult to achieve the appearance of 100% participation in a recycling program. Mixed waste processing can claim 100% participation even though there is typically a lower rate of recyclable material recovery.
- More education and a higher level of involvement by waste generators.

Inconsistency with Statute on Mixed Waste and Source Separated Processing

The proposed regulations and recently enacted legislation (AB 341) have different language with respect to how single stream and mixed waste processing are addressed.

Here is the language of AB 341:

- (b) A commercial waste generator shall take at least one of the following actions:
- (1) Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials.
 - (2) Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

Here is the parallel language of the proposed regulations:

- (a) On and after July 1, 2012, a business shall take at least one of the following actions in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:
- (1) Source separating recyclable and/or compostable materials from the solid waste they are discarding and either self-hauling, subscribing to a hauler, and/or otherwise arranging for the pick-up of, the recyclable and/or compostable materials separately from the solid waste to divert them from disposal.
 - (2) Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.

Clearly the text of the regulations does not mirror the text of the implementing statute. WM believes that CalRecycle is misinterpreting the language of the statute and, as a result, relaxing the requirements imposed by the statute on mixed waste processing facilities. Take for example, the text of the overriding Statute in subparagraph (2):

- (2) Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

This subparagraph does not contain any commas separating the phrases. Thus the only interpretation that can be made is as follows:

- (2) Subscribe to a recycling service -- that may include mixed waste processing that yields diversion results comparable to source separation.

The statutory language seems clear that the mixed waste processing must achieve diversion results comparable to source reduction rather than the recycling service (that may include mixed waste processing) that yields diversion results comparable to source reduction. The only way that the language of the statute could have the interpretation given to it by CalRecycle would be if it read:

- (2) Subscribe to a recycling service, that may include mixed waste processing, that yields diversion results comparable to source separation.

But, this is NOT the way the implementing statute is written and thus, CalRecycle must conform its regulatory language to that of the statute by interpreting that the mixed waste processing must achieve diversion results comparable to source reduction processing – NOT that the overall recycling service (that may include mixed waste processing) that yields diversion results comparable to source separation. WM requests that the proposed regulations be amended to parallel the language of the statute and not try to read something into the statute that is not there.

Failure to make this adjustment to the proposed regulations will potentially severely disadvantage services that emphasize source separated recycling. For the reasons cited above, source separated recycling achieve higher levels of recycling, but with higher costs – unless sufficient processing worker time, resources and equipment and are added to mixed waste processing operations. To create a more level playing field the two types of processing operations must be directly compared. WM believes the proper interpretation of the statutory language is such that if a service uses mixed waste processing, the mixed waste processing operation must achieve recycling levels comparable to that of source separated recycling.

The regulations as written do not provide any standard for recyclable material recovery by recycling services. Thus the only way to treat them fairly is though a strict interpretation of the statute to directly compare mixed waste processing with source separated processing. As noted above, source separated recycling is more expensive to implement – unless the time and effort is made to achieve higher levels of mixed waste processing recyclable recovery by investing in increased time, materials, and workers to achieve even marginally comparable results.

No standard or procedure for “comparability” between mixed waste and source separated processing

Further, the statute clearly anticipates that some form of “comparable diversion” determination must be made between mixed waste processing facilities and source separated processing facilities. Yet the regulations do not include any such standard or procedure for determining comparability. WM believes that the statute demands that the regulations adopted by CalRecycle must include some standard or procedure for determining comparable diversion rates between

source separated and mixed waste processing. Failure to include such standards or procedures would clearly be inconsistent with the intent of the statute. WM requests that the regulations be amended to include a process for determining comparable diversion rates. We suggest the following language be added as subdivision (f) and (g) of proposed Section 14 CCR 18837:

- (f) Starting on March 1, 2013, any recycling service that provides commercial recycling services in accordance with this regulation shall report to CalRecycle the following information by March 1 of each year for the previous calendar year. The purpose of this information to assist CalRecycle in determining the comparable diversion rates as required by PRC 42649.2(b):
 - (1) The names of the cities or counties for which commercial recycling services are provided.
 - (2) The type of recycling processing used in each city or county including mixed waste processing, source separated (single stream) processing or other form or combination of processing services.
 - (3) The overall amount of materials disposed or recovered by all recycling and disposal services offered to the jurisdictions served by the recycling service.
 - (4) The amount of recyclable material recovery, by material type, by each mixed waste processing facility or source separated processing facility operated by the recycling service. The total tons of waste and recyclable materials handled, processing and/or disposed by the recycling service.
- (g) Not later than September 1 of each year, CalRecycle will prepare a report on the comparability of mixed waste processing and source separated processing in accordance with PRC 42649.2(b).

Inconsistency with Statute on Requirements of Jurisdictions

The regulations also contain another inconsistency with respect to the requirements imposed on jurisdictions in the proposed regulations related to the requirements that may be imposed by the jurisdiction on commercial solid waste. The statute reads as follows in 42649.2 (c):

- (c) The commercial solid waste recycling program shall be directed at a commercial waste generator, as defined in subdivision (b) of Section 42649.1, and may include, but is not limited to, any of the following:
 - (1) Implementing a mandatory commercial solid waste recycling policy or ordinance.
 - (2) Requiring a mandatory commercial solid waste recycling program through a franchise contract or agreement.

- (3) Requiring all commercial solid waste to go through either a source separated or mixed processing system that diverts material from disposal.

On the other hand, the parallel provisions of the regulations read somewhat differently, as follows in 14 CCR 18838 (b):

- (b) The commercial recycling program adopted pursuant to Subdivision (a) may include, but is not limited to,
- o implementing a commercial recycling policy or ordinance requiring businesses to recycle,
 - o requiring a mandatory commercial recycling program through a franchise agreement or contract, or
 - o requiring that commercial solid waste from businesses be sent to a mixed waste processing facility.

WM requests that the last requirement be amended to be consistent with statute as follows:

- o requiring that commercial solid waste from businesses ~~be sent to a~~ to go through either a source separated or mixed waste processing ~~facility~~ system that diverts material from disposal.

If a jurisdiction chooses the 3rd approach, they should be required to specify either a source separated or mixed waste processing system as required by statute.

Please do not hesitate to contact me if you have any questions or require further information regarding our concerns

Sincerely,



Charles A. White, P.E.
Director of Regulatory Affairs/West

cc: Honorable Wes Chesbro, Assemblyman
Caroll Mortensen, Director, CalRecycle, Caroll.Mortensen@calrecycle.ca.gov
Mark Leary, Acting Director, CalRecycle, Mark.Leary@CalRecycle.ca.gov
Howard Levenson, Deputy Director, CalRecycle, Howard.Levenson@CalRecycle.ca.gov
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UTS Residual Processing,
LLC

Patrick Serfass
Executive Director (ex officio)

December 12, 2012

Teri Wion
California Department of Resources Recycling and Recovery
P.O. Box 4025, MS-13A
Sacramento, CA 95812-4025

Re: **Proposed Regulations: Mandatory Commercial Recycling**

Dear Ms Wion:

The American Biogas Council (ABC) represents 144 companies dedicated to the development of the anaerobic digestion and biogas industry. Our member companies include biogas project developers, landowners, anaerobic digestion providers, waste water companies, utilities and the entire biogas supply chain.

Thank you for the opportunity to comment on the Proposed Regulation for Mandatory Commercial Recycling Rulemaking package. We are encouraged by language including the organic portion of the commercial recyclables. Not only will this more rapidly decrease greenhouse gas (GHG) emissions, it will also encourage the development of infrastructure in California to recycle organic material, creating energy and soil amendments.

The ABC appreciates the consistent leadership of CalRecycle on the use of composting and anaerobic digestion to handle diverted organic materials. Anaerobic digestion facilities, coupled with composting, are an effective method of processing commercial organic materials and the most efficient method for reducing greenhouse gas emissions from the organic portion of the municipal solid waste (MSW) stream. As CalRecycle knows, such emissions consist predominantly of methane, which is 20-21 times more potent as a GHG than carbon dioxide. Organic materials processed in anaerobic digesters can avoid all the GHG emissions normally associated with the decomposition of organic materials in landfills and reduce the odor and ammonia emissions with composting, while also producing usable biogas that can further reduce GHG emissions by substituting for fossil fuels.

Given the important and effective role anaerobic digestion can play in achieving both AB 341 and AB 32 goals, as CalRecycle moves through the regulatory process, we respectfully suggest that

anaerobic digestion, as well as composting, be specifically called out as an accepted and recommended diversion method. The language of the proposed §18837(a) does not specifically name anaerobic digestion as a potential avenue for compliance with AB 341, but does appear to allow it under the catchall requirement that a business “otherwise divert commercial solid waste from disposal.” It would be helpful if anaerobic digestion could be added to the list of acceptable alternatives: “reuse, recycle, compost, anaerobically digest, or otherwise divert ...” At a minimum, CalRecycle should clarify the acceptability of anaerobic digestion when it issues the final regulatory package.

CalRecycle should also encourage communities to implement a mandatory commercial *organics* recycling ordinance, in addition to other recyclables. This will better enable communities and the state to meet, and exceed, the 75% diversion rate with appropriate technologies and processes.

Finally, we note that as proposed §18837(a)(2) specifically authorizes diversion through mixed waste processing, IF the process “alone or in combination with other programs, activities or processes. . . [yields] diversion results comparable to source separation.” We observe that separation of organics from a totally un-presorted MSW stream could, if not done with the proper pre- or post-treatment, yield highly contaminated organics that may not be suitable for digestion or result in saleable composting and must therefore be landfilled. Compared to other recyclables, separation of organics in MRF operations is much less effective for organics and therefore undercuts AB 341 and other California policy objectives around maximizing landfill diversion and reducing GHGs. European results over the last 20 years show that source separation of organics has resulted in a higher percentage of diverted material and the resulting product is marketable as an organic soil amendment. In providing direction to local agencies on enforcement and compliance with §18837(a)(2), CalRecycle should encourage attention to the superior diversion results achievable with source separation of organics.

Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Patrick R. Serfass". The signature is written in a cursive style with a large, stylized initial "P".

Patrick Serfass
Executive Director

THE FLANIGAN LAW FIRM



December 12, 2011

VIA Electronic Mail

Marshalle Graham
Materials Management and Local
Assistance Division
California Department of Resources
Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025

Re: Proposed Mandatory Commercial Recycling Regulations

Dear Mr. Graham:

I am writing on behalf of my client, the West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI) concerning CalRecycle's proposed Mandatory Commercial Recycling regulations. ISRI is a trade association representing approximately, 18,000 companies nationwide, of which ten percent are located in California. ISRI's members are the principal processors, brokers, and consumers of scrap commodities. They are experts in the handling, processing, and/or recycling of recyclable commodities.

ISRI agrees that the proposed draft regulations are necessary in order to clarify certain provisions of AB 341 (Chesbro, stats. 2011, ch. 476). However, ISRI is greatly concerned that the proposed draft regulations do not provide the clarity and consistency along with maintaining the intent of AB 341 and existing regulations. We further believe that without proper clarity, local jurisdictions and the businesses that will be regulated under the referenced regulations will not have a clear and consistent understanding as to how businesses may divert their non-discarded recyclable material (i.e. that "which has been separated or kept separate from the solid waste stream, at the point of generation...") to independent recycling services rather than to haulers that transport commercial solid waste, thus creating an economic hardship for both the regulated community and the independent recyclers.

Furthermore, AB 341 declares that it is the "intent of the Legislature to encourage the development of the additional solid waste processing and composting capacity that is needed to meet state objectives..."¹ AB 341 clearly states that it is the "policy goal of the state that not less than 75% of the solid waste generated by source reduced, recycled, or composted by the year 2020..." but does not provide statutory authority to mandate that a business must divert their compostable materials from the solid waste stream. It is important for local jurisdictions to have

¹ Public Resources Code section 40004(b).

a clear understanding of the intent of AB 341 (i.e. The 75% goal is just that, a goal and not a mandate). As you can see, the Legislature created two completely different avenues with the passage of AB 341. In order to be consistent with statutory authority, we recommend that any reference to compostable materials in the proposed regulations be omitted.

Title of Chapter 9.4.

In order to be consistent with AB 341, the title of Chapter 9.4 of the proposed regulations must use the same title as found in Chapter 12.8 (commencing with Section 42649) of the Public Resources Code which is "Mandatory Recycling of Commercial Solid Waste."

§ 18835. Purpose.

For reasons stated above, we recommend the language describing the purpose of the regulations be changed in order to be consistent with AB 341 as follows:

This Chapter implements the Mandatory ~~Commercial~~ Recycling of Commercial Solid Waste regulation pursuant to §42649 of the Public Resources Code. The purpose of this regulation is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

§ 18836. Definitions.

The Initial Statement of Reasons explains that the regulations are necessary in order to clarify a number of technical and administrative terms from the Public Resources Code that appear in the proposed regulations in order to ensure regulatory consistency and clarity. We agree that such is necessary. However, the definitions in subsections 18836(6) and (7) are inconsistent with existing statutory and regulatory language. In particular, subsection (a)(7) creates a new definition of "source separating" which will be inconsistent with the existing definition which is found in Title 14, Division 7, Chapter 3, Article 6.0, Section 17402.5(4).² Furthermore, there appears to be no necessity for the inconsistency in language. We recommend that either the existing definition of "source separated" found in Article 6.0 as noted above be referenced in the regulations or included in its entirety in the proposed regulations.³

² "Source Separated" means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. (Title 14, Division 7, Chapter 3, Article 6.0, Section 17402.5(4)).

³ According to Government Code, section 11349.1, all proposed regulations must pass muster regarding several standards, including clarity, consistency, necessity, and authority. (See also section 11349.) All four of these referenced standards apply in this case. As for the deviation from the statutory language referenced, there is no defensible argument in the statement of reasons as to why the statutory language has been changed in the regulation, which relates to all four standards mentioned herein. Additionally, there is no valid argument of necessity as to why some definitions are being changed that appear in the current, long standing regulations. These issues are being

Additionally, in order to be consistent with the intent of AB 341, we recommend subsection (a)(6) be amended as follows:

(a)(6) “Self Hauler” or “Self Hauling” means a business that ~~transports~~ hauls its own commercial solid waste and/or ~~recyclables~~ recyclable materials rather than contracting ~~with a hauler~~ for that service.

§ 18837. Mandatory Recycling of Commercial Solid Waste by Businesses.

The Initial Statement of Reasons stresses throughout the importance of making sure that the regulations provide clarity for the business community when deciding how each business that generates more than four cubic yards of commercial solid waste per week or is a multifamily residential dwelling of five units or more will comply with AB 341. The proposed regulations are also designed to provide a clear mechanism for local governments to oversee that the business community is complying with the law. Unfortunately, the draft regulation is misleading the business community and local jurisdictions as to what type of recycling service a business may chose. Furthermore, the draft regulations pertaining to section 18837 are inconsistent with AB 341. It is important to note that AB 341 was carefully and thoughtfully drafted to make sure that the existing rights of a business to sell or donate its recyclable materials (i.e. paper, plastics, glass, metals, etc.) to independent recyclers was maintained and that local jurisdictions would have a clear understanding that a franchise agreement between a local jurisdiction and a waste hauler only pertains to solid waste and does not pertain to source separated recyclable materials as defined under the current regulations.⁴

The Initial Statement of Reasons specifies that section (a) and subsection (a)(1) provide different methods businesses may use in order to meet the requirements of AB 341. It further states that a business may “arrange for the pick-up of recyclables (e.g. by independent recyclers).” Furthermore, AB 341 specifically states that a commercial waste generator may “subscribe to a basic level of recycling services that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials” (Emphasis added.). However, section (a) and subsection (a)(1) as drafted changes the wording of the actions as outlined in AB 341 thus creating a lack of clarity and consistency between AB 341 and the regulations.

Again, in order to be consistent with the language in AB 341, along with the intent of the author to maintain the right of a business to sell or donate its recyclable materials, subsection (e) must include a new subsection that states “This Subsection does not modify or abrogate in any manner the existing right of a business to sell or donate its recyclable materials.” Without the inclusion of the aforementioned sentence, the draft regulations will mislead the business community and local jurisdictions and remove the intent of Public Resources Code section 42649.5(b).

raised herein to preserve ISRI’s right to challenge the proposed changes during the review by the Office of Administrative Law and beyond.

⁴ Title 14, Division 7, Chapter 3, Article 6.0, Section 17402.5(4). (As set forth in footnote 1 above.)

With this in mind, ISRI recommends the following amendments be made to section 18837 of the proposed regulations:

- (a) On and after July 1, 2012, in order to meet the requirements of Mandatory Recycling of Commercial Solid Waste pursuant to §42649 of the Public Resources Code, a business shall take at least one of the following actions ~~in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:~~
 - (1) Source separating recyclable ~~and/or compostable~~ materials from the solid waste ~~they are discarding~~ and ~~either self-hauling, subscribing~~ subscribe to a ~~hauler, and/or basic level of recycling service that includes collection, self-hauling, or other arrangements~~ ~~otherwise arranging~~ for the pick-up of the recyclable ~~and/or compostable~~ materials ~~separately from the solid waste to divert them from disposal.~~
 - (2) Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.
- (b) To comply with §18837(a), property owners of commercial or multi-family complexes may require tenants to source separate their recyclable materials. Tenants must source separate their recyclable materials if required to by property owners of commercial or multi-family complexes.
- (c) Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section. The activities undertaken by each business pursuant to §18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance, policy, contract or agreement applicable to the collection, handling or recycling of solid waste.
- (d) Except as expressly set forth in §18837(e)(3), this Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction must comply with any local requirements that have been enacted.
- (e) This Subsection does not modify or abrogate in any manner any of the following:
 - (1) A franchise granted or extended by a city, county, city and county, or other local government agency;
 - (2) A contract, license, or permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation; ~~or~~

(3) The existing right of a business to sell or donate its recyclable materials; or

- (4) (4) The existing provisions of §41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Materials sent to transformation facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

Conclusion

In summary, ISRI believes that the proposed regulations are inconsistent, in pertinent part, with the language and intent of AB 341 (Chesbro, Ch. 476, Stats. 2011) and do not provide clarity to the commercial waste generators, haulers, recyclers, and local jurisdictions. We do not believe it is the intent of CalRecycle to mislead the regulated community into believing that it will no longer be able to contract with independent recyclers for the purpose of picking up its source separated recyclable materials. We further believe that our suggested amendments to the proposed regulations will rectify any inconsistency and lack of clarity that is currently found in the proposed regulations.

Thank you for your consideration to our concerns.

Sincerely,



Katherine S. Brandenburg
Legislative Advocate

cc: The Honorable Wesley Chesbro
Ms. Elizabeth MacMillan, Principal Consultant
Assembly Natural Resources Committee
Mr. Mark Murray, Executive Director
Californians Against Waste



Ms. Teri Wion
California Department of Resources Recycling and Recovery
P.O. Box 4025, MS-13A,
Sacramento, CA 95812-4025

December 7, 2011

Subject: Comments on AB 341 Mandatory Commercial Recycling Regulations

Dear Ms Wion,

The City of Sunnyvale appreciates the opportunity to comment on the proposed regulations for AB 341 and supports the increased diversion goals and efforts. In December, 2008, the Sunnyvale City council adopted a zero waste policy. The first step on the path to zero waste was to commission a waste characterization study, which was completed in 2010. Community meetings were held to solicit residential and business input. Following community engagement, a draft zero waste strategic plan to identify and quantify goals was developed and has just been released. Council will select and approve programs to move Sunnyvale toward a zero waste future.

As an important instrument in the zero waste toolbox, the City of Sunnyvale operates the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station®), a \$25 million mixed waste materials recovery facility (MRF) for municipal solid waste (MSW) from the cities of Mountain View, Palo Alto and Sunnyvale. Source separated recyclables and yard trimmings from Sunnyvale and Mountain View residential and multifamily collection programs, as well as residential and commercial municipal solid waste from all three cities, enter the facility for processing. The MRF recovers from the MSW a variety of materials ranging from high value (e.g. beverage containers and cardboard) to low value (concrete, wood, and compostable organics). These recovered materials are sent to recycling markets.

The City of Sunnyvale has a flexible, open market commercial recycling policy, supplemented by City-provided cardboard collection at no charge. Businesses have the option of selecting a private recycling service provider. Many older retail and commercial properties, however, have limited space for placement of additional collection containers. Others are very small generators. Sunnyvale's diverse demographics and dynamic Silicon Valley business environment also

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pose outreach challenges. Materials recovery from the MRF allows businesses that are unable to site containers to comply with the law as it functions as a "safety net" for recovery of recyclables not captured through other programs. Mixed waste processing meets these challenges while simultaneously avoiding the greenhouse gas emissions that would otherwise be produced by adding duplicative, separate collection routes.

Recently completed \$16M upgrades to the SMaRT Station have improved processing capacity so that diversion from the MRF now stands at 19% and is expected to soon reach 25%. Given that much of the solid waste SMaRT receives has already had recyclables removed, these rates of recovery from MSW are quite an achievement.

With the multi-layered approach described above, Sunnyvale's AB 939 diversion rate stands at 67%, well above the mandated 50%, and continues to increase annually. This is unambiguous evidence that a diversion approach based on mixed waste processing can provide compliance with AB 341's commercial recycling requirements.

Thank you for your consideration.

Very truly yours,



Mark Bowers
Solid Waste Program Manager

December 12, 2012

Teri Wion
California Department of Resources Recycling and Recovery
P.O. Box 4025, MS-13A
Sacramento, CA 95812-4025

Re: **Proposed Regulations: Mandatory Commercial Recycling**

Dear Ms Wion:

These comments are submitted on behalf of InSinkErator, the world's leading manufacturer of food waste disposers, in my capacity as its senior consultant on public and environmental affairs.

The proposed regulations pursuing the desired goal of Mandatory Commercial Recycling should reflect a positive consideration of the past, present and future use of food waste disposers in both multi-family residences and food service establishments.

For decades, food waste disposers have served the public purpose of converting food scraps from a solid waste into a liquid resource, suitable for easy transport through underground sewers and processing into clean water, renewable energy and fertilizer products at most wastewater treatment plants in California. This re-thinking of food scraps as liquid – averaging 70% water – rather than solid opens up new ways of promoting the diversion of food scraps from collection via trucks for either disposal in landfills or transport to centralized composting facilities, and serves to connect existing municipal assets of wastewater treatment infrastructure to solve this perplexing challenge in ways that are entirely consistent with the goals of AB32.

Food waste disposers are a ubiquitous “tool” in a high percentage of California’s multi-family housing, and are commonly used in a wide range of food service establishments, including food markets, restaurants, and institutional food services. Food scraps processed via currently installed disposers already divert a significant percentage of material that otherwise would be handled through other means, but are not credited for the environmental benefits. Previous studies by your agency have indicated substantial excess capacity in existing anaerobic digesters at wastewater treatment plants. And biosolids produced by wastewater treatment plants are credited towards diversion by California’s municipalities.

InSinkErator would welcome the opportunity to discuss this topic more fully with agency staff and leadership, sharing a deep and broad range of technical and best practice research from around the world, as cities and states elsewhere examine their options and tools. As one example, InSinkErator recently published a comprehensive life cycle assessment of environmental impacts of a dozen systems for managing food scraps; as a second, earlier this year the UK-based CIWEM updated its Policy Statement carefully examining key aspects of disposer use. Both documents are attached.

Thank you for your consideration of these comments.

(signed)
Kendall Christiansen



Joint State Office

December 8, 2011

Marshall Graham
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025

Re: Proposed Commercial Recycling Regulations

Dear Ms. Graham:

The California Refuse Recycling Council (CRRC) writes to express its support for the Proposed Regulatory Action described in the recent Notice of Proposed Rulemaking, which will amend the California Code of Regulations, Title 14, Division 7, Chapter 9.4 to implement AB 341 (Chesbro) regarding commercial solid waste recycling.

CRRC representatives participated in every stage of the development of these regulations, and we believe them to be consistent with AB 341. Indeed, our support for regulations in substantially this form was critical to CRRC's decision, and the decision of more than 50 of its members, to offer formal letters of support on AB 341.

We urge no further change to the draft regulations, and wish to commend staff for its efforts in developing regulations that appropriately balance a variety of points of view.

Very Truly yours,

Evan W.R. Edgar
Evan W.R. Edgar
Regulatory Advocate

J. Kelly Astor
J. Kelly Astor
Legislative Advocate

ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA
DEL NORTE, EL DORADO, GLENN, IMPERIAL, INYO, LASSEN



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TAG CHAIR – KRISTINA MILLER, TEHAMA COUNTY
TAG VICE CHAIR – GRETCHEN OLSEN, TUOLUMNE COUNTY
PROGRAM MANAGER – MARY PITTO

December 13, 2011

Teri Wion
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025

RE: Proposed Mandatory Commercial Recycling Regulation

Dear Ms. Wion:

On behalf of our twenty-two member counties, the Rural Counties' Environmental Services Joint Powers Authority (ESJPA) would like to express our appreciation to the Department of Resources Recycling and Recovery (CalRecycle) for their efforts to develop regulations to implement the mandatory commercial recycling requirement of AB 341. The ESJPA especially appreciates and supports CalRecycle staff's efforts in recognizing the difficulties faced by rural jurisdictions.

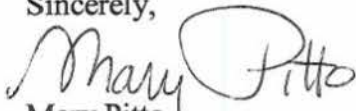
Recycling is significantly limited in rural jurisdictions due to the "small geographic size, low population density or distance to markets". Section §18839 (b) (7) recognizes these circumstances in consideration of a rural jurisdiction's good faith efforts. We suggest that the evaluation of good faith efforts in §18839 (c) also reference the requirements of Public Resources Code (PRC) commencing with Section 41850 that identifies additional parameters related to good faith efforts.

Our counties have expressed concern with the monitoring requirements of Section 18838 (a) (2) and Section 18839 (b) (4). Monitoring of all businesses would require additional staff resources, which is not feasible; especially since most jurisdictions have had to reduce staff during these economic times. It is our understanding that the proposed language in Section 18838 (a), "...each jurisdiction shall implement a commercial recycling program appropriate for that jurisdiction...", is intended to allow jurisdictions to implement programs that meet local needs and work within existing infrastructures and resources. The ESJPA has previously discussed with CalRecycle staff alternative strategies for rural areas that include requesting businesses to self report compliance, phased in implementation, and that a jurisdiction can still achieve compliance or good faith efforts even if it cannot demonstrate that all businesses have been monitored.

The ESJPA has committed to work with CalRecycle staff to assist in the preparation of a model rural commercial recycling program that would satisfy the minimum requirements for consideration of a rural jurisdiction's good faith efforts. We expect that as the recycling market and infrastructure expand making recycling in rural areas more feasible, the overall recycling rates in rural areas will improve, including in the commercial sector.

Again, the ESJPA would like to express our support and gratitude to all the CalRecycle staff for their continued efforts to understand the rural county constraints. We will continue to work with CalRecycle staff and our member counties in the implementation of the mandatory commercial recycling regulations. Thank you for your consideration.

Sincerely,



Mary Pitto
ESJPA Program Manager

- cc: ESJPA Board of Directors
- RCRC Board of Directors
- Caroll Mortensen, Director, CalRecycle
- Howard Levinson, Deputy Director, CalRecycle
- Cara Morgan, Branch Chief, CalRecycle

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December 12, 2011

VIA ELECTRONIC MAIL
climatechange@calrecycle.ca.gov

Teri Wion
California Department of Resources
Recycling and Recovery
P.O. Box 4025, MS-13A
Sacramento, CA 95812-4025

Re: Comments on Proposed Mandatory Commercial Recycling Regulations

Dear Ms. Wion:

We are submitting these comments on behalf of the Contract Services Administrative Trust Fund (Contract Services), a non-profit organization that administers a variety of programs for the benefit of the motion picture and television industry. Contract Services congratulates California on being one of the first states in the nation to enact a statewide program to reduce greenhouse gas emissions by diverting commercial solid waste from landfills. Contract Services strongly supports commercial recycling but urges CalRecycle to adopt a regulation that recognizes the difficulty of recycling at remote locations and which will allow for flexibility to accommodate the entertainment industry's current successful recycling programs.

Contract Services works closely with the Motion Picture Association of America, Inc. (MPAA)¹ and the Alliance of Motion Picture & Television Producers (AMPTP)², which have worked with the entertainment industry for over 20 years to reduce waste and encourage recycling. The MPAA and AMPTP's Solid Waste Task Force (SWTF) is comprised of representatives of the major studios and television networks and was

¹ The Motion Picture Association of America, Inc. (MPAA) serves as the voice and advocate of the American motion picture, home video and television industries from its offices in Los Angeles and Washington, D.C. Its members include: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

² Since 1982, The Alliance of Motion Picture & Television Producers (AMPTP) has been the primary trade association with respect to labor issues in the motion picture and television industry. The AMPTP negotiates 80 industry-wide collective bargaining agreements on behalf of over 350 motion picture and television producers (member companies include studios, broadcast networks, certain cable networks and independent producers).

Teri Wion
December 12, 2011
Page 2

formed in the early 1990s, following the passage of Assembly Bill 939, to address resource conservation and reduce solid waste being sent to landfills. The SWTF member companies voluntarily implement waste diversion programs to reduce the environmental impact of solid waste, as well as assist local government in meeting the mandates of AB 939. SWTF members meet regularly to collaborate on creating additional progressive environmental programs for the entertainment industry.

The industry's waste reduction and recycling program has been very successful. In a Press Release dated August 20, 2011, the MPAA reported that

the major motion picture studios collectively prevented more than 40 million pounds - or 66 percent - of their studio sets and other solid waste from entering landfills last year. That percentage ... is consistent with 2009 levels, and remains the highest figure ever reported by the studios since they began voluntary waste reduction mandates 20 years ago.

A copy of the full Press Release, which includes examples of recycling programs at the various studios, is attached to these comments.

The proposed regulation would not appear to provide any compliance issues for studio operations, but Contract Services is concerned that any regulation that is adopted recognize the logistical problems that may be encountered in location shooting. Location shooting occurs at a location away from studio operations for a short period of time, often a single day. Location shooting can also occur at remote locations that pose additional logistical issues. Studios typically attempt to recycle waste generated during location shooting but at some locations it can be difficult to find a waste vendor that can perform the required source separation. We request that the definition of "business" be amended to exempt from the requirement to contract with a waste hauler with mixed waste processing for waste generation that occurs off-site or that is short-term in duration.

Please call if you have any questions.

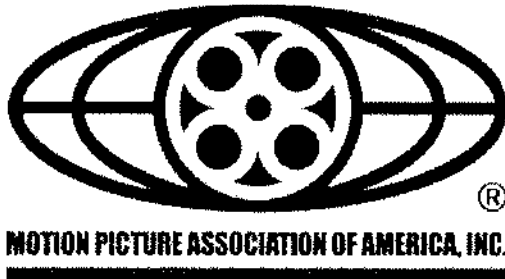
Very truly yours,



Sharon Rubalcava
ALSTON & BIRD LLP

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Enclosure

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FOR IMMEDIATE RELEASE

April 20, 2011

ENVIRONMENT PLAYS A STARRING ROLE IN STUDIO INITIATIVES

Creative Initiatives Reduce Energy Usage and Prevent 40 Million Pounds of Waste from Entering Landfills

LOS ANGELES — In observance of Earth Day, the Motion Picture Association of America, Inc. (MPAA) today announced that the major motion picture studios collectively prevented more than 40 million pounds - or 66 percent - of their studio sets and other solid waste from entering landfills last year. That percentage, according to the Solid Waste Task Force, a joint program of the MPAA and the Alliance of Motion Picture and Television Producers (AMPTP), is consistent with 2009 levels, and remains the highest figure ever reported by the studios since they began voluntary waste reduction mandates 20 years ago.

“Through a sustained commitment to a variety of new and ongoing creative initiatives, the studios are changing procedures across all aspects of their operations to reduce their environmental footprint,” said Senator Chris Dodd, Chairman and CEO of the MPAA. “From green building designs that promote energy efficiency; employee incentive programs; waste reduction measures across the production process; and a sustained commitment to promoting consumer awareness, the studios are continuing to lead the way and defining best practices for business around the world.”

Over the past year, the studios have concentrated their efforts on dramatically reducing single-use and five-gallon bottled water consumption on the studio lots, sets, and offices. Every year, literally tons of un-recycled water bottles wind up clogging landfills and harming our ecosystem. Because plastic is non-biodegradable, bottles end up breaking up into smaller fragments which absorb toxins and contaminate soil and waterways. The studios’ efforts to reduce bottled water consumption has led to positive environmental impacts by eliminating waste from landfills, as well as reducing transportation related emissions from water bottle delivery services.

The following are highlights of the studios’ 2010 environmentally friendly initiatives:

Disney

- Disney’s new 2010 Corporate Citizenship Report (www.disney.com/citizenship2010) reflects company-wide progress toward goals to minimize the studio’s environmental footprint, as well as to inspire kids and families to take action for the planet, including a signature

program, Disney's Friends for Change (FFC). On the FFC website, kids around the world can make personal action pledges to help the environment. Since the FFC's launch in 2009, over 3.5 million kids have committed to help save water, reduce waste, protect habitats and save energy in their communities.

- One of Disney's goals is to eliminate the use of disposable water bottles company-wide in all offices and production sets. Between 2009 and 2010 water bottle purchases at the Disney corporate offices and The Walt Disney Studios have declined 30%.
- Walt Disney Studios Motion Picture Production introduced a new full-time position in 2009, the Environmental Steward, to each of the studios' live-action feature film crews. The Steward is charged with implementing recycling, reuse and best practices across the myriad of crafts on the set. On the set of *John Carter of Mars*, the Environmental Steward distributed reusable water bottles to support the film's goal of being a "case-free" show and motivated the crew to be green by giving special prizes for the best environmental efforts. In an effort to affect positive change beyond the life of the production, the Environmental Steward convinced a local waste vendor to continue recycling programs after production had ended.
- Disney's *African Cats* opens Friday April 22, Earth Day 2011. As of April 11, advance ticket sales for opening week totaled \$1.7 million. Thanks to the "See *African Cats*, Save the Savanna" initiative, Disney's pledge to make a contribution in honor of everyone who sees the film opening week already translates to the protection of more than 9,500 acres of savanna within Kenya's Amboseli Wildlife Corridor. "See *African Cats*, Save the Savanna" continues Disney's conservation efforts, beginning with its first release, *Earth* (2009), which helped support the planting of three million trees in Brazil's Atlantic Forest. The program in support of *Oceans* (2010) helped establish 40,000 acres of marine protected areas in the Bahamas, which contain miles of vital coral reef.

Fox

- In March, Fox parent News Corporation announced the achievement of a major sustainability milestone, becoming the first carbon neutral global media company. To meet this target, set in 2007, News Corporation pursued a three-pronged strategy: first, implementing energy efficiency initiatives within company operations; secondly, sourcing energy from renewable sources; and, finally, supporting carbon credit projects around the world. In conjunction with the achievement, the company set forth a new long-term sustainability vision to guide its future efforts: grow the business without growing its carbon footprint; power the company's operations with clean electricity; minimize solid waste to landfill from production operations; and continue to engage audiences on sustainability issues through partnerships and content of the highest caliber.
- Twentieth Century Fox was one of 24 companies selected by the U.S. Department of Energy (DOE) to be part of a leading-edge initiative that provides technical assistance to improve energy use in commercial buildings. The program leverages public-private partnerships to link commercial building owners and operators with multidisciplinary teams from the DOE's National Laboratories, as well as private sector building experts. Fox's projects, which will achieve energy savings of at least 30%, involve the retrofit of two stages on the lot for cooling and a central cooling plant. The retrofit is expected to be a prototype

for the future retrofit of all the stages on the lot and will serve as a model for other companies.

- As part of FOX's "Green It. Mean It." campaign, the 2010 Teen Choice Awards incorporated a host of eco-friendly elements, going well beyond standard best practices of sustainable sourcing and recycling. The awards show went all-out in its efforts to reduce its impact on the environment, including a red carpet made from recycled soda bottles; a living wall of plants; clean energy innovations like solar panels powering electricity needed for the red carpet (the panels will be donated to local schools); and POWERleap floor pads under the carpet that generated electricity when stepped on. In addition, energy-saving LED and fluorescent lighting lit the press tent area and stage, and power came from biodiesel fuel. In conjunction with the Global Inheritance Tour Rider Program, attendees who took public transportation to the show received a prize with proof of a bus or train ticket.
- The Home Tree Initiative, a partnership between the Earth Day Network and *Avatar*, exceeded its one-million-tree goal for The Avatar Home Tree Initiative with the planting of 1,006,639 trees in 15 countries on six continents in 2010. The project was accomplished through the tireless work of 17 partner organizations and the direct participation of over 31,000 individuals in the massive planting effort.

NBC Universal

- Universal Picture's recent box office hit *Hop* implemented sustainable production practices while making the live action and animated family feature. The entire cast and crew worked together to compost and recycle on location, preventing 34 tons of material (85% of location set waste) from ending up in a landfill. The production provided reusable stainless steel water bottles, preventing the use and waste of over 13,500 plastic bottles, and the sound department used rechargeable batteries, reducing battery usage by 800 batteries. *Hop* is the second film from the Universal Pictures/Illumination Entertainment partnership that has had a strong environmental impact. Last summer's animated *Despicable Me*, implemented a cutting-edge cooling technology which reduced the film's energy use by 47%.
- NBCUniversal has continued its corporate commitment to drive sustainability into every part of its business, helping to significantly reduce the environmental impact of its physical operations. Last year the company launched the EcoOvation Awards which recognize employees who have supported the company's commitment to the environment by promoting, incorporating or innovating green practices within their department and around the company. The EcoOvation Awards showcase the many ways in which sustainability efficiency and innovation techniques can make a substantive difference in every part of the business. More than 100 employees in five countries, across 20 business units have been recognized thus far.
- Universal Media Studios and Universal Cable Production unit -which continue to integrate sustainable practices across all of their shows - recently launched an internal "TV Green Competition" to promote sustainable production best practices. Crews from NBCUniversal's network, cable, and syndication productions competed to drive advances in green operations across their productions. The winning production, *Warehouse 13* (Syfy), implemented a 'Bike to Work' contest which eliminated 217 round trips via car by crew

members; composting and recycling on stage, on location and in the office, and the donation of leftover food. Additionally, by transitioning to reusable water bottles and utilizing water filtration systems on set, Green Screen Toronto estimated that *Warehouse 13* was able to avoid the use of 80,000 water bottles. The TV Green Competitions will be held throughout the year, continuing sustainability awareness and recognition throughout NBCUniversal's television properties.

Paramount

- With completion of Paramount Pictures' Post Production Building scheduled for summer 2011, this new state of the art facility will boast over 85,000 square feet of post production sound and picture editing facilities including mix and broadcast stages, animation and 3D ADR (Automated Dialogue Replacement) stages and will be one of the first post production facilities in the United States with a LEED certified interior. LEED Certification pending.
- Paramount's bottle-less water filtration systems, which were installed in 2009 across the property, have dramatically reduced single-use and five-gallon bottled water consumption on the studio lot. The water dispensers are situated in offices, conference rooms and The Dining Room and have resulted in an 80% reduction in bottled water orders.
- In 2010, Paramount Pictures elected to change its annual holiday lighting on its Hollywood lot from incandescent to LED bulbs. This resulted in reduced electrical consumption from 43,000kwh to under 7,000kwh for the holiday period.
- Paramount Pictures has completed installation of over 100 waterless urinals to replace water-based urinals. This shift will result in 4,000,000 gallons in annual water savings.

Sony Pictures

- Sony Pictures has achieved a solid waste diversion rate of over 90% on its Culver City lot and adjacent buildings as part of its commitment to achieve "zero waste." Recently, the studio completed a closed loop system with compost created from the lot's organic waste composting program delivered back for landscaping and an additional three tons offered to employees for home use.
- Throughout the pantries on the Sony Pictures studio lot, water coolers were installed in place of the traditional five-gallon water dispensers resulting in a savings of about \$80,000 and eliminating approximately 32,000 bottles each year. Sony Pictures is also saving water by using lower flow faucets and toilets, waterless urinals, and drought resistant plants. In 2010, a total of 63,149,900 gallons of water were saved by the Sony Pictures studio lot and nearby offices.
- Sony Pictures Entertainment offers employees hybrid vehicle and home solar purchase incentive programs. These programs offer eligible employees a cash rebate on the purchase of a qualifying hybrid vehicle, and similar programs for installing solar panels on their residence. In addition, robust rideshare, vanpooling and flexible work arrangement programs give employees plenty of options for clean, green commuting. Whether they are carpoolers, bicyclists, walkers, alternative fuel vehicle drivers, or bus riders, the company supports their

actions by giving them access to studio coupons, transit pass discounts, preferred parking, guaranteed emergency rides home, secure bike racks, showers, and more.

- In addition to “matching gift” dollars for environmental donations made by employees, this year, Sony Pictures launched the Greener World Grant Program. Teams of four or more employees can partner with an environmental organization in their community to complete a project or learning opportunity of their choice, and then nominate that charity for a grant of \$7,500 from Sony Pictures.

Warner Bros. Entertainment

- All Warner Bros. Television Group (WBTVG)-produced shows participate in waste reduction through reuse and recycling and incorporate renewable resources such as biodiesel and compostable Crafts Service products. Additionally, *The Big Bang Theory* and *The Mentalist* are participating in a pilot program implementing energy conservation measures that include optimizing equipment settings to reduce energy consumption on hiatus, holidays and during both working and non-working hours. Throughout the season, *The Mentalist* has also set up a hybrid base camp, which includes solar-powered and biodiesel-fueled generators, while on locations. *The Mentalist* is the first domestically-produced television show to run a base camp on solar energy.
- All Warner Bros. Pictures productions use a carbon calculator to measure the footprint of each production. On-set sustainability coordinators are employed to help implement and measure sustainable production initiatives. Based on carbon calculator measurements, nine of the studio's last 25 films were carbon neutral; *Due Date*, *Flipped*, *Green Lantern*, *Going The Distance*, *Jonah Hex*, *Sucker Punch*, *Valentine's Day*, *Inception* and *The Town* all purchased carbon credits to offset their carbon emissions. Cast and crew on 18 out of the studio's last 25 films utilized reusable water bottles, leading to an estimated savings of approximately 320,000 disposable plastic water bottles. Additionally, four films (*Jonah Hex*, *Inception*, *Valentine's Day* and *Crazy Stupid Love*) employed solar energy to power production base camps.
- Warner Bros. Studios encourages employees to choose reusable water bottles in place of disposable water bottles. In 2009, Warner Bros. Studio Facilities (WBSF) successfully tested reverse osmosis (RO) water filtration systems at select locations. RO systems are now being incorporated into renovations and new construction projects. Ultimately, the goal is to install water filtration systems in all plumbed locations that currently use five gallon water bottle stations. RO provides clean, filtered water on site and on demand, reduces the need for remote sourcing and production of water bottles (five gallon and half liter) and reduces traffic and transportation related emissions from ongoing water bottle deliveries.

About the Solid Waste Task Force

The Solid Waste Task Force (SWTF), comprised of the major studios and television networks, was formed in the early 1990s, following the passage of Assembly Bill 939 in 1989, to address resource conservation and reduce solid waste being sent to landfills. The SWTF member companies voluntarily implement waste diversion programs to reduce the environmental impact of solid waste, as well as assist local government in meeting the mandates of AB 939. Today, SWTF members meet regularly to collaborate on creating additional progressive environmental programs.

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