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2084	Ajise, Kome, Southern California Association of Governments	Whether CalRecycle provides financial assistance or grant funding to cities in order to meet SB 1383 requirements?	Refer to Public Resources Code Section 42652.5(b) which states that a local jurisdiction may charge and collect fees to recover the costs associated with complying with these regulations.
2085	Ajise, Kome, Southern California Association of Governments	Is composting a better aerobic process than landfills in reducing or preventing the release of methane emissions during organic matter breakdown, and scientifically, what is the difference in methane emissions between storing compost above or underground?	Yes, composting and other means of recycling are better than disposing of organic waste. Landfilling organic waste is not an aerobic process and leads to the creation of methane. Landfill's create methane, while some landfills may capture some of the methane the create, as required by existing regulations, they do not "store methane underground."
2086	Ajise, Kome, Southern California Association of Governments	That there is a lack of current infrastructure to accept organic waste for composting, and there would be increased local costs associated with meeting the new state-mandated requirements under SB 1383.	"Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: "The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new mixed waste processing systems provided that the receiving facilities demonstrate they are capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements." The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: "With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of material. For example, metals, paper, and plastics are remanufactured through distinct processes (e.g. metal is smelted, paper is pulped and washed). Largely because of this, while material may be valuable as a homogenous commodity, it can become difficult or impossible to recycle when it is contaminated with other materials (e.g. many materials lose their value when they are commingled with other materials.) This principle holds true, and is perhaps more of a factor in the recovery of organic waste. Required source-separation of organic waste helps ensure that organics are kept clean, separate and recoverable. However; throughout the informal regulatory engagement process stakeholders raised concerns about potential costs associated with providing commercial and residential generators with a third container to source separate organic waste. Stakeholders also noted that several cities and counties implement single container collection services and process all the collected material for recovery. Stakeholders argued that allowing the use of a single-container collection system is a

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			viable and cost-effective alternative that can help the state meet that statutory organic waste recovery targets. To respond to stakeholder requests for additionally flexibility CalRecycle crafted this section and Section 18984.2. These sections allow alternatives to providing a three-container source-separated organic waste collection service. Under these section jurisdictions are allowed to require their generators to use a service that does not provide the generators the opportunity to separate their organic waste for recovery at the curb. In order to ensure that the state can achieve the statutory organic waste reduction targets, these collections services are required to transport the containers that include organic waste to high diversion organic waste processing facilities that meet minimum organic content recovery rates (content recovery rates are specified in Subdivision (b) of this section)…" The commenter has stated in each comment period, that they believe the requirement to recover 75 percent of the organic content collected in these mixed waste collection services is unrealistic and infeasible. In turn CalRecycle staff repeatedly communicated to the commenter that the recovery targets cannot be lowered without compromising the integrity of the regulations. This was further documented for this commenter and the public in the ISOR: "These minimum recovery rates are necessary because when the opportunity to recover material through source separation is lost, the state must ensure that minimum recovery levels are met at processing facilities. While this section provides additional flexibility to jurisdictions, CalRecycle must consider its obligation to ensure that the regulations are designed to achieve the statutory targets. If 100 percent of jurisdictions employed this collection option in 2022 the state could not meet the mandatory recovery target of 50 percent unless at least 50 percent of the organic waste collected from these services is recovered. Similarly, if 100 percent of jurisdictions employed this collection option in 2025 the state could not meet the mandatory recovery target of 75 percent unless 75 percent of the organic waste collected from these services is recovered. Therefore, in order to meet the recovery targets specified in statute and the state's ultimate climate goals the recovery standards included in this section are the minimum standards necessary. As generation of organic waste increases with population growth, these minimum recovery rates may need to be revisited. As stated previously the organic waste reduction targets are linked to a 2014 baseline of 23 million tons. This requires the state to dispose of no more than 5.7 million tons by 2025. If, as CalRecycle projects, generation increases to 26 million tons of organic waste by 2025, recovering 75 percent of 25 million tons will only reduce disposal to slightly more than 6 million tons, resulting in the state missing its organic waste recovery targets. The need for this rate increase could be mitigated if higher recovery rates are achieved through source separation, or if efforts to increase source reduction through food recovery and other methods are successful. However, the recovery rates established in this regulation should be considered an absolute minimum." CalRecycle has, prior to and during this rulemaking, communicated that the recovery efficiency requirements established in the regulation is the minimum level that the statute can tolerate. The commenter suggests existing infrastructure that cannot meet this standard should be "protected" or provided a "safe-harbor." The commenter requests changes in the proposed regulations that cannot be reconciled with the statutory targets because CalRecycle finds that it cannot propose a

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			regulation consistent with a statutory 2025 target that permits an unknown portion of the state from implementing the requirements necessary to achieve that target. CalRecycle acknowledges the role of existing infrastructure and acknowledges that previous investments in infrastructure were consciously made to achieve targets that were established prior to the adoption of SB 1383. However, the legislative direction in SB 1383 is unmistakably clear. The Legislature required CalRecycle to adopt regulations to achieve mandatory organic waste reduction levels. Nothing in the regulations prevents facility operators or jurisdictions from investing in facility upgrades or adapting existing facilities to process waste in a manner that meets the minimum regulatory requirements. Comment noted. CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. The provisions of Section 40004 are general legislative findings and declarations applying to the AB 341 (2011) mandatory commercial recycling program and not specific, affirmative legal requirements CalRecycle is required to adhere to in the proposed regulations. SB 1383 contains specific mandates on organic waste diversion that CalRecycle is required to observe in this rulemaking. The findings and declarations in Section 40004 recognize that adequate processing and composting capacity are essential for diversion and disposal reduction. CalRecycle does not dispute this necessity. But CalRecycle is also more specifically subject to the findings and declarations in SB 1383 (2016, PRC Section 42652) that state that the disposal reduction targets in SB 1383 are essential to achieving the statewide recycling goal of 75% in PRC Section 41780.01 and that significant investment is required to meet these goals and that state and local funding mechanisms are needed to support this expansion. The Legislature acknowledges in this section that infrastructure investment and capacity is a central issue to the success of SB 1383. Since the specific controls the general and the more recent statute controls under common rules of statutory construction, CalRecycle does not find a conflict with Section 40004. Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA).

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			CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
2087	Ajise, Kome, Southern California Association of Governments	That Southern California Edison renewable energy contracts already successfully capture methane from existing landfills.	Comment noted. The statute requires CalRecycle to adopt regulations to reduce the disposal of organic waste in landfills.
2088	Ajise, Kome, Southern California Association of Governments	That it would be more cost-effective for CalRecycle than for local governments to undertake the responsibility of education.	CalRecycle is providing educational materials to local jurisdictions and conducting a statewide educational campaign.
2089	Ajise, Kome, Southern California Association of Governments	That the City of Culver City is implementing this program and does not have an issue with implementing SB 1383.	Comment noted. The commenter is not requesting a change in the regulation.
2000	Allen, Rebecca, N/A	A large concern I have is with the public's awareness, education, and compliance with these new regulations, especially in relation to contamination. While I am well aware of the need for and benefits from diverting organics, and fully support the need, this is not a subject that the vast majority of our residents/business owners are familiar with. I understand the proposal calls for local outreach and education, and clear signage and messaging on all bins/containers. But 30 years in to mandated recycling, the general public is still uneducated on what can and cannot go into their recycling bins which results in higher percentages of contamination. I would argue that stakes are even higher for organics, as a variety of "unnatural" or hazardous materials could make its way into the organics waste stream. I believe that beyond the local justifications requirement on education and awareness, the state needs to take on some of the responsibility of education ALL Californians as to why this is so important and what the requirements are for them.	CalRecycle is providing educational materials to local jurisdictions and conducting a statewide educational campaign.
15;0097	Astor, J., California Refuse Recycling Council Southern District	Our communication on these regulations summarizes various concerns and comments shared by the members of the California Refuse Recycling Council, Southern District (CRRC SD). Our members range from small, privately owned enterprises, to several of the world's largest waste management firms. Collectively, CRRC Southern District members serve a majority of the state's population, and in so doing, operate virtually every form of solid waste management, recycling and composting facility and program now in existence. As committed recyclers and composters, our members share in the state's waste reduction and climate change	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.

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		objectives, though we may have different views on how best to accomplish those goals. The CRRC Southern District is comprised of the California counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, San Luis Obispo, Tulare, and Riverside. It is home to approximately 26 million residents, or some 67% of the state's population. CRRC SD members have expended billions of dollars in delivering recycling and composting services to these communities. No other stakeholder can claim the same level of investment in (or commitment to) waste recycling. The California Refuse Recycling Council, Southern District, is pleased to offer the following comments on the proposed changes to the draft regulations referenced above:	
15;0098	Astor, J., California Refuse Recycling Council Southern District	We hereby incorporate by reference each and every comment contained in all of our prior testimony and correspondence on this issue including, without limitation, written communications dated July 21, 2017, September 15, 2017, November 20, 2017, March 12, 2019, and July 17, 2019. Accordingly, we respectfully submit this letter with the understanding and express intention that all of our prior communications, including the matrix submitted with the July 17, 2019 correspondence making significant recommendations and language changes that remain unaddressed in this current formal draft, be incorporated by reference and deemed a part of this filing for consideration and response. We further hereby incorporate by reference each and every comment contained in all prior correspondence submitted by Kelly Astor on this issue including, without limitation, his letters written on behalf of certain CRRC Southern District member associations dated, respectively, July 17, 2017, September 15, 2017, November 20, 2017 and July 17, 2019. We want to renew our prior observations and concerns with this expensive and prescriptive approach taken to implement SB 1383 (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383), and we encourage consideration of many prior recommendations and suggested language requests that were thoughtfully provided by us with outreach to respected experts, local government officials and industry leaders that have a strong foundation in how to manage the waste streams, as well as how to develop and sustain markets in their jurisdictions.	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.
15;0099	Astor, J., California Refuse Recycling Council Southern District	In each of our prior communications with CalRecycle, we have shared a number of concerns with this rulemaking, chiefly with respect to its impact on existing recycling facilities and programs Another primary concern has been the failure of the draft regulations to make any allowance whatsoever for the vital role that markets play in the successful operation of a recycling facility or program, despite lessons learned from China's National Sword export policy. A third concern has been with the multi-billion dollar cost that CalRecycle's own analysis projects this rulemaking will entail (and we believe your estimate dramatically understates the true cost). The	Comment noted. CalRecycle disagrees that the cost presented in the SRIA, and the subsequent estimates provided in the Appendix to the ISOR, "vastly underestimate the true cost of implementation." In the Appendix, CalRecycle presented a cost sensitivity of three scenarios. Each scenario is based on a projected disposal level. CalRecycle projected cost based on the most conservative projections of disposal (highest estimates of disposal and required recover of 289 million tons). CalRecycle also provided cost sensitivity for the economic value of recycled commodities and costs for transporting recovered material to market. CalRecycle relied upon the most conservative estimates for each of these sensitivity analyses (the highest estimate of

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		breathtaking nature of these regulations and the undue hardship they create for local governments, our industry and the communities we serve, particularly underserved communities, without commensurate program or policy benefits cannot be overstated. None of these larger issues have been properly addressed in prior drafts of these regulations. The latest draft is no different; while it does represent a modest improvement over the prior draft in certain limited respects, most of the larger issues have once again been bypassed, with little or no regard for the disaster that is likely to follow. We would be remiss if we didn't also note that some of the revisions to this draft create further confusion and seem to undermine other attempts to improve the regulations. A case in point is the container contamination minimization changes that appear to remove an option for a high-performance jurisdiction to choose route reviews or waste evaluations. It is inconsistent with Article 17 which was added to provide an alternative pathway. It too has become unworkable with the complexity built into the regulations. We will outline a few additional specific recommendations to accompany our prior language suggestions and comments. (Please also see the addendum to this letter, Comments on Changes in Regulatory Text.)	transportation costs and lowest value for recycled commodities). The general comment that CalRecycle understates costs was made by several commenters but failed to specify how costs were underestimated or recommend an alternative method for estimated costs. Regarding comments that cite specific areas where the commenter believes costs are underestimated, those comments are addressed in separate responses. Comment noted that the regulations fail to make any allowance whatsoever for the vital role that markets play in the successful operation of a recycling facility or program. Comment noted. CalRecycle disagrees that route reviews are appropriate for performance-based source separated collection services. The requirement for jurisdictions providing these services to perform waste evaluation studies section is necessary to ensure that a substantial amount of organic waste is not incidentally or intentionally disposed of in the gray container. Twenty five percent was established as a threshold to mirror the 75% intent and the threshold established in statute. Absent this requirement, a jurisdiction would only be implementing a performance-based source separated organic waste collection system and generating 100 tons of organic waste would only need to send the material collected in the green container to a facility that can recover 75 percent of the material in the green container. If the jurisdiction only collects 50 tons of organic waste in the green container and sends it to a facility that recovers 75 percent of that material, up to 50 tons could be sent directly to disposal in the gray container. Removing this section would compromise the state's ability to achieve the organic waste reduction targets. Further, jurisdictions implementing a performance-based source separated organic waste collection system, are not subject to the strict education and outreach requirements prescribed in Article 4. This exemption is premised on the jurisdiction's existing education programs being sufficient to meet or exceed the state's minimum standards. The organic waste threshold measured in the gray container is a key indicator of efficacy.
15;0100	Astor, J., California Refuse Recycling Council Southern District	The communities we serve will suffer from this regulatory effort. Those residing in rural or remote areas of larger counties that do not meet the "rural" definition in the regulations (because these counties also include a large urban area) are being held to an impossible standard. Surely, they are no less deserving of the relief the regulations afford smaller, completely rural counties. In many cases these same communities are located in arid areas that generate very little organic waste. Frequently they are home to an economically disadvantaged populace. Few opportunities to process organic materials exist locally. The regulations do not make appropriate allowance for any of this. We framed several concerns in our prior communication related to these disadvantaged communities and our concerns that other statutes and regulations which are central to reducing emissions of greenhouse gases are not being reconciled and incorporated in this regulation. We have urged using the current tools available to address these communities and "do no harm" to them from an environmental and economic perspective. We continue to request a two-tiered approach to this regulation and an alternative pathway for those disadvantaged	CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than 5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the following to be eligible would impact organic waste disposal: 1) cities with disposal of less than

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		communities. As was stated above, Article 17 was purportedly added to provide an alternative pathway, but it is cumbersome, labor intensive, does not seem realistic for many of our members, and expensive which undermines the stated purpose of the inclusion in the last regulatory draft.	5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA's definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile but which are located within a census tract with greater than 50 people per square mile; and 7) rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383. Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection.

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			Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals. Comment noted. It is unclear from the comment what statutes and regulations the proposed regulations are in conflict with.
15;0101	Astor, J., California Refuse Recycling Council Southern District	In addition, there has been a lack of transparency and open input into studies for SB 1383 that have been contracted out that will further exacerbate the problems in low income disadvantaged communities. These contracts include the 2020 Disposal-Based Waste Characterization Study (https://www2.calrecycle.ca.gov/Contracts/Advertisement/1769), the 2020 Commercial Generator-Based Edible Food Waste Characterization Study (https://www2.calrecycle.ca.gov/Contracts/Advertisement/1771), the California Packaging and Organics Recycling Campaign (https://www2.calrecycle.ca.gov/Contracts/Advertisement/1744), and the SB 1383 Ordinance Tools (https://www2.calrecycle.ca.gov/Contracts/Advertisement/1712) study. By not weaving community and stakeholder input into these contracts, you violated the tenets of what the California Air Resources Board and the Legislature are attempting to do under AB 617 (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB617) and other mandates to accommodate the disproportionate burden on disadvantaged communities.	The comment is not accurate or germane to the rulemaking. However, the department notes that the specific contracts cited in the letter were subject to a public approval processes. The department notes that the author of the comment, as well as several members of the organization the author represents, currently serve on a resource group providing feedback on one of the cited contracts.
15;0102	Astor, J., California Refuse Recycling Council Southern District	Urban communities are no less insecure. In complete disregard of the instruction set forth in Pubic Resources Code Section 40004 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=40004.&lawCode=PRC), these regulations threaten the continued existence of much of the existing Material Recovery Facility (MRF) network that has arisen in more populated areas. Several confront the very real possibility that they will be prematurely shuttered or will be deprived of critical waste flow because they are unable to meet the unrealistic performance standards these regulations impose. It matters not that they are operating precisely as designed and are performing a critical AB 939 (Sher, The Integrated Waste Management Act) diversion function. Rather than instill confidence in facility developers who might wish to contribute in constructing the 100 new facilities that CalRecycle itself has said will be required, you are instead sending a signal that no facilities are safe from the prospect of a sudden change in course. This is a detrimental signal to be sending at a time when further statutory and regulatory initiatives are contemplated. Your indifference to these effects on facility operation and development is difficult to understand, particularly when one considers the language of SB 1383 itself. The legislation specifically directs CalRecycle to provide a report to the Legislature, by July of 2020, on (i) the status of new organics recycling infrastructure development, (ii) the progress in reducing regulatory barriers to the siting of organics recycling infrastructure, and (iii) the status of markets for the products generated by organics	The provisions of Section 40004 are general legislative findings and declarations applying to the AB 341 (2011) mandatory commercial recycling program and not specific, affirmative legal requirements CalRecycle is required to adhere to in the proposed regulations. SB 1383 contains specific mandates on organic waste diversion that CalRecycle is required to observe in this rulemaking. The findings and declarations in Section 40004 recognize that adequate processing and composting capacity are essential for diversion and disposal reduction. CalRecycle does not dispute this necessity. But CalRecycle is also more specifically subject to the findings and declarations in SB 1383 (2016, PRC Section 42652) that state that the disposal reduction targets in SB 1383 are essential to achieving the statewide recycling goal of 75% in PRC Section 41780.01 and that significant investment is required to meet these goals and that state and local funding mechanisms are needed to support this expansion. The Legislature acknowledges in this section that infrastructure investment and capacity is a central issue to the success of SB 1383. Since the specific controls the general and the more recent statute controls under common rules of statutory construction, CalRecycle does not find a conflict with Section 40004. Comment noted. The comment is not germane to the text and documents released for comment. CalRecycle is aware of its statutory obligation to analyze the progress the state has made toward achieving the targets of SB 1383 by July 2020. The proposed regulations contain provisions in Section 18995.4 and 18996.2 allowing delayed enforcement of penalties for extenuating circumstances, including for organic waste infrastructure deficiencies. Under 18996.2, enforcement of penalties may be delayed for up to three years if the standards of that section are met.

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		recycling facilities. The Legislature clearly understood the relationship of these factors to achieving the bill's organics management objectives. This report is due in a mere eight months on July 1, 2020. As you must know, facility development (including the expansion of existing facilities) takes several years, and organics facilities more so due to the need for control measures to address air emissions and water quality concerns. It is fair to say that we already know, today, that the need for additional infrastructure will not be met in time. Under these circumstances, we submit that it would be appropriate for the regulations to include a provision temporarily staying, or suspending, enforcement against a facility operator or local agency IF CalRecycle's report concludes that there has been inadequate progress in these areas. At that point, as SB 1383 also expressly contemplates, CalRecycle can then "include incentives or additional requirements in the regulations…to facilitate progress towards achieving the organic waste reduction goals to 2020 and 2025."	
15;0103	Astor, J., California Refuse Recycling Council Southern District	In their current form, the regulations provide little in the way of incentives. In fact, they actually run in quite the opposite direction. Incentives can, and should, come in a form other than merely the threat of sanction. Further, to the extent that the statute may include unrealistic goals or may otherwise be in need of refinement, your department, as the governmental agency most knowledgeable in this policy area, is best positioned to communicate this need to the Legislature. Indeed, SB 1383 (at Public Resources Code Section 42653(b) (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=42653.&lawCode=PRC)), specifically contemplates the submission of recommendations to the Legislature by CalRecycle following consultation with stakeholders.	Comment noted. CalRecycle has adopted requirements within the scope of its regulatory authority that are necessary to achieve the statutory reduction targets. CalRecycle has sought to build incentives and performance based alternatives into the reg wherever feasible. Comment noted about the targets.
15;0104	Astor, J., California Refuse Recycling Council Southern District	This regulatory process has at least been valuable to the extent that it provided a forum for stakeholder input. In that sense, you already have consulted with stakeholders. The failure here has not been one of process, but rather one of sufficient progress within the process you established. Thank you for the opportunity to comment again on the proposed regulations, and please contact any of the undersigned if you have questions or to request further information. We stand ready to assist you in achieving the goals established in SB 1383. Please see the addendum attached to this letter for additional comments on the text, and we have attached our prior correspondence for your ease of review.	Comments noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.
15;0105	Astor, J., California Refuse Recycling Council Southern District	The comments in this document include specific comments and recommendations for changes in regulatory text in the October 2 proposed regulations. These comments are an addition to the numerous specific comments and suggested language modification that CRRC Southern District has already filed on these proposed regulations that have not been addressed in principle or with specifics. Most recently these suggested modifications can be found in the Comment Matrix from the CRRC Southern District letter dated July 17, 2019. This matrix included detailed line by line recommendations. Please consider those comments as	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.

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		refreshed for this filing, and the additional comments below are reinforcement to those comments and new issues that were noted in the October 2 regulatory language changes.	
15;0106	Astor, J., California Refuse Recycling Council Southern District	Article 1. Definitions 1.Comment: The definitions are always of great importance in regulations, and we have consistently requested alignment with other statutes in the Public Resources Code and have appreciated the improvement in this section. We continue to flag our numerous requests made in the July 17th matrix as unresolved; and some new issues, such as 31.5 “Hauler route,” has added confusion, rather than clarity, and it is not clear what type of routes are anticipated with this definition.	CalRecycle added a definition of ‘hauler route.’ Section 18984.5 requires jurisdictions to minimize contamination of organic waste containers by either conducting route reviews or conducting waste evaluation studies on each hauler route. The term “hauler route” is key to the jurisdiction’s compliance with these requirements because it describes where the jurisdiction should direct its contamination minimization efforts in order to increase detection of container contamination by generators. What constitutes a “hauler route” is dependent upon the designated itinerary or geographical configuration of the jurisdiction’s waste collection system. For example, a jurisdiction’s collection system may consist of one continuous itinerary or series of stops that services both commercial generators and residential generators for garbage, dry recyclables and organics or the system could be divided into two or more itineraries or segments based on each type of generator and/or material type collected. This section is necessary to maximize detection of container contamination so that the jurisdiction’s education and outreach and/or enforcement efforts can be targeted to the generators serviced along the affected routes, thereby reducing contamination and increasing the recoverability of organic waste.
15;0107	Astor, J., California Refuse Recycling Council Southern District	In our July 17th CRRC Southern District letter we also raised concern with the implementation phase of the AB 901 (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB901) regulation which is just now underway and the SB 1383 regulation incorporating some of the AB 901 definitions without real transparency to the public or an understanding of how the two regulations will work together. The layering of these regulations is creating further confusion, especially since AB 901 has some aspects now pending in court (West Coast Chapter of the Institute of Scrap Recycling Industries (ISRI) vs. Scott Smithline Director California Department of Resources Recycling and Recovery, case No. 2019-00257463). Additionally, this concern has come to fruition – an example involves the recently released organic waste types identified in AB 901 and published (https://www.calrecycle.ca.gov/swfacilities/rdreporting#References) (RDRS Material List). This is a voluminous list, and it is not practical or logistically possible for our many varied facilities to conduct the sampling anticipated in this regulation.	Comment noted. Commenter is describing conditions that may influence the implementation of the regulations but is not suggesting a particular regulatory language change.
15;0108	Astor, J., California Refuse Recycling Council Southern District	Article 3. Organic Waste Collection Services Section 18984.5. Container Contamination Minimization Regulatory Text (f) For the purposes of demonstrating compliance with 18998.1, organic waste that is textiles, carpet, hazardous wood waste, human waste, pet waste, or material subject to a quarantine on movement issued by a county agricultural commissioner, is not required to be measured as organic waste. 2. Comment: The newly revised section 18984.5(f) above does not include non-compostable paper in the same type of list. In addition, section 17409.5.7(c)(3) says, “remove any remnant organic material” but should qualify that to exclude	Comment noted. The omission or inclusion of non-compostable paper was intentional and specific for each section based on the purpose of the measurement and when the measurement occurs in the waste handling process. Non-compostable paper is still an organic waste. Paper is organic whether it is coated in plastic or other non-compostable material. Paper additionally constitutes a significant portion of the waste stream. With respect to Section 18984.5(f), including non-compostable paper in this section (as an organic material that is not required to be measured as organic waste in a gray container evaluation) would encourage the continued disposal of this material, and would discourage jurisdictions and haulers from identifying recovery solutions for this material. If jurisdictions are unable to find

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		non-compostable organic wastes so that a reasonable evaluation can be made on gray waste container streams. The previously written sections 17867(a)(16)(F) and section 18982(55)(B), however, list non-compostable paper as a material that may not be measured as organic waste. Please reconcile these and any other related sections so as not to have non-compostable organic waste count against compliance with the regulations.	methods to recovery non-compostable paper, they may consider options to prevent its introduction into their waste stream in the first place, rather than solely relying on collection and recovery. Including non-compostable paper in this section would encourage the continued disposal of a significant source of organic waste. With respect to Section 17409.5.7(c)(3), the gray container waste evaluations are not jurisdiction-specific. The evaluations will provide critical data that will inform policy making for jurisdictions and the state by providing data on organic waste that is still collected in gray containers in jurisdictions. Jurisdictions that implement a three-container organic waste collection service are required to prohibit the placement of organic waste in the gray container unless the jurisdiction specifically transports the gray container to a high diversion organic waste processing facility thar recovers 75 percent of the organic content in the gray container. This data will reveal general levels of regulatory compliance, as well as inform the department on the progress toward achieving the SB 1383 targets. Excluding non-compostable paper from this measurement would distort the amount of organic waste identified as being disposed. With respect to Section 17867(a)(16), these measurements are performed by composting facilities evaluating the organic content of the residuals that are sent to disposal. Non-compostable paper should not be received at compost facilities and should not be included in the composting process. Non-compostable paper is allowed not to count against the measurements compost facilities perform as doing so would penalize the facility for removing a non-compostable contaminant from the composting process. With respect to Section 18982(a)(55)(B), this section does not state that non-compostable paper does not need to be measured as organic waste. This section states that non-compostable paper shall be considered a prohibited container contaminant if it is included in the green container. 18982(a)(55)(B) does not state that those materials are allowed in the gray container. Allowances for the collection of organic waste in the gray container are made in the organic waste collection requirements in Article 3. The construction of 18982(a)(55)(D) specifies that paper products, which includes non-compostable paper, may be collected in the blue container. In other words, non-compostable paper should not be collected in the blue container for recovery, it should not be collected in the green container, and it should only be collected in the gray container if the jurisdiction hauls the gray container to a high diversion organic waste processing facility.
15;0109	Astor, J., California Refuse Recycling Council Southern District	Article 12. Procurement of Recovered Organic Waste Products Section 18993.1. Recovered Organic Waste Product Procurement Target Regulatory Text (f)(2) Renewable gas used for transportation fuel for ~~transportation,~~ electricity, or heating applications.~~, or pipeline injection.,~~ 3. Comment: By eliminating "pipeline injection" on page 55 of the proposed regulation, this provision does not work. By omission, CalRecycle staff has eliminated the means of transport, conveyance or delivery of liquid or gaseous renewable gas. The language should read: (f)(2) Renewable gas used for fuel for transportation, electricity of heating applications shall be conveyed or transported via pipeline injection or distributed delivery.	CalRecycle deleted pipeline injection as an eligible procurement option in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. Renewable gas facilities will still be able to inject gas into the pipeline, but the language revision clarifies that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target.

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		It is our understanding that if there is no delivery system for renewable gas, it has no use. Case in point, that is why we fire off gas at landfills and publicly owned treatment works (POTWs), etc.	
2067	Ball, Julie Malinowski, CA Biomass Energy Alliance	The California Biomass Energy Alliance (CBEA) submits these comments on the proposed changes to the Organic Waste Reduction Regulations issued pursuant to SB 1383. CBEA previously provided comments only on Article 12 related to procurement requirement. CBEA (1) supports the proposed changes to Article 12, (2) has one additional suggested revision. In Section 18993.1(i)(1) CBEA requests an amendment that removes the exclusion of chipping and grinding operations or facility as defined in Section 17852(a)(10) as qualifying feedstock to a biomass conversion facility. As the SB 498 report indicates, California's biomass plants take in over a million tons of urban wood waste. More than half of that is coming from chipping and grinding 17852(a)(10) permitted facilities. Chippers and grinding operations are a cheaper alternative to landfill disposal of clean urban wood waste. These processors take the material for less than a landfill, sorts, processes and sells it to end users such as biomass. Not all this clean green material is being used as an end product or recycling feedstock. Currently, what they cannot sell is landfilled. Furthermore, while there are other end uses for the wood waste that chippers and grinders process, such as compost and landscaping, none of those alternatives can absorb the volumes of material that biomass conversion facilities would no longer take if chippers and grinders are unable to qualify under this regulation. Ultimately even more clean green material from chippers and grinders would end up in the landfill. Such an outcome is directly counter to the stated goal of this regulation. CBEA urges you to remove the exception of licensed chipping and grinding operations from the current draft proposal. It is damaging and disruptive to the waste disposal infrastructure and provides no benefit to the state or CalRecycle's stated goals. Alternatively, if more information is needed to verify the limited end users, this regulation should keep the door open for material from chippers and grinders so that they earn their eligibility through additional reporting and/or data collection. Referencing your intention to work on this further in the Final Statement of Reason would appropriately acknowledge work is still needed on this issue.	CalRecycle disagrees with the comment. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling "green material". "Green material" is defined in 17852(21) as "any plant material except food material and vegetative food material that is separated at the point of generation…", which in turn is defined in 17852(35) as "material separated from the solid waste stream by the generator of that material." Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.
5014	Barnes, K., City of Bakersfield	There is some inconsistency between new blue underlined text of the current draft and some older text from a previous draft, relative to what materials are to be counted or not counted as organic waste when container contaminants are measured. Specifically, previously written sections 17867(a)(16)(F) and section 18982(55)(B) list non-compostable paper as a material that may not be measured as organic waste, but the newly revised section 18984.5(f) does not include non-compostable paper in the same type of list.	Comment noted. The omission or inclusion of non-compostable paper was intentional and specific for each section based on the purpose of the measurement and when the measurement occurs in the waste handling process. Non-compostable paper is still an organic waste. Paper is organic whether it is coated in plastic or other non-compostable material. Paper additionally constitutes a significant portion of the waste stream. With respect to Section 18984.5(f), including non-compostable paper in this section (as an organic material that is not required to be measured as organic waste in a gray container evaluation) would encourage the continued disposal of this material, and would discourage jurisdictions and haulers from identifying recovery solutions for this material. If jurisdictions are unable to find

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			methods to recovery non-compostable paper, they may consider options to prevent its introduction into their waste stream in the first place, rather than solely relying on collection and recovery. Including non-compostable paper in this section would encourage the continued disposal of a significant source of organic waste. With respect to Section 17409.5.7(c)(3), the gray container waste evaluations are not jurisdiction-specific. The evaluations will provide critical data that will inform policy making for jurisdictions and the state by providing data on organic waste that is still collected in gray containers in jurisdictions. Jurisdictions that implement a three-container organic waste collection service are required to prohibit the placement of organic waste in the gray container unless the jurisdiction specifically transports the gray container to a high diversion organic waste processing facility thar recovers 75 percent of the organic content in the gray container. This data will reveal general levels of regulatory compliance, as well as inform the department on the progress toward achieving the SB 1383 targets. Excluding non-compostable paper from this measurement would distort the amount of organic waste identified as being disposed. With respect to Section 17867(a)(16), these measurements are performed by composting facilities evaluating the organic content of the residuals that are sent to disposal. Non-compostable paper should not be received at compost facilities and should not be included in the composting process. Non-compostable paper is allowed not to count against the measurements compost facilities perform as doing so would penalize the facility for removing a non-compostable contaminant from the composting process. With respect to Section 18982(a)(55)(B), this section does not state that non-compostable paper does not need to be measured as organic waste. This section states that non-compostable paper shall be considered a prohibited container contaminant if it is included in the green container. 18982(a)(55)(B) does not state that those materials are allowed in the gray container. Allowances for the collection of organic waste in the gray container are made in the organic waste collection requirements in Article 3. The construction of 18982(a)(55)(D) specifies that paper products, which includes non-compostable paper, may be collected in the blue container. In other words, non-compostable paper should not be collected in the blue container for recovery, it should not be collected in the green container, and it should only be collected in the gray container if the jurisdiction hauls the gray container to a high diversion organic waste processing facility.
5015	Barnes, K., City of Bakersfield	In addition, section 17409.5.7(c)(3) says, “remove any remnant organic material” but should qualify that to exclude non-compostable organic wastes so that a reasonable evaluation can be made on gray waste container streams. Please reconcile these and any other related sections to not have non-compostable organic waste count against compliance with the regulations.	A change to the regulatory text is not necessary. Remnant organic material is defined in Section 17402(a)(23.5) and is the organic waste collected in the gray container, as part of a three-container organic waste collection system.
15;0110	Bell, K., County of Placer	Comment 15;0110 is a spreadsheet that appears to be an analysis of whether or not the commenter’s input during prior comment periods was reflected in changes to the regulatory language reflected in the October, 2019 draft.	Comment noted. The comment does not suggest changes to the regulatory language or provide specific input on how the agency followed the APA process, but is instead akin to notations on what changes were made in the October, 2019 draft.
3000	Bell, K., County of Placer	Section 18982 The proposed definition is both impractical and inconsistent with existing definitions of the same term. As stated during the pre-rulemaking workshops and comments, we strongly believe that the definition of “organic waste” should be consistent to reduce operational confusion. We do not think the	Comment noted. The definition of organic waste employed in these regulations is specific to the purpose and necessity of this regulation. Regulations adopted by other agencies or codified in other portions of statute, can employ a different definition for a different purpose. Comment noted. Article 11 uses a narrower definition of organic waste that aligns with existing planning

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		definition should include items like organic textiles and carpets, biosolids, digestate, and sludges because many of these materials are later defined as “prohibited container contaminants” and that also should not be measured as organic waste per 17867(a)(16)(e).	requirements which jurisdictions must engage in to plan for organic waste capacity. Comment noted. CalRecycle disagrees that the definition of organic waste is too broad, or should be limited to the types of organic waste included in the definition used in AB 1826. SB 1383 requires CalRecycle to reduce the disposal of organic waste. These reductions are required as a means of achieving the methane emission reduction targets of the SLCP Strategy. AB 1826 only requires that collection services be offered to commercial businesses. SB 1383 requires the state to reduce the disposal of organic waste that is landfilled, it is a substantially broader legislative mandate and requirement. Organic waste that break down in a landfill and create methane must therefore be included in the regulatory definition, including organic waste that are not generated by commercial businesses. Organic waste defined in the regulation are subject to specific requirements (e.g. collection, sampling etc). These requirements are necessary to achieve the purpose of the statute. Comment noted. The definition of organic waste clearly identifies materials that are types of organic waste. It is not feasible or necessary to state in the negative every conceivable material that is not an organic waste. Comment noted. The regulations are structured to specify material that cannot be collected in certain containers, e.g. glass cannot be collected in green containers with organic waste. Further, the regulations define organic waste however they do not specifically require organic specific materials to be collected together, e.g. the regulations do not require food and textiles to be collected together. The regulations allow jurisdictions to source separate materials that are recoverable when mixed together The definition of organic waste itself does not govern how specific types of materials are handled. The definition identifies which materials are organic waste. The active text of the regulation, not the definition, controls how material is handled. Nothing in the regulatory text requires textiles or dead animals to be placed in the green container. Comment noted. The omission or inclusion of non-compostable paper was intentional and specific for each section based on the purpose of the measurement and when the measurement occurs in the waste handling process. Non-compostable paper is still an organic waste. Paper is organic whether it is coated in plastic or other non-compostable material. Paper additionally constitutes a significant portion of the waste stream. With respect to Section 18984.5(f), including non-compostable paper in this section (as an organic material that is not required to be measured as organic waste in a gray container evaluation) would encourage the continued disposal of this material, and would discourage jurisdictions and haulers from identifying recovery solutions for this material. If jurisdictions are unable to find methods to recovery non-compostable paper, they may consider options to prevent its introduction into their waste stream in the first place, rather than solely relying on collection and recovery. Including non-compostable paper in this section would encourage the continued disposal of a significant source of organic waste. With respect to Section 17409.5.7(c)(3), the gray container waste evaluations are not jurisdiction-specific. The evaluations will provide critical data that will inform policy making for jurisdictions and the state by providing data on organic waste that is still collected in gray containers in jurisdictions. Jurisdictions that implement a three-container organic waste collection service are required to prohibit the placement of organic waste in the gray container unless the jurisdiction specifically transports the gray container to a high diversion organic waste processing facility thar

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			recovers 75 percent of the organic content in the gray container. This data will reveal general levels of regulatory compliance, as well as inform the department on the progress toward achieving the SB 1383 targets. Excluding non-compostable paper from this measurement would distort the amount of organic waste identified as being disposed. With respect to Section 17867(a)(16), these measurements are performed by composting facilities evaluating the organic content of the residuals that are sent to disposal. Non-compostable paper should not be received at compost facilities and should not be included in the composting process. Non-compostable paper is allowed not to count against the measurements compost facilities perform as doing so would penalize the facility for removing a non-compostable contaminant from the composting process. With respect to Section 18982(a)(55)(B), this section does not state that non-compostable paper does not need to be measured as organic waste. This section states that non-compostable paper shall be considered a prohibited container contaminant if it is included in the green container. 18982(a)(55)(B) does not state that those materials are allowed in the gray container. Allowances for the collection of organic waste in the gray container are made in the organic waste collection requirements in Article 3. The construction of 18982(a)(55)(D) specifies that paper products, which includes non-compostable paper, may be collected in the blue container. In other words, non-compostable paper should not be collected in the blue container for recovery, it should not be collected in the green container, and it should only be collected in the gray container if the jurisdiction hauls the gray container to a high diversion organic waste processing facility. The definition of organic waste necessarily includes all items that are organic material. Regarding items defined as prohibited container contaminants see 234 (right above)
3001	Bell, K., County of Placer	18984.5 Container Contamination Minimization -- Thank you for the added flexibility	Thank you for the comment. The comment is in support of the current language.
3002	Bell, K., County of Placer	18984.8 Container Labeling -- Thank you for this revision which provides a more reasonable requirement.	Thank you for the comment. The comment is in support of the current language.
3003	Bell, K., County of Placer	18984.11 Waivers Granted by a Jurisdiction This revision seems to indicate that De Minimis Waivers may only be granted to customers with three-container systems. The intent of the waiver is to grant jurisdictions the flexibility to focus their efforts where it is most cost effective while still ensuring state reduction targets are achieved. Since de minimis generators are such, regardless of the container system utilized, this newly added language should be deleted.	There is nothing that prohibits the jurisdiction from having more restrictive criteria. The language does not limit de minimis waivers to three-container systems. Regarding part time residential waivers. CalRecycle is not able to quantify how much material would be exempt, and many of these residents would be captured under the low population waivers in Section 18984.12. Such a waiver could compromise the state's ability to meet the organic waste reduction targets. CalRecycle does not concur with waiving to "part-time" residents as the term is undefined and could encompass a significant amount of waste generation when the property owner is in residence.
3004	Bell, K., County of Placer	18984.12 Waivers and Exemptions Granted by CalRecycle -- This change just restates the previously deleted language and continues to disregard the previously explained issue common, particularly in rural areas, where a majority of the population in a large census tract is concentrated in a small area, where the remaining larger portion of the unincorporated census tract area is sparely populated but the entire census tract is over the propothose sparsely populated areas of the census tract such as consideration of block groups using the same requirement of 75 people per square mile. sed 75 people per square mile.	Per the regulations, an approved waiver should be applicable for 5 years. However, unlike census tracts, census blocks may change in any year in-between censuses. As a result, census blocks can merge/split/change during the course of the waived period, which could result in waived census blocks changing configuration during the waived period. This would require the Department to completely rebuild a database of 710,000 census block data points whenever a waiver request is being reviewed, as opposed to simply updating the population density from the most recent census.

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		Jurisdictions should have ability to exclude those sparsely populated areas of the census tract such as consideration of block groups using the same requirement of 75 people per square mile.	Given the fact that census blocks change, CalRecycle would have no way of quantifying the total amount of organic material potentially exempted. In addition, some census blocks are very low, or no, population areas (parks, businesses, etc.), making it difficult to ascertain which census blocks have populations that should be served and which do not. There also could be commercial census blocks in major cities that are large waste generators but technically do not meet the population density threshold. With respect to greenhouse gas emission, CalRecycle is not able to ascertain any method of objectively defining greenhouse gas emissions within census tracts or blocks, further this only addresses one part of the statute, greenhouse gas reduction, and ignores the central organic waste reduction requirement. For example black carbon generation in a census tract is unrelated to organic waste generation.
3005	Bell, K., County of Placer	18984.13 Emergency Circumstances -- This allowance for disposal does not explicitly exempt the organics from be counted as disposal, especially in gray container sorts. There should be a provision that excludes these landfilled wastes from counting as disposed organics. These wastes should also be granted a "disposal reduction credit" or tonnage modifications for purposes of AB 939 counting in the Electronic Annual Report like the one existing for quarantined wastes and others. Suggested clarification: **These materials may be subtracted from the "generated" amount and the "disposed organic materials" amount.**	Jurisdictions are not required to separate and recover organic waste removed from homeless encampments, disaster debris, and sediment debris if they receive a waiver from the Department. While waste removed from homeless encampments, disaster debris, sediment debris, or illegal disposal sites does still count as statewide disposal, the jurisdiction is allowed to dispose of the material and is not subject to enforcement for disposing of the material. This rulemaking does not implement AB 939.
3006	Bell, K., County of Placer	Section 18992.3 Schedule for Reporting -- Jurisdictions that are entirely exempt, should not have to conduct the planning at all, not just during the first reporting period. But while this offers some practical relief to exempted jurisdictions (those exempted in their entirety), it is unclear how this applies to jurisdictions with only some areas, e.g. census tracts, exempt. This section should be revised accordingly. Since it will likely be challenging for some jurisdictions to estimate the organic generation of specific census tracts, CalRecycle should modify its capacity planning calculator to provide a means to do so.	CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than 5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the following to be eligible would impact organic waste disposal: 1) cities with disposal of less than 5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA's definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile

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			but which are located within a census tract with greater than 50 people per square mile; and 7) rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383. Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection. Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals. Thank you for the comment. CalRecycle will be providing such tools. Also for clarification, the regulation does not require food waste capacity to be verifiably available or to develop an exact estimate of capacity. However, there does need to be engagement with the FROs to determine if there is sufficient capacity. Cities and the counties will have to work together in gathering info from the FROs and mapping out capacity.

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3007	Bell, K., County of Placer	Section 18993.1 Recovered Organic Waste Product Procurement Target -- Despite numerous comments that the procurement target is unreasonable, exceeds many jurisdictions' actual need, and beyond the scope of SB 1383, this section continues to be expanded. Placing the entire burden on jurisdictions is not appropriate. The proposed per capita procurement requirements of 0.08 tons per resident per year would force many jurisdictions to procure amounts of recovered organic waste products that are potentially an order of magnitude larger than what is currently used. This is unreasonable and the huge gap between the procurement requirement and actual need for the materials demonstrates that the assumptions used for calculating the procurement target must be revisited. The County repeats its earlier comments that if Procurement must be included, the target should be a percentage of a jurisdiction's actual need, that the requirement be applied to "nonlocal entities" and State agencies, and that CalRecycle efforts should be more focused on developing markets where there is real potential and need (e.g. State agencies and programs, e.g. CalTrans, Healthy Soils) and outside of this regulation.	The procurement requirements are designed to build markets for recovered organic waste products, which is an essential component of achieving the highly ambitious organic waste diversion targets mandated by SB 1383. CalRecycle developed an open and transparent method to calculate the procurement target that is necessary to help meet the highly ambitious diversion targets set forth by the Legislature. CalRecycle also recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. Regarding the commenter's proposal to base the procurement target methodology on "actual need", CalRecycle disagrees. The comment lacks specific language for quantifying that approach. Even if the commenter recommended a quantifiable way to determine "actual need", California has over 400 diverse jurisdictions and it would be overly burdensome to account for each jurisdiction's "actual need" and to develop a procurement target and enforcement policy for each one. Regarding state agencies, CalRecycle cannot impose procurement mandates on other state agencies or sectors without the necessary statutory authority, which SB 1383 lacks. Regarding "nonlocal entities", it is important to clarify that the populations in, for example, local education agencies and special districts are already included in a jurisdiction's population-based procurement target; the population data published by the California Department of Finance (DOF) includes universities, community colleges, and other local education agencies. The populations inherent in these entities are built into the procurement target calculation, and jurisdictions are encouraged to work with these entities to meet their procurement targets, which may be accomplished through a contract or agreement, such as a Memorandum of Understanding (MOU).
3008	Bell, K., County of Placer	Adding the ability to give away material procured only reinforces the fact that the procurement target is unreasonable. See above comments. (COMMENT 3007)	CalRecycle disagrees with the comment's assumption. The reference to "giveaway" in Section 18993.1(e)(1) is intended to provide even more flexibility to jurisdictions for how they may use recovered organic waste products. For example, many jurisdictions hold compost giveaways to residents, which increases local use and its associated environmental benefits to the community. The proposed language is intended to clarify that giveaways may count toward the procurement target.
3009	Bell, K., County of Placer	The County appreciates the inclusion of mulch. However, the requirement for an ordinance is unwarranted, excessive, and creates additional burden on jurisdictions. The requirement that mulch be procured from a permitted facility, and the reporting requirements, will ensure appropriate standards are met. Also, there is no basis for not allowing chipping and grinding operations or facilities to contribute the mulch procurement target. This limitation should be deleted as it is unnecessary.	The intent of requiring jurisdictions to establish an ordinance per Section 18993.1(f)(4)(A) is to ensure that mulch procured from solid waste facilities meets land application environmental health standards. CalRecycle disagrees with the comment that the solid waste facilities and reporting requirements alone will be sufficient to ensure mulch meets the land application standards. Due to the utmost importance of protecting public health and safety, it is necessary for jurisdictions to have the ability to take enforcement action against entities who apply contaminated material on local lands. Regarding including chipping and grinding operations, CalRecycle disagrees with the comment. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling "green material". "Green

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			material" is defined in 17852(21) as "any plant material except food material and vegetative food material that is separated at the point of generation…", which in turn is defined in 17852(35) as "material separated from the solid waste stream by the generator of that material." Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.
3010	Bell, K., County of Placer	Section 18993.2. Record Keeping Requirements -- Again, this section continues to be expanded to be more burdensome to jurisdictions. This level of detail is over-prescriptive and should be deleted.	The intent of the proposed language is to provide greater accountability for the use of recovered organic waste products by jurisdictions. The information is also intended to provide the Department with information about how and where recovered organic waste products are being used across the state in order to guide future efforts for using recovered organic waste products in California.
3011	Bell, K., County of Placer	Section 18994.1 Initial Jurisdiction Compliance Report -- A single contact would make sense under a typical regulation. However, there will likely be numerous key contacts in any given jurisdiction due to fact that the many required programs in this regulation will likely be managed by numerous different departments, e.g. Solid Waste, Procurement/Purchasing, Environmental Health, Planning, Code Enforcement, Parks and Grounds, and others. Particularly with regards to (B), CalRecycle should consider allowing multiple contacts to enable swifter communication both to and from the jurisdiction.	The timeline for requesting a hearing is set for a short duration because it is expected that, based on the requirements and procedures in the regulations, a jurisdiction will be familiar with the compliance issue. A jurisdiction is required under the regulations to designate a primary contact person and/or agent for service of enforcement process. This individual will be receiving all notices of violation from CalRecycle. By the time a violation gets to the point where penalties will be imposed, it is expected that the contact person or agent for service of process should be familiar with the circumstances of the violation and already in touch with the appropriate departments or individuals within the jurisdiction. In addition, the informational bar for the hearing request is set low and it should not be prohibitive for the jurisdiction to submit such a request even in the absence of legal counsel. To be clear, the request for the hearing and the hearing itself are two separate things. The hearing itself would be held at least 90 days from the request for hearing which should allow the jurisdiction sufficient time to consult with counsel and prepare for the proceeding.
3012	Bell, K., County of Placer	This section has been revised to add more reporting requirements. The County repeats its previous comment that neither SB 1383 nor CALGreen requirements give CalRecycle the authority to oversee CALGreen requirements. This should be deleted to avoid enforcement confusion, duplication and overlap. Building standards are issued by the Building Standards Commission, implemented and enforced by local Building Departments, and are not subject to the authority of CalRecycle.	The relevant regulatory sections do not have CalRecycle enforcing substantive CALGreen requirements. CalRecycle would only be enforcing whether a jurisdiction has adopted an ordinance or other enforceable requirement that requires compliance with certain portions of CALGreen that pertain to recycling organic waste. The enforcement of the ordinance itself would be up to the jurisdiction.
3013	Bell, K., County of Placer	The County appreciates this revision that reduces the frequency of verifying businesses' waiver eligibility.	Comment noted. This comment is not a recommendation for a regulatory text change.
3014	Bell, K., County of Placer	18996.2 Enforcement over Jurisdictions -- CalRecycle's Statutory Background and Primary Regulatory Policies document states, in part, that "Legislative guidance directs CalRecycle not to…utilize the "Good Faith Effort" compliance model specified in PRC Section 41825." This is inaccurate and contrary to the language of SB 1383. Section 42652.5. (a)(4) of the PRC specifically requires CalRecycle to consider "good faith effort" in determining a jurisdiction's progress in complying with the law. It states that CalRecycle "shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to Section 41825." To	This comment is not directed at changes in the third regulatory draft.

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		comply with this, after the words “of this chapter” insert: it shall consider whether the jurisdiction has put forth a good faith effort. If the Department finds that the jurisdiction has not provided a good faith effort the Department…	
3015	Bell, K., County of Placer	18996.2 Enforcement over Jurisdictions -- The County appreciates this revision that provides a provision for extending the time to comply with an NOV. However, the Department may find that extenuating circumstances, such as insufficient facility capacity, require more than 180 days to address. Section (a)(1) should allow the Department the flexibility to grant, at its discretion, in its Notice of Violation, an extension “**for a reasonable period according to the actions required**” rather than for 180 days. Similarly, in Section 18996.2, the Corrective Action Plan issued by the Department should allow an extension “**for a reasonable period according to the actions required**” rather than for 12 months.	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the

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			regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets. With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. Further, the proposal for perpetual CAPS essentially requests a reinstatement of a provision that would mirror "good faith effort," as established in Section 41825 of the Public Resources Code. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction

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			and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction. Finally, CalRecycle notes that the commenter recommends replacing all timelines with "for a reasonable period according to the actions required." The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of "reasonable" is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how "reasonable" would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for "any extenuating circumstance" or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances
3016	Bell, K., County of Placer	Article 15 Section 18996.2 (a)(4) -- Allowing a total of 24 months for compliance may be sufficient for some jurisdiction measures but others may take considerable time to resolve beyond 24 months or even 36 months if an extension is granted per section 18996.2 (a)(4). In some cases, new facilities will need to built. CalRecycle has acknowledged the lack of organics infrastructure. In Eastern Placer County, a portion of organic waste collected is sent to compost facilities out of state. It is unclear if this regulation would prohibit sending material out of state. If that is the case, siting a new facility would take several years. If an alternate facility is located, all new hauler and facility agreements may need to be drafted and approved, and limiting that situation to an absolute deadline of 36 months lacks a fundamental understanding of the realities of solid waste management. Recommend: (4) An initial Corrective Action Plan issued due to inadequate organic waste recycling infrastructure capacity may be extended for a period of up to 12 months if the department finds that the jurisdiction has demonstrated substantial effort. Additional extensions in 12-month increments may be granted if the department finds that the jurisdiction has demonstrated substantial effort.	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time

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			to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets. With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate

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			strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. Further, the proposal for perpetual CAPS essentially requests a reinstatement of a provision that would mirror "good faith effort," as established in Section 41825 of the Public Resources Code. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction. Finally, CalRecycle notes that the commenter recommends replacing all timelines with "for a reasonable period according to the actions required." The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of "reasonable" is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how "reasonable" would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for "any extenuating circumstance" or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances
3017	Bell, K., County of Placer	18997.2 (Jurisdiction) Penalty Amounts -- The County appreciates the effort to simplify this section, however, the County still is of the opinion that SB 1383 did not	The comment regarding authority is not directed at the changes in the third regulatory draft.

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		give CalRecycle the authority to require local jurisdictions to impose civil penalties on generators	
3018	Bell, K., County of Placer	18997.3 Department Penalty Amounts --- Department Penalty Amounts are unreasonably high. “Minor” violations should never be so high that they could bankrupt a jurisdiction. “Major” violations, resulting in up to $10,000 per violation per day should be levied for only the most serious and intentional offenses, and should not be issued for things like accidentally omitting “any” information required in required reports as stated in Section 18997.3(b)(3)(F). Major violations should be reserved for failing to provide a meaningful and reasonable effort to comply with the regulations.	It is unclear from the comment under what circumstances a “minor” violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines. With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation. In addition, the regulatory language defining a “major” violation takes into account knowing, willful or intentional actions. And the factors in subdivision (d) of this section allow consideration of the willfulness of the violator’s conduct in setting a penalty level within the appropriate range.
3019	Bell, K., County of Placer	18997.5 Department Procedure for Imposing Administrative Civil Penalties -- As commented previously, jurisdictions will need more time to respond to legal accusations. It not only takes time to receive and route mail in a public agency, it will take time for the single contact person to determine which department (of the many implementing this regulation) is responsible and for that department to evaluate the issue, consult with legal counsel, and prepare a response. Regarding (c), the regulation should allow at least 90 days for a jurisdiction to respond. Regarding (d), the Department shall schedule a hearing no sooner than 60 days of receipt of a request for hearing	The timeline for requesting a hearing is set for a short duration because it is expected that, based on the requirements and procedures in the regulations, a jurisdiction will be familiar with the compliance issue. A jurisdiction is required under the regulations to designate a primary contact person and/or agent for service of enforcement process. This individual will be receiving all notices of violation from CalRecycle. By the time a violation gets to the point where penalties will be imposed, it is expected that the contact person or agent for service of process should be familiar with the circumstances of the violation and already in touch with the appropriate departments or individuals within the jurisdiction. In addition, the informational bar for the hearing request is set low and it should not be prohibitive for the jurisdiction to submit such a request even in the absence of legal counsel. To be clear, the request for the hearing and the hearing itself are two separate things. The hearing itself would be held at least 90 days from the request for hearing which should allow the jurisdiction sufficient time to consult with counsel and prepare for the proceeding.
3020	Bell, K., County of Placer	17409.5.7 (formerly Loadchecking) -- We appreciate the deletion of the load checking requirement	Comment noted. We thank the commenter for their support.
3021	Bell, K., County of Placer	Section 17409.5.8 Incompatible Materials Limit in Recovered Organic Waste -- The County appreciates this revision to phase in compliance with the incompatible materials limit.	Comment noted. We thank the commenter for their support.
3022	Bell, K., County of Placer	17869 General Record Keeping -- The County appreciates the removal of this requirement.	Comment noted. We thank the commenter for their support.
3023	Bell, K., County of Placer	Section 20901. Gray Container Waste Evaluations -- While we support the deletion of the requirement for landfills to conduct gray container evaluations, it appears that the revisions in section 17409.5.7 now apply this requirement to operators of all facility types, so essentially the requirement remains.	Comment noted. The changes to the gray container waste evaluation reduced the number of waste evaluations, frequency of samples, and reporting requirements. The gray container waste evaluations will now only be required at Transfer/Processing operations and facilities that receive a gray container collection stream and more than 500 tons of solid waste from at least one

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			jurisdiction annually will now only have to conduct one waste evaluation per quarter. This change is necessary to replace the provision with a less burdensome alternative.
3024	Bell, K., County of Placer	21695 Status Impact Report -- This revision was simply the relocation of text formerly in subsection (h)(i). Reporting of surface emissions is currently required by and under the regulatory jurisdiction the California Air Resources Board is therefore redundant and unnecessary in this regulation and should be removed. Reporting of surface landfill gas emissions is not required under SB 1383 and not under the regulatory authority of CalRecycle.	CalRecycle has deleted Section 21695 (i) in response to comments.
3025	Bell, K., County of Placer	Section (i) was deleted (which required a study to demonstrate that intermediate cover is as effective as final cover). We appreciate this removal of the study.	Comment noted. We thank the commenter for their support.
3026	Bell, K., County of Placer	However, we remain greatly concerned with many of the remaining requirements, the fact that the vast majority of our comments were unaddressed, and with several of the new revisions, many of which add new requirements, restrictions, or limitations. Overall, as commented previously, the amount of prescriptive detail contained in the regulation goes far beyond what is necessary to achieve the goal of increased organics diversion. Jurisdictions should be afforded more flexibility to identify and implement programs that are best for their communities and given reasonable time to fully implement them before harsh penalties are imposed upon them and their constituents. Even with the exemptions provided, compliance will necessitate significant additional staffing, contracted services, and resources which will be costly and burdensome to jurisdictions and their constituents.	Comment noted. The commenter is noting the overall nature of the regulations but is not proposing a particular change in the language of the regularion.
3027	Bell, K., County of Placer	The regulation still imposes requirements on jurisdictions that we believe the SB 1383 did not grant to Cal Recycle, or are beyond the authority of CalRecycle, such as requiring ordinances, jurisdiction-imposed penalties, and procurement of organic materials. We agree that market development is crucial to the overall success of diverting organics from landfills. However, we do not think that these regulations are the vehicle to address this issue or that placing the entire burden on jurisdictions is appropriate. It would be more appropriate and effective to address market development in a separate, future effort which would allow more time for reasonable approaches to be vetted.	SB 1383 provides a broad grant of regulatory authority to CalRecycle in Public Resources Code Section 42652.5, “CalRecycle, in consultation with the State Air Resources Board, shall adopt regulations to achieve the organic waste reduction goals for 2020 and 2025 established in Section 39730.6 of the Health and Safety Code.” That section also provides that CalRecycle may “include different levels of requirements for local jurisdictions…” Furthermore, CalRecycle also maintains broad, general rulemaking authority in Public Resources Code Section 40502, “The [department] shall adopt rules and regulations, as necessary, to carry out this division [Division 30 of the Public Resources Code] in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.” SB 1383 is included within Division 30. As stated in PaintCare v. Mortensen (2015) 233 Cal. App. 4th 1292, where CalRecycle successfully prevailed in a court action alleging a lack of authority to pass administrative regulations, the Court stated that “[a]n administrative agency is not limited to the exact provisions of a statute in adopting regulations to enforce its mandate. ‘[The] absence of any specific [statutory] provisions regarding the regulation of [an issue] does not mean that such a regulation exceeds statutory authority . . ..’ The [administrative agency] is authorized to ‘“fill up the details”’ of the statutory scheme.” Administrative Civil Penalty tables, including “Base Table 6,” were deleted from the proposed regulations.

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			Consistent with CalRecycle's broad rulemaking authority, the proposed procurement requirements are designed to help achieve the organic waste diversion goals in SB 1383 by supporting markets for recovered organic waste products. The regulations have a direct nexus to achieving those organic waste diversion goals by preventing initially diverted organic waste from being disposed due to lack of end uses. Health and Safety Code Section 39730.8, also in SB 1383, refers to CalRecycle considering recommendations in the California Energy Commission's 2017 Integrated Energy Policy Report (IEPR) for the use of biomethane and biogas. The IEPR recommended that "state agencies should consider and, as appropriate, adopt policies and incentives to significantly increase the sustainable production and use of renewable gas." As such, provisions for the procurement of renewable transportation fuel generated from recovered organic waste. The Air Resources Board's Short Lived Climate Pollutant Strategy states, "CalRecycle will continue to work towards strengthening state procurement requirements relative to use of recycled organic products." The inclusion of compost as an eligible recovered organic waste procurement product aligns with policies and mandates for methane reduction as described in the Air Resources Board's SLCP Strategy. The Economic Analysis conducted for the SLCP Strategy notes several scenarios that can achieve the needed reductions in short-lived climate pollutants from the waste sector, and every scenario modeled includes new compost facilities. The purpose of a compost procurement requirement is to establish markets for compost, which is a product generated by organics recycling facilities which the SLCP Strategy identified as in need of market development. Regarding paper procurement requirements, CalRecycle's 2014 Waste Characterization Study found that paper accounts for 17.4 percent of the disposed waste stream. Requirements on jurisdictions to meet the recycled content paper procurement requirements will help grow markets for recycled content paper. Given the prevalence of paper in the disposal stream, increased procurement of recycled paper is needed to grow the market for recycled paper in order to achieve the organic waste reduction goals. This is necessary to help achieve the organic waste diversion goals in SB 1383 by ensuring an end use for diverted organic waste. Regarding funding, SB 1383 (Public Resources Code Section 42652.5(b)) provides that, "A local jurisdiction may charge and collect fees to recover the local jurisdiction's costs incurred in complying with the regulations adopted pursuant to this section."
3028	Bell, K., County of Placer	The proposed regulation still fails to incorporate provisions for jurisdiction "good faith effort" - and instead includes "critical milestones" that we believe are too severe - even though SB 1383 requires CalRecycle to "base its determination of progress on ... reviews conducted pursuant to Section 41825" - which includes provisions for evaluating good faith effort.	The comment is not directed at changes in the third regulatory draft. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the

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			regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction.
3029	Bell, K., County of Placer	The extensive penalties, while simplified, are still contrary to SB 1383, which states the regulation "may authorize" (not require) local jurisdictions to impose penalties. We recommended all penalties be deleted and penalties only be considered in a separate, future regulatory effort once there has been ample time to assess implementation, including barriers which are beyond jurisdiction control.	For response to arguments about authority to require local penalties, A change to the regulatory text is not necessary. The legislature specifically authorizes CalRecycle's to develop regulations that "require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction and may authorize local jurisdictions to impose penalties on generators for noncompliance." Also, the statue states the regulations "may include penalties to be imposed by the Department." This text clearly authorizes CalRecycle to adopt regulations that require specified action from jurisdictions, including regulations the require jurisdictions to impose requirements on entities subject to their jurisdiction. This approach mirrors CalRecycle's delegated enforcement approach for waste tire hauler oversight and solid waste facility oversight, where primary oversight is conducted at the local level (typically by county offices of environmental health) with CalRecycle concurrence. Programs that have enforcement generally see a higher rate of compliance than programs that do not have enforcement. The success of the Short-Lived Climate Pollutant Strategy relies on achieving significant reductions in landfill disposal of organic waste by 2020 and 2025. Delaying enforcement would impede California's goal of achieving these targets.
3030	Bell, K., County of Placer	The regulation not only places a significant financial burden on jurisdictions, but much of these costs will be passed on to residents and businesses. An analysis of the costs to provide the additional organic waste collection services indicated that customer costs would double. In addition, we estimate a 50% increase in solid waste staffing, not to mention staffing for an entirely new edible food program. Such impacts must be considered and further reinforce the fact that the regulations are too prescriptive.	Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
3065	Bell, K., Western Placer Waste Management Authority	The WPWMA generally requests that CalRecycle revise the proposed regulations to minimize the burden on facility operators; develop and support sustainable end-use markets; and establish a safe harbor for operating facilities regarding odor complaints related to organics handling and processing.	Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the

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			statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: "The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new mixed waste processing systems provided that the receiving facilities demonstrate they are capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements." The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: "With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of material. For example, metals, paper, and plastics are remanufactured through distinct processes (e.g. metal is smelted, paper is pulped and washed). Largely because of this, while material may be valuable as a homogenous commodity, it can become difficult or impossible to recycle when it is contaminated with other materials (e.g. many materials lose their value when they are commingled with other materials.) This principle holds true, and is perhaps more of a factor in the recovery of organic waste. Required source-separation of organic waste helps ensure that organics are kept clean, separate and recoverable. However; throughout the informal regulatory engagement process stakeholders raised concerns about potential costs associated with providing commercial and residential generators with a third container to source separate organic waste. Stakeholders also noted that several cities and counties implement single container collection services and process all the collected material for recovery. Stakeholders argued that allowing the use of a single-container collection system is a viable and cost-effective alternative that can help the state meet that statutory organic waste recovery targets. To respond to stakeholder requests for additionally flexibility CalRecycle crafted this section and Section 18984.2. These sections allow alternatives to providing a three-container source-separated organic waste collection service. Under these section jurisdictions are allowed to require their generators to use a service that does not provide the generators the opportunity to separate their organic waste for recovery at the curb. In order to ensure that the state can achieve the statutory organic waste reduction targets, these collections services are required to transport the containers that include organic waste to high diversion organic waste processing facilities that meet minimum organic content recovery rates (content recovery rates are specified in Subdivision (b) of this section)…" The commenter has stated in each comment period, that they believe the requirement to recover 75 percent of the organic content collected in these mixed waste collection services is unrealistic

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			and infeasible. In turn CalRecycle staff repeatedly communicated to the commenter that the recovery targets cannot be lowered without compromising the integrity of the regulations. This was further documented for this commenter and the public in the ISOR: "These minimum recovery rates are necessary because when the opportunity to recover material through source separation is lost, the state must ensure that minimum recovery levels are met at processing facilities. While this section provides additional flexibility to jurisdictions, CalRecycle must consider its obligation to ensure that the regulations are designed to achieve the statutory targets. If 100 percent of jurisdictions employed this collection option in 2022 the state could not meet the mandatory recovery target of 50 percent unless at least 50 percent of the organic waste collected from these services is recovered. Similarly, if 100 percent of jurisdictions employed this collection option in 2025 the state could not meet the mandatory recovery target of 75 percent unless 75 percent of the organic waste collected from these services is recovered. Therefore, in order to meet the recovery targets specified in statute and the state's ultimate climate goals the recovery standards included in this section are the minimum standards necessary. As generation of organic waste increases with population growth, these minimum recovery rates may need to be revisited. As stated previously the organic waste reduction targets are linked to a 2014 baseline of 23 million tons. This requires the state to dispose of no more than 5.7 million tons by 2025. If, as CalRecycle projects, generation increases to 26 million tons of organic waste by 2025, recovering 75 percent of 25 million tons will only reduce disposal to slightly more than 6 million tons, resulting in the state missing its organic waste recovery targets. The need for this rate increase could be mitigated if higher recovery rates are achieved through source separation, or if efforts to increase source reduction through food recovery and other methods are successful. However, the recovery rates established in this regulation should be considered an absolute minimum." CalRecycle has, prior to and during this rulemaking, communicated that the recovery efficiency requirements established in the regulation is the minimum level that the statute can tolerate. The commenter suggests existing infrastructure that cannot meet this standard should be "protected" or provided a "safe-harbor." The commenter requests changes in the proposed regulations that cannot be reconciled with the statutory targets because CalRecycle finds that it cannot propose a regulation consistent with a statutory 2025 target that permits an unknown portion of the state from implementing the requirements necessary to achieve that target. CalRecycle acknowledges the role of existing infrastructure and acknowledges that previous investments in infrastructure were consciously made to achieve targets that were established prior to the adoption of SB 1383. However, the legislative direction in SB 1383 is unmistakably clear. The Legislature required CalRecycle to adopt regulations to achieve mandatory organic waste reduction levels. Nothing in the regulations prevents facility operators or jurisdictions from investing in facility upgrades or adapting existing facilities to process waste in a manner that meets the minimum regulatory requirements. Comment noted. CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious

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			statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. The provisions of Section 40004 are general legislative findings and declarations applying to the AB 341 (2011) mandatory commercial recycling program and not specific, affirmative legal requirements CalRecycle is required to adhere to in the proposed regulations. SB 1383 contains specific mandates on organic waste diversion that CalRecycle is required to observe in this rulemaking. The findings and declarations in Section 40004 recognize that adequate processing and composting capacity are essential for diversion and disposal reduction. CalRecycle does not dispute this necessity. But CalRecycle is also more specifically subject to the findings and declarations in SB 1383 (2016, PRC Section 42652) that state that the disposal reduction targets in SB 1383 are essential to achieving the statewide recycling goal of 75% in PRC Section 41780.01 and that significant investment is required to meet these goals and that state and local funding mechanisms are needed to support this expansion. The Legislature acknowledges in this section that infrastructure investment and capacity is a central issue to the success of SB 1383. Since the specific controls the general and the more recent statute controls under common rules of statutory construction, CalRecycle does not find a conflict with Section 40004. Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
3066	Bell, K., Western Placer Waste Management Authority	17409.5.7/20901 -- The WPWMA appreciates the revision reducing the number of required samples. However, it appears that this requirement is intended to verify the effectiveness of jurisdictions' programs. If that is the case, it should not be a requirement of facility operators.	A change to the regulatory text is not necessary. The purpose of this section is to determine how effective organic waste is being recovered and use the results to gauge the accuracy of the jurisdictions container contamination minimization results that send their waste to that specific facility. The result from the above measurements independently will help provide an overview of how the jurisdictions and facilities are doing and allow to cross-check the measurements, even

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		The requirement for facilities to conduct these evaluations when jurisdictions are already required to conduct quarterly waste composition studies of this stream is redundant. Jurisdiction evaluations provide more accurate data as they're targeting specific areas whereas facilities would be sorting material received from numerous jurisdictions. If CalRecycle maintains that facilities must conduct these evaluations, we recommend that the jurisdiction and facility be allowed to combine their efforts and utilize the data to satisfy both requirements.	though it is not per jurisdiction. In addition to providing information on the type and quantities of organic waste not being recovered for possible future regulations in order to help recover those materials.
3067	Bell, K., Western Placer Waste Management Authority	17414.2(b) -- The WPWMA appreciates the deletion of this requirement.	Comment noted. We thank the commenter for their support.
3068	Bell, K., Western Placer Waste Management Authority	18983.1 -- The WPWMA maintains that the organic fraction of MRF fines inherently contained in ADC and previously approved for use as ADC under AB 939 and AB 1594 should not be considered disposal. The organic fraction of MRF fines currently cannot be feasibly recovered and marketed for other beneficial reuse as there is no viable market. We strongly encourage CalRecycle to continue applying diversion credits for use of all MRF fines as ADC and recommend reverting to language in previous versions of the proposed regulation that maintained the use of ADC as diversion. At a minimum, consider the following provisions: --Allow, with no restrictions, the use of MRF fines where only a di minimis (e.g. 10%) portion is organic waste. --Allow full use of MRF fines as ADC once the material has been composted or otherwise processed to the point that the organic fraction is depleted of methane-producing characteristics prior to use as ADC consistent with Section 18983.2. -- Clarify the definition of "organic waste" in section 18982 (a)(46) to be that "Organic waste does not include organic material that has been composted or otherwise processed to reduce its methane-producing potential."	Comment noted. The use of organic waste as alternative daily cover constitutes landfill disposal of organic waste. Language was added to clarify that use of non-organic materials does not constitute landfill disposal of organic waste. Facilities are not required to remove organic material from MRF fines. Facilities are required to sample material they send to disposal to determine the portion of organic waste they are sending to disposal. Pursuant to the sampling requirements in the regulations a representative sample of material sent to disposal must be sampled to determine the level of organic waste disposed. This includes sampling of material sent to for use as alternative daily cover. Only the organic fraction of the material sent to disposal is measured as disposal of organic waste. Language was added to clarify that disposal of non-organic materials does not constitute landfill disposal of organic waste.
3069	Bell, K., Western Placer Waste Management Authority	18984.1 -- Annual notification seems unnecessary. Recommend initial notification to jurisdictions of ability to recover this material and requirement to notify again upon policy/market changes.	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility.

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			It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
3070	Bell, K., Western Placer Waste Management Authority	18984.5 -- The WPWMA has previously commented and maintains that these materials should not be included in the definition of organic waste. The WPWMA strongly recommends that these materials be removed from the definition of organic waste. If CalRecycle insists on considering these materials as organic and therefore banned from landfill disposal in one area of the regulation, these materials should not be allowed to be considered nonorganic and disposable in another part of the regulations.	Comment noted. The omission or inclusion of non-compostable paper was intentional and specific for each section based on the purpose of the measurement and when the measurement occurs in the waste handling process. Non-compostable paper is still an organic waste. Paper is organic whether it is coated in plastic or other non-compostable material. Paper additionally constitutes a significant portion of the waste stream. With respect to Section 18984.5(f), including non-compostable paper in this section (as an organic material that is not required to be measured as organic waste in a gray container evaluation) would encourage the continued disposal of this material, and would discourage jurisdictions and haulers from identifying recovery solutions for this material. If jurisdictions are unable to find methods to recovery non-compostable paper, they may consider options to prevent its introduction into their waste stream in the first place, rather than solely relying on collection and recovery. Including non-compostable paper in this section would encourage the continued disposal of a significant source of organic waste. With respect to Section 17409.5.7(c)(3), the gray container waste evaluations are not jurisdiction-specific. The evaluations will provide critical data that will inform policy making for jurisdictions and the state by providing data on organic waste that is still collected in gray containers in jurisdictions. Jurisdictions that implement a three-container organic waste collection service are required to prohibit the placement of organic waste in the gray container unless the jurisdiction specifically transports the gray container to a high diversion organic waste processing facility thar recovers 75 percent of the organic content in the gray container. This data will reveal general levels of regulatory compliance, as well as inform the department on the progress toward achieving the SB 1383 targets. Excluding non-compostable paper from this measurement would distort the amount of organic waste identified as being disposed. With respect to Section 17867(a)(16), these measurements are performed by composting facilities evaluating the organic content of the residuals that are sent to disposal. Non-compostable paper should not be received at compost facilities and should not be included in the composting process. Non-compostable paper is allowed not to count against the measurements compost facilities perform as doing so would penalize the facility for removing a non-compostable contaminant from the composting process. With respect to Section 18982(a)(55)(B), this section does not state that non-compostable paper does not need to be measured as organic waste. This section states that non-compostable paper

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			shall be considered a prohibited container contaminant if it is included in the green container. 18982(a)(55)(B) does not state that those materials are allowed in the gray container. Allowances for the collection of organic waste in the gray container are made in the organic waste collection requirements in Article 3. The construction of 18982(a)(55)(D) specifies that paper products, which includes non-compostable paper, may be collected in the blue container. In other words, non-compostable paper should not be collected in the blue container for recovery, it should not be collected in the green container, and it should only be collected in the gray container if the jurisdiction hauls the gray container to a high diversion organic waste processing facility. The definition of organic waste necessarily includes all items that are organic material.
3071	Bell, K., Western Placer Waste Management Authority	18985.1/18992.1 -- Define "substantial".	The text regarding linguistic outreach requirements is linked to the requirements of Section 7295. The definitions and provisions governing that section of law shall apply. Government Code 7295 states: "Any materials explaining services available to the public shall be translated into any non-English language spoken by a substantial number of the public served by the agency. Whenever notice of the availability of materials explaining services available is given, orally or in writing, it shall be given in English and in the non-English language into which any materials have been translated. The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency."
3072	Bell, K., Western Placer Waste Management Authority	21695(i) -- The WPWMA appreciates the removal of this requirement.	Comment noted. We thank the commenter for their support.
3073	Bell, K., Western Placer Waste Management Authority	21695 -- This revision was simply the relocation of text formerly in subsection (h)(i). Reporting of surface emissions is currently required by and under the regulatory jurisdiction the California Air Resources Board is therefore redundant and unnecessary in this regulation and should be removed. Reporting of surface landfill gas emissions is not required under SB 1383 and not under the regulatory authority of CalRecycle.	CalRecycle has deleted Section 21695 (i) in response to comments.
2038	Boone, Arthur, Center for Recycling Research, Berkeley	Subject: Comments on SB 1383. Comments on the most recent draft regulations. I think there is no statutory authority to allow the removal of organics from mixed waste materials (a/k/a "garbage") leading to compost or other beneficial uses to be an acceptable practice under SB 1383. The 2011 statute on this issue allowed for such practices to occur only if the the results were "comparable to source separation." As the agency in control of this statute, the burden falls on the California Department of RRR to determine that such activities are in fact "comparable to source separation." The agency has never done so and therefore the qualification which the legislature made to the propriety of mixed waste processing being used for organics diversion and recovery has been undone by the failure of the enforcing agency to take investigative and conclusory steps towards knowledge through research, fact-gathering, and other activities. With adequate counsel we will bring this matter to the attention of the Administrative Law tribunal which is responsible for the approval of these	Although it is unclear from the comment, the commenter is apparently referring to AB 341 (Chesboro, 2011) which has a requirement that commercial waste generators 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. The commenter is conflating the quantitative requirement of comparable waste diversion rates in AB 341 with a qualitative value determination on the nature of waste that is diverted after processing. The commenter appears to be suggesting that AB 341 puts requirements on the cleanliness or quality of waste that is diverted from disposal through mixed waste processing. It is clear from the language of AB 341 that this is not the case. The language speaks to "diversion results," meaning a quantitative determination on levels of diversion.

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		regulations and, we hope, we will see that what you have allowed by regulations has been forsaken by a silent statutory base and your own inadequate homework. No doubt the garbage-as-usual industry will claim we are in error but the court can decide. It took the European Community 25 years to recognize that attempting to remove organic (and thus compostable) materials from mixed wastes for conversion into compost was a useless science; it's a shame the waste haulers in California and those who help keep them in business cannot recognize what the Europeans have learned so we don't have to reinvent the wheel here.	Regardless, there are existing requirements on land application of compostable material as well as finished compost that limit the content of pathogens, physical contaminants and metals and thus address the quality of diverted organic material anyway. It is notable that AB 341 is silent regarding organic material. The statute that is more relevant is AB 1826, which deals with business recycling of organic waste. AB 1826 contains no provisions regarding "comparable to source separation" and instead simply has a provision in PRC Section 42649.81(b) giving businesses the option to "subscribe to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste."
2007	Braicovich, Alex, CR&R Incorporated	Section 18982. Definitions (a) 31.5 "Hauler route" – We do not understand this language as it is overly vague. Please clarify. Does the proposed language include both commercial and residential routes? Residential collection routes typically occur once per week per household and commercial routes typically include picking up from a business multiple times weekly. The frequency of collection should also be addressed meaning is CalRecycle focusing on weekly collection or daily. Suggested Change: Please clarify as we are not sure what you are trying to achieve.	CalRecycle added a definition of 'hauler route.' Section 18984.5 requires jurisdictions to minimize contamination of organic waste containers by either conducting route reviews or conducting waste evaluation studies on each hauler route. The term "hauler route" is key to the jurisdiction's compliance with these requirements because it describes where the jurisdiction should direct its contamination minimization efforts in order to increase detection of container contamination by generators. What constitutes a "hauler route" is dependent upon the designated itinerary or geographical configuration of the jurisdiction's waste collection system. For example, a jurisdiction's collection system may consist of one continuous itinerary or series of stops that services both commercial generators and residential generators for garbage, dry recyclables and organics or the system could be divided into two or more itineraries or segments based on each type of generator and/or material type collected. This section is necessary to maximize detection of container contamination so that the jurisdiction's education and outreach and/or enforcement efforts can be targeted to the generators serviced along the affected routes, thereby reducing contamination and increasing the recoverability of organic waste.
2008	Braicovich, Alex, CR&R Incorporated	Section 18993.1 Recovered Organic Waste Product Procurement Target (f)(2) The term pipeline injection has been struck and language now states procurement includes: "Renewable gas used for fuel for transportation, electricity, or heating applications". The proposed language appears to preclude the use of pipeline injection for delivering renewable gas safely and efficiently. We are confident that this is not the case and that this newly proposed language was designed to streamline the regulatory language. As you are aware, CR&R has made a significant investment in green energy through the design and construction of our state-of-the-art Anaerobic Digester. A critical component of this green and sustainable process involves the use of pipeline injection in order to move the Renewable Natural Gas that is created from our organics recycling program. This RNG is then used to power our fleet of Alternative Fuel trucks. To provide clarity we would like to the see the following language used: Suggested Change: **Renewable natural gas used for fuel for transportation, electricity, or heating applications and does not preclude pipeline injection as a means of distribution to achieve these uses.**	Regarding pipeline injection, CalRecycle deleted this as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target.
2009	Braicovich, Alex, CR&R Incorporated	Section 18984.12 Waivers and Exemptions Granted by the Department We believe the standard from which to determine low population waiver is inadequate. There are jurisdictions located in very remote and arid locations with	CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than 5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a

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		very low incomes, that produce relatively small amounts of organics (desert communities) and are not in the proximity of markets or processing facilities. It will be very costly in relative terms for these jurisdictions to fully comply with SB 1383 while contributing very little to the overall statewide goal. Suggested Change: CalRecycle should increase the population standard to at least 1,000 residents per square mile for achieving a waiver and it should not be limited to "unincorporated portions" of the County only. This waiver should be available to both incorporated jurisdictions as well as unincorporated County areas.	county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the following to be eligible would impact organic waste disposal: 1) cities with disposal of less than 5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA's definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile but which are located within a census tract with greater than 50 people per square mile; and 7) rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383. Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would

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			impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection. Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals.
2010	Braicovich, Alex, CR&R Incorporated	Section 17409.5.4 Measuring Organic Waste Recovered from Source Separated Organic Waste Collection Stream. (b) It is stated that the sampling shall be accomplished by investigating the waste stream, by each organic waste type. In previous versions of the regulations a request was made for CalRecycle to define the term "organic waste type". It was not addressed until just recently when a list of potential waste types in response to the implementation of AB 901 was released for public consumption. That list includes a description of 26 organic and 20 paper types. It is simply not operationally possible nor practical to achieve the goals of this section while including the sorting of all these number of material types. Suggested Change: CalRecycle needs to reevaluate this section and determine what information is absolutely necessary for achieving their needs while keeping in mind practical logistical and operational constraints. This proposed process is a very laborious and costly endeavor and priority should include only that information absolutely necessary to archive the program's goals. It is simply impossible to expect a processor to segregate organics waste into 46 different types of material. At the end of the day the goal is to divert organics from the landfill, not create an unmanageable sorting process that has no basis in practical operations.	CalRecycle staff has noted the comment. Section 18982(a)(46) defines what material is considered organic waste for the purpose of these requirements. The requirement to perform measurements for each organic waste type defined in Section 18982(a)(46) is necessary to accurately calculate how much "actual organic" waste is being recovered from each particular organic waste stream. Although the goal is to divert organic waste from the landfill, the goals established by SB 1383 are to recover 50% of the organic waste by 2020 and 75% by 2025, which cannot be determined without accurately measuring organic waste recovery and organic waste disposal. In addition, Section 17409.5.9 allows the EA, with concurrence by the Department, to approve alternatives to the measurement protocols described in these sections if the operator can ensure that the measurements will be as accurate.
2011	Braicovich, Alex, CR&R Incorporated	Section 18998.1 Requirement for Performance-Based Source Separated Collection Service (1)(a)(b) The regulations have been amended to require a very complex and unworkable methodology for determining the amount of organic material in the gray container referencing section 18984.5. This newly proposed requirement is very disappointing as it is contrary to the purpose of this section and to the original genesis of this section as discussed with Cal Recycle staff. In fact, language in this section states that the intent of the article is to provide streamlined requirements as a compliance incentive for those jurisdictions that implement a collection service	Comment noted. CalRecycle disagrees that a change is necessary as jurisdictions are not required to pursue this compliance option. The methodology is modeled from existing waste sampling requirements in practice in California; however, a jurisdiction could opt to implement a service under Article 3 instead and meet its contamination monitoring requirements through the performance of route reviews instead of using the waste sampling methodology.

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		designed to achieve high-efficiency performance in recovery of organic waste. By adding this new sampling requirement (quarterly for the gray can and at least twice per year for the blue and green cans) it significantly impacts the original intent of the performance based source separated collection service. Suggested Change: Strike out subsections (a)(3) (A&B). Jurisdictions must still perform gray container waste evaluations as required in Sections 18984.5 and 17409.5.7.	
2012	Braicovich, Alex, CR&R Incorporated	Section 18984.5. Container Contamination Minimization (a) (1) Originally all jurisdictions were provided an option for achieving compliance with this section by either performing route reviews or undertaking complex waste evaluations. This recent version of the SB 1383 regulations no longer allows for potential high-performance jurisdictions to choose the streamlined approach of performing route reviews but are mandated to perform complex waste evaluations described in subsection (c). This newly proposed complex approach is inconsistent with Article 17 that states that the evaluation must be made of only the gray container. Subsection (c) of this section, also states that waste evaluations must be made of all three containers. As mentioned earlier, meeting the compliance requirements of this section are not possible nor practical. Please see below for a more detailed discussion of why this is not achievable. Suggested Change: Delete the newly proposed language contained in Sections 18984.5 (a)(1) and (c) referring to jurisdictions that want to implement a performance-based system must perform detailed waste composition studies. By striking this section performance-based jurisdictions would be treated consistently with other jurisdictions and have a choice of the type of evaluation to be completed. Gray container evaluations will still be performed through route reviews as well as in Section 17409.5.7 - Gray Container Waste Evaluations. Additionally, striking the newly proposed language would eliminate evaluating the blue and green containers which is also inconsistent with the requirements of Article 17.	Comment noted. The comment does not recommend or request a specific change to the regulatory text. Comment noted. CalRecycle disagrees that route reviews are appropriate for performance-based source separated collection services. The requirement for jurisdictions providing these services to perform waste evaluation studies section is necessary to ensure that a substantial amount of organic waste is not incidentally or intentionally disposed of in the gray container. Twenty five percent was established as a threshold to mirror the 75% intent and the threshold established in statute. Absent this requirement, a jurisdiction would only be implementing a performance-based source separated organic waste collection system and generating 100 tons of organic waste would only need to send the material collected in the green container to a facility that can recover 75 percent of the material in the green container. If the jurisdiction only collects 50 tons of organic waste in the green container and sends it to a facility that recovers 75 percent of that material, up to 50 tons could be sent directly to disposal in the gray container. Removing this section would compromise the state's ability to achieve the organic waste reduction targets. Further, jurisdictions implementing a performance-based source separated organic waste collection system, are not subject to the strict education and outreach requirements prescribed in Article 4. This exemption is premised on the jurisdiction's existing education programs being sufficient to meet or exceed the state's minimum standards. The organic waste threshold measured in the gray container is a key indicator of efficacy.
2013	Braicovich, Alex, CR&R Incorporated	Performing a Detailed Waste Composition Based Upon Proposed SB 1383 Regulations. The following is an example of an application of the container contamination minimization through waste evaluations as required per Section 18984.5 (c)(1)E. For this example, we have selected one of our communities that includes a population of +/-100,000. In that city there are about 36,000 single family and duplex housing units. In this example we are only evaluating the gray container waste and only in the residential sector. Keep in mind there will be 20 – 30 jurisdictions desiring to be considered high-performance and having to go through this process at the same facility. It is stated that the waste composition study shall include a minimum number of samples from all hauler routes included in the study. Additionally, there are four unique tiers to determine the number of samples to be taken from each	Comment noted. The Performance-Based Source-Separated Organic Waste Collection Service provisions in Article 17 are optional requirements and a jurisdiction does not have to choose this regulatory pathway.

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		route. While the first tier would apply (less than 1,500 in a route) to most likely all cities, the other tiers are mostly irrelevant. A typical route is going to take place in a workday that consist of 480 minutes or 8 hours. This includes drive time from the transfer station to the beginning of the route and back to the station after the last generator is serviced. 1500 houses served in 480 minutes would be approximately 3 homes per minutes or 20 seconds each home (a very efficient route performance). A route of 7,000 generators or more means that the trucks would provide a rate of collection from generators of 15 per minute or one every 4 seconds which is not feasible. Cleary this section needs to be adjusted to a more realistic operational setting. For this particular jurisdiction there are approximately 30 residential routes (1200 generators per route). According to subsection (E) the waste composition study shall include at least 25 samples per route. It is impractical to take samples while on route (as there is no means to do so) so it is assumed the 25 samples would be taken upon each route completion. It is also assumed that the size of each of the 25 samples required will be 200 pounds as that is the only weight that seems to be referred to in the regulations. To achieve a reasonable characterization of the jurisdictions waste stream 6 routes completed per day would be sampled, equating to about 15 tons or 150 cubic yards of material that would be placed on a sorting floor. From this 15 tons or 150 cubic yards of material, 200-pound samples from various areas of the pile would then be taken. Performing this activity, representing just one container type from only one city would take up a significant amount of floor space and this does not include waste from the commercial sector or the other two material container types. Additionally, it is expected that 20-30 jurisdictions would be going through the same process. The amount of floor space, logistics for this size of an operation and resources needed to complete this task would be overwhelming in performing the requirements of the section of the regulations. It should also be noted that existing facilities were simply not designed to account for the number of audits and sampling requirements included in these regulations. There is simply not enough floor space to conduct the amount and number of sampling requirements in a safe and efficient manner. Safety will be compromised if we require personnel to be on the ground next to heavy equipment and other rolling stock while performing the multitude of audits and sampling requirements required in these current regulations. It is very apparent that the newly proposed process described in the proposed regulations for high efficiency jurisdictions would be extremely complicated and costly which is contrary to the intent of Article 17. In addition it is simply not feasible given current routing and other operational realities.	
2014	Cable, Justine, N/A	I currently live Montara, CA and it does not offer curbside compost pickup and there is a lot of resistance to bring it in. In order to bring this service, we have to work through the Montara Water and Sanitation District (MWSD). I have a question about AB 1383, section 42652.5 (inline below). If penalties are assessed against the	For violations by a jurisdiction, fines would be assessed by CalRecycle. For violations by a generator, fines would be assessed by the jurisdiction. The grounds for violations are separate for jurisdictions and generators so if a fine is assessed on a jurisdiction, the jurisdiction would not have grounds to cite a generator for the same violation.

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		MWSD for non-compliance, do they then have the right to collect those penalty charges from the residents of the districts they manage? 42652.5. (a) The department, in consultation with the State Air Resources Board, shall adopt regulations to achieve the organic waste reduction goals for 2020 and 2025 established in Section 39730.6 of the Health and Safety Code. The regulations shall comply with all of the following: (1) May require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction and may authorize local jurisdictions to impose penalties on generators for noncompliance. (2) Shall include requirements intended to meet the goal that not less than 20 percent of edible food that is currently disposed of is recovered for human consumption by 2025. (3) Shall not establish a numeric organic waste disposal limit for individual landfills. (4) May include different levels of requirements for local jurisdictions and phased timelines based upon their progress in meeting the organic waste reduction goals for 2020 and 2025 established in Section 39730.6 of the Health and Safety Code. The department shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to Section 41825, the amount of organic waste disposed compared to the 2014 level, per capita disposal rates, the review required by Section 42653, and other relevant information provided by a jurisdiction. (5) May include penalties to be imposed by the department for noncompliance. If penalties are included, they shall not exceed the amount authorized pursuant to Section 41850. (6) Shall take effect on or after January 1, 2022, except the imposition of penalties pursuant to paragraph (1) shall not take effect until two years after the effective date of the regulations. (b) A local jurisdiction may charge and collect fees to recover the local jurisdiction's costs incurred in complying with the regulations adopted pursuant to this section. http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1383	
2076	Carmichael, Tim, Southern California Gas Company	SoCalGas fully supports a plan that will reduce greenhouse gas (GHG) emissions from the California economy, recognizing that some sectors will be net carbon sinks as others will be net sources. Because we do not know how we will meet California's mid-century GHG goals, the State must maintain optionality and flexibility. This balanced energy approach is consistent with the Energy Futures Initiative's study developed by Dr. Moniz, former Secretary of Energy under the Obama Administration, titled, "Optionality, Flexibility & Innovation: Pathways for Deep Decarbonization in California," which analyzes the ways California can meet its 2030 and 2050 low-carbon energy goals.1 (1 Energy Futures Initiative. "Optionality, Flexibility, & Innovation. Pathways for Deep Decarbonization in California. 2019.	It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while energy storage and renewable hydrogen may default to "electricity" for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the

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		Available at https://energyfuturesinitiatine.org/) The report emphasizes that there is no “silver bullet,” all energy infrastructure should be utilized, and renewable gas is needed in California’s long-term plan to achieve mid-century goals. With this in mind, SoCalGas urges CalRecycle to expand the allowable end uses of renewable gas to provide as many beneficial alternatives for diverted organic waste as possible. This is especially important because each jurisdiction’s needs and infrastructure access are different. With the proposed changes below, SoCalGas supports the adoption of the Organic Waste Reduction Regulations at it will ensure that organics diversion meets the requirements of SB 1383, maximizes GHG emissions reduction co-benefits, and maintains flexibility so that implementation will be efficient and cost-effective.	eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
2077	Carmichael, Tim, Southern California Gas Company	By adding these provisions, the regulations will give local jurisdictions maximum flexibility to determine the highest and best end use of biogas from diverted organic waste based on their energy needs and proximity to energy infrastructure (e.g., transmission lines, pipelines, vehicle fueling infrastructure, etc.). The final regulations should not exclude beneficial end uses of renewable gas, which are much broader in use than electric generation, space and water heating, and transportation use.	Regarding pipeline injection, CalRecycle deleted this as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction’s procurement target.
2061	Cason, Kyle, Whittier	The City of Whittier would like to express our appreciation to the California Department of Resources Recycling and Recovery (CalRecycle) for providing the opportunity to comment on the October 2019 proposed regulation text implementing SB 1383 Short-Lived Climate Pollutants (SLCP). The City’s primary concern regarding the new regulations is the cost of implementation to the City, residents and businesses. The Third Formal Draft of the proposed regulations continues to impose excessive responsibilities including programmatic and penalty requirements on local jurisdictions compared to other regulated entities, including state agencies, public and private colleges and universities, and school districts. In requiring cities to impose steep civilpenalties of up to $500 per offense on residents and businesses for non-compliance with each requirement of the regulations, CaiRecycle will have added a time-consuming burden to our already stretched thin Code Enforcement division, with no funding for additional staffing.	Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
2062	Cason, Kyle, Whittier	Previously adopted commercial and commercial organics recycling regulations (AB 341 and AB 1826), required jurisdictions to provide education, outreach, reporting and make a “good faith effort” in implementing the programs. The proposed regulations to implement SB 1383 go further in placing costly responsibilities on	The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its

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		jurisdictions. If jurisdictions are not fulfilling their responsibilities they will be put on a work plan and require the City to demonstrate adequate staff and budget resources for implementing the program and enforcement. If jurisdictions continue to fail in fulfilling one or more of its many responsibilities significant civil penalties will be assessed. We believe precluding considering “good faith effort” is in conflict with existing state statute, section 42652.5 (a)(4) of the PRC, in particular.	enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction
2063	Cason, Kyle, Whittier	The local infrastructure does not currently exist to recycle the amounts for organics that will be diverted from landfills meaning the material will need to be transported at great distance at an increased cost. The cost to recycle organics is much higher than landfilling the material and the cost will have to be paid by businesses and residents who already have fee/regulation fatigue. We request that CalRecycle recognize and mitigate the fact that this unfunded mandate will (financially) greatly affect residents, businesses and other stakeholders at the local level. The requirement of local jurisdictions to enforce requirements on generators and impose penalties for noncompliance puts jurisdictions in the position of responding to complaints and defending regulations that the jurisdiction would not have otherwise adopted. There is also a concern that if the cost for organics recycling is spread among all customers to make it affordable, it may be a Proposition 218 violation.	CalRecycle disagrees with the characterization of procurement requirements as an unfunded mandate. First, the Legislature, in SB 1383, explicitly authorized local jurisdictions to charge and collect fees to recover its costs incurred in complying with the regulations (Pub. Res. Code § 42652.5(b)). In addition, Section 7 of the bill states that, “No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.” Such a fee authorization, and costs being recoverable from sources other than taxes, overcomes any requirement for state subvention of funds for reimbursement for a state mandate (see Gov. Code § 17556, County of Fresno v. State of California, 53 Cal.3d 482 (1991)). Second, local jurisdictions have discretion to design legitimate regulatory fees that charge, collect, and use funds in a manner that meets the exceptions to the definition of a “tax” under Cal. Const. Art. XIII C, Section 1 (e). There are no provisions in the SB 1383 regulations that limit that discretion. As such, it is overbroad and speculative to describe “any fees” that may in the future be imposed by the numerous local jurisdictions in California as “likely” to be treated as taxes. If a fee were to be challenged, the determination would be highly dependent on the particulars of how a local charge is purposed, collected and used. CalRecycle is not aware of any facts indicating that local jurisdictions are outright prevented from designing valid regulatory fees consistent with Prop. 26 and Prop. 218 to offset the costs of complying with SB 1383. According to the October 1, 2018 decision in Paradise Irrigation Dist. v. Commission on State Mandates, a statutory authorization to levy fees, such as that provided in SB 1383, is the relevant and dispositive factor in overcoming claims of subvention for a state mandate. This is true whether or not a local fee is subject to, or defeated by, a majority protest procedure. The court found the protest procedure to be a practical consideration for a local government as opposed to a legal factor in determining a requirement for subvention for a state mandate. Finally, it should be recognized that the procurement requirements are designed to apply to existing needs for a jurisdiction, such as for paper products, compost and mulch, and fuel for transport, heating and electricity, and require jurisdictions to instead purchase that material in a form derived from recovered organic waste. Thus, it is not designed to mandate new purchases but instead to make existing needs purchased from an alternate source.
2064	Cason, Kyle, Whittier	The City of Whittier respectfully request CalRecycle to consider these concerns while finalizing regulations by revising the proposed regulations to be less prescriptive, more flexible, and less punitive.	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.

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2111	Chinnakotla, Ramana, Sunnyvale	Thank you for this opportunity to comment on the third formal draft of the proposed regulations for implementing Senate Bill 1383. The City of Sunnyvale supported the passage of SB 1383 and is fully engaged in providing organics diversion services to its residents and businesses and institutional customers such as schools and government offices. The City supports the organics diversion goals expressed in SB 1383 and is presently diverting from disposal more than 8,000 tons per year of food scraps alone.	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.
2112	Chinnakotla, Ramana, Sunnyvale	We appreciate the careful attention paid by CalRecycle staff to the comments and concerns in the City's letters on the first two formal drafts. It is evident from the changes in the third draft that staff has heard and responded to some of the concerns expressed by the City and others regarding the June 2019 draft of these regulations. In many ways, this draft has been changed to make the regulations more reasonable and more likely to produce positive results. However, some of the changes have only partially addressed the problem they were intended to solve and in other cases the original concerns have been replaced with new language that creates new, significant concerns. Our most high-level concerns about the new wording are noted in detail below. We have many other issues and concerns that are noted in the comments being provided in a separate letter from the SWANA California Chapters Legislative Task Force.	Comment noted. This particular comment does not have specific changes noted.
2113	Chinnakotla, Ramana, Sunnyvale	The City reiterates that the proposed per capita procurement requirements of 0.08 tons per resident per year, would force the City to procure amounts of recovered organic waste products that are an order of magnitude larger than what we currently use and is unrealistic and impossible to comply with. The huge gap between the procurement requirement and the City's actual consumption needs for organics-derived materials indicates that the assumptions used for calculating imposed procurement quantities must be revisited.	The procurement requirements are designed to build markets for recovered organic waste products, which is an essential component of achieving the highly ambitious organic waste diversion targets mandated by SB 1383. CalRecycle developed an open and transparent method to calculate the procurement target that is necessary to help meet the highly ambitious diversion targets set forth by the Legislature. Regarding the proposal to base the procurement target methodology on "actual need" CalRecycle disagrees. The comments submitted on this lack specific language for quantifying such an approach. Even if the commenter recommended a quantifiable way to determine "actual need", California has over 400 diverse jurisdictions and it would be overly burdensome to account for each jurisdiction's "actual need" and to develop a procurement target and enforcement policy for each one. CalRecycle recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. If, as mentioned in the comment, the city has limited need for compost, mulch, or fuel, the city may procure electricity or heating applications derived from renewable gas. If the city is capable of reducing or eliminating its use of fossil gas entirely, it could correspondingly reduce or eliminate its procurement obligation under the regulation. This provision was added to ensure jurisdictions are not required to procure more material than they can actually use, and to ensure that the requirements do not conflict with other environmental goals to reduce the carbon intensity of products and activities cities procure material for use.

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2114	Chinnakotla, Ramana, Sunnyvale; Zetz, Eric, SWANA	Table 1 below demonstrates that the City's combined procurement of compost, mulch, renewable gas/energy is almost one-fourth of the procurement target and is clearly short of the mandated amount. Sunnyvale Total Population considered for calculation purposes is 155,567. Based on the proposed procurement factor of 0.08, City's TOTAL Procurement TARGET of Organic Tons Equivalent will be 12,445.36 tons/year. The Table below shows that the City's total procurement is only 26 percent of the required tonnage. (See Table in Chinnakotla 2011-2021) As shown in the table above, the City of Sunnyvale, a leader in sustainability and climate issues, can barely make it to 26 percent or ¼ of the 0.08/capita requirement. Therefore, the City proposes to consider a procurement factor of 0.02 (1/4 of 0.08) tons of organic waste per California resident per year, effective from January 1, 2022, which CalRecycle shall recalculate after five years for each jurisdiction. Proposed 0.02 per capita procurement requirement will be a more realist and achievable goal.	The procurement requirements are designed to build markets for recovered organic waste products, which is an essential component of achieving the highly ambitious organic waste diversion targets mandated by SB 1383. CalRecycle developed an open and transparent method to calculate the procurement target that is necessary to help meet the highly ambitious diversion targets set forth by the Legislature. CalRecycle recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. If, as mentioned in the comment, the city has limited need for compost, mulch, or fuel, the city may procure electricity or heating applications derived from renewable gas. If the city is capable of reducing or eliminating its use of fossil gas entirely, it could correspondingly reduce or eliminate its procurement obligation under the regulation. This provision was added to ensure jurisdictions are not required to procure more material than they can actually use, and to ensure that the requirements do not conflict with other environmental goals to reduce the carbon intensity of products and activities cities procure material for use. Regarding geographic space constraints for compost application, See also response
2115	Chinnakotla, Ramana, Sunnyvale; Zetz, Eric, SWANA	Additionally, the methodology to achieve 0.08/capita procurement requirement and the assumed link between local government's 13 percent share of GPD and local government's ability to absorb organics-derived products seems faulty and needs more thought.	Please refer to the Final Statement of Reasons for Section 18993.1 which includes text explaining the purpose and necessity of the provisions of the final regulation including the per capita procurement target. The per capita procurement target increase from 0.07 to 0.08 is based on higher than estimated disposal data recently obtained from CalRecycle's Disposal Reporting System (DRS). The corresponding increase in diversion impacted the per capita procurement target. For reference, the initial per capita procurement target was based on an estimated 21,000,000 tons of organics diversion by 2025. The new DRS data increased the organics diversion estimate to 25,043,272 tons. That number is multiplied by 13% (government GDP), and divided by CA population estimated in 2025 (42,066,880); result is 0.08.
2116	Chinnakotla, Ramana, Sunnyvale	Furthermore, the fuel options proposed conflict with the City's Climate Action Plan, which envisions electrification of transportation vehicles as part of our move to reduce carbon emissions.	Section 18993.1(j) provides that if a jurisdiction reduces its consumption of gas for heating, electricity, or vehicle fuel to zero, then they would not have a procurement obligation under the regulations. In the event the jurisdiction still procures gas, then the intent of the procurement requirements is to have that gas, or a portion thereof, be renewable which contributes to the state's climate goals by reducing organic waste. Regarding electric vehicles, the proposed regulatory text recognizes the eligibility of electricity derived from renewable gas. The draft regulatory proposal also does not mandate that jurisdictions procure renewable gas. A jurisdiction also has the option to procure compost or mulch.
2117	Chinnakotla, Ramana, Sunnyvale	Thank you for revising the performance-based compliance option. The proposed revisions are a good start, but some additional wording changes are needed to make the performance-based option viable. One of the biggest problem is that measurement of the organics content of the "gray container waste" as collected, does not account for organics sorted from the gray container by post-collection processing.	Comment noted. The gray container waste evaluations are not only indicative of the amount of organic waste that continues to be disposed in jurisdictions that are implementing a performance-based source separated organic waste collection service, which is an important metric for ensuring the state achieves the statewide targets. The requirements also reflect that jurisdictions implementing these services are not required to comply with enforcement and education and outreach requirements included in other portions of the chapter. The gray container waste evaluations are a way of demonstrating performance that is equivalent to or greater than the

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			minimum requirements jurisdictions would otherwise be subject to. Further, after material is recovered from a gray container waste stream, it cannot be accurately associated with the jurisdiction of origin, and even if it could, such a measurement would be used to quantify a jurisdiction-specific diversion target. As noted in several comments, jurisdiction-specific diversion requirements are precluded by statute.
2118	Chinnakotla, Ramana, Sunnyvale	The City suggests the Section 18998.1. (a)(1) requirement to provide 3-container service to 90 percent of the commercial businesses should be reconsidered. The City has a wide range of commercial establishments (small to large sized) with varying generation rates. Therefore, the City requests that the 3-container service requirement should be based on 90 percent of total tonnage generated from all commercial businesses combined.	Comment noted. CalRecycle acknowledges that some sectors may be more difficult to meet the service requirements than others. The standards were established to ensure that the state can achieve the organic waste reduction targets. Requirements related to providing organic waste collection services are not a new requirement. Jurisdictions are already required by law to offer organic waste collection services to the commercial sector. Additionally, the Article 17 service requirements are specifically designed to apply to an entire jurisdiction. Piecemealing where Article 17 services are provided would unnecessarily complicate enforcement and oversight for the department as well as jurisdictions. Comment noted. The tons generated by commercial generators can vary from year to year and from day to day. Although the total number of businesses is knowable, the waste each business will generate in a given day is not. It is unclear how a jurisdiction could comply with a requirement to provide service to 90 percent of the tons generated, when the tons are still yet to be generated. This alternative would require jurisdictions to constantly evaluate waste generation on a daily basis to ensure they actually capture 90 percent of the commercial tons generated, which would be unnecessarily burdensome. CalRecycle agrees that jurisdictions should prioritize generators which is why this article allows jurisdictions to forego providing service to 10 percent of their commercial generators.
2119	Chinnakotla, Ramana, Sunnyvale	The City reiterates it's concern that measurement of the organics content of the "gray container waste" as collected does not account for organics sorted from the gray container by post-collection processing. A methodology that's a combination of front end source-separated organics and post-collection recovery of organics before disposal is the best way (perhaps the only way) to achieve 75% diversion	Comment noted. The gray container waste evaluations are not only indicative of the amount of organic waste that continues to be disposed in jurisdictions that are implementing a performance-based source separated organic waste collection service, which is an important metric for ensuring the state achieves the statewide targets. The requirements also reflect that jurisdictions implementing these services are not required to comply with enforcement and education and outreach requirements included in other portions of the chapter. The gray container waste evaluations are a way of demonstrating performance that is equivalent to or greater than the minimum requirements jurisdictions would otherwise be subject to. Further, after material is recovered from a gray container waste stream, it cannot be accurately associated with the jurisdiction of origin, and even if it could, such a measurement would be used to quantify a jurisdiction-specific diversion target. As noted in several comments, jurisdiction-specific diversion requirements are precluded by statute.
2120	Chinnakotla, Ramana, Sunnyvale	Additionally, we request that instead of imposing the 75 percent diversion mandate from January 1, 2022, a two-phase compliance schedule should be considered, which would allow facilities to come into compliance in a phased approach which is more realist: ➢ Between January 1, 2022 - December 31, 2024: No more than 50 percent of the organic waste collected in the jurisdiction is disposed in a landfill. ➢ After January 1, 2025: No more than 25 percent of the organic waste collected in the jurisdiction is disposed in a landfill.	Comment noted. The definition of designated source separated organic waste facility phases in the requirements as proposed in the comment. Several commenters proposing this approach appear to assume that the recovery efficiency target is an overall jurisdiction diversion target. It is not. See response to General Comment 62, also see Specific Purpose and Necessity as presented in the ISOR and FSOR for Article 2 and Article 3. The provisions related to compost operations and facilities were amended to phase in the organic disposal levels from 20 percent in 2022 to 10 percent in 2024. The definition of "designated source separated organic waste recycling facility" in Section 18982(a)(14.5) includes cross-references that make it clear that a facility that is seeking to qualify

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			as a designated source separated organic waste recovery facility can rely upon the sampling and measurement and reporting requirements that are included in Sections 17409.5.8 and 18815.5. Facilities are not required to qualify as designated source separated organic waste facilities. They may demonstrate that they meet the standards through the applicable reporting requirements. The emphasis of the requirements in Article 17 rest with jurisdictions who may only use a facility that has demonstrated that it meets the designated source separation organic waste facility standards.
2121	Chinnakotla, Ramana, Sunnyvale	Furthermore, the percentage of organic waste present in the gray container collection stream collected and the percentage of organic waste disposed in a landfill shall be determined by a measurement methodology submitted by the jurisdiction to the department for approval no less than 180 days prior to the start of the performance-based collection system	Comment noted. The proposed change is vague and does not include any objective standards that would be applied to the methodology. This could result in uneven application whereby one entity is subject to a different set of regulatory standards than another. The standard established in the regulation is objective, measurable and applies equally to all entities subject to the regulation.
5089	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	The Third Formal Draft of the proposed regulations imposes inordinately excessive responsibilities on local jurisdictions compared to other regulated entities, which are not consistent with existing state statute. The Task Force recognizes the significant responsibility CalRecycle has under State law to achieve the Statewide 75 percent "recycling" goal by 2020, reduce organic waste landfill disposal by 75 percent by 2025, support the Air Resources Board in reducing climate pollutants, and the limited time granted by the State Legislature to achieve these goals. However, while the Task Force strongly supports efforts to reduce climate pollutants, the Task Force is very concerned about the approach that CalRecycle has selected, which places a tremendous burden and responsibility on counties and cities (more than any other stakeholder group, including, but not limited to, state agencies, public and private colleges and universities, school districts, local education agencies and non-local entities as defined in Article 1, Section 18982 (a) (40) and (42), respectively, etc., [emphasis added]), while relying on extremely prescriptive requirements, and excessive inspection and monitory reporting, while requiring counties and cities to impose steep penalties on residents and businesses. The Task Force believes that the Third Formal Draft of the proposed regulations stipulates a number of mandates that are inconsistent with the provisions of the Article XI of the California Constitution in regard to general law and charter cities and counties as well as provisions of the California Public Resources Code (PRC), Subdivision 40059 (a) which, in part, states, "each county, city, district, or other local governmental agency may determine all the following: Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services." (emphasis added) (as an example, see provisions of Articles 3, 14, and 15 through 17 of the mandates stipulated by the Third Formal Draft of the proposed regulations.)	Comment noted. It is unclear from the comment how the commenter believes requirements should be redistributed. CalRecycle finds that the proposed regulatory requirements are designed to meet the organic waste diversion mandates in SB 1383. Regarding Public Resources Code Section 40059, there are two phrases that must be taken into account in its application to SB 1383. First, Public Resources Code Section 40059 applies to aspects of solid waste handling "which are of local concern." The organic waste diversion mandates in SB 1383 are of statewide application and statewide concern. As described in other responses to comments, CalRecycle was granted broad statutory authority by the Legislature to create rules designed to implement these statewide mandates and ensure the statutory organic waste diversion requirements are met. To the extent there are provisions in the rulemaking that touch on aspects of local solid waste handling, these are regarding matters of statewide concern that have been determined by CalRecycle to be necessary to achieve the goals of SB 1383. Second, Public Resources Code Section 40059 contains the introductory phrase, "Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine…aspects of solid waste handling which are of local concern…" This phrase contemplates that other laws exist that may affect local solid waste handling and that the mere existence of those laws does not automatically preempt local governments from regulating the enumerated subject areas. It was designed to make clear that the state was not preempting the entire field of solid waste handling and that local jurisdictions were still allowed to regulate in certain areas. As such, Public Resources Code 40059 is not a limitation on CalRecycle from regulating aspects of solid waste handling to the extent they are of statewide concern.

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		State law, Section 40001 (a) of the Public Resources Code (PRC), declares that "the responsibility for solid waste management is a shared responsibility between the state and local governments (emphasis added)." Furthermore, SB 1383 recognizes the shared responsibility "the waste sector, state government, and local governments" have in achieving the organic waste landfill disposal reduction goals for 2020 and 2025, and thus requires CalRecycle to analyze the progress made by the three sectors, in that order, including "commitment of state funding", in achieving the said goals {PRC Section 42653 (a)} (emphasis added). However, under the Third Formal Draft of the proposed regulations, the responsibility weighs much more heavily on counties and cities, including programmatic and penalty requirements, than on state agencies, school districts, and special districts, local education agencies, and non-local entities (as an example, see provisions of Articles 14 and 15 of the proposed regulations). The Task Force strongly recommends that the Office of Administrative Law (OAL) consider the lack of consistency, as defined by Government Code 11349(d), between the proposed regulations and PRC 40059 when considering the regulations pursuant to Government Code 11349.1. Before approval, the proposed regulations must be revised to be consistent with the provisions of the California Constitution and the California Law to provide for a more equitable distribution of the responsibility for achieving the disposal reduction goals among all sectors, including industry, state government, school districts, public and private colleges and universities, and other non-local entities and local education agencies, etc.	
5090	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	The Third Formal Draft exceeds its statutory authority by requiring jurisdictions to impose mandatory monetary penalties on residents and businesses. SB 1383 does not provide CalRecycle with the authority to require local jurisdictions such as counties and cities to impose civil (monetary) penalties on residential or commercial organic waste generators for non-compliance (emphasis added). This requirement as stipulated by CalRecycle exceeds the authority granted to CalRecycle by State law. While SB 1383 grants CalRecycle the authority to "require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction," this authority does not extend to the imposition of penalties (emphasis added). SB 1383 only states that CalRecycle "may authorize local jurisdictions to impose penalties on generators for noncompliance" {see Section 42652.5. (a)(1) of the Public Resources Code (PRC)} (emphasis added). However, the proposed regulations [Article 16, Section 18997.1 (b)] specify that jurisdictions "shall adopt ordinance(s) or enforceable mechanisms to impose penalties as prescribed in Section 18997.2." (emphasis added). In addition, Section 18997.2. Penalty Amounts, requires: "(a) A jurisdiction shall impose penalties for violations of the requirements of this chapter consistent with the applicable requirements prescribed in Government Code Sections 53069.4, 25132 and 36900. The penalty levels shall be as follows: …" (emphasis added). As	Regarding Public Resources Code Section 40059, there are two phrases that must be taken into account in its application to SB 1383. First, Public Resources Code Section 40059 applies to aspects of solid waste handling "which are of local concern." The organic waste diversion mandates in SB 1383 are of statewide application and statewide concern. As described in other responses to comments, CalRecycle was granted broad statutory authority by the Legislature to create rules designed to implement these statewide mandates and ensure the statutory organic waste diversion requirements are met. To the extent there are provisions in the rulemaking that touch on aspects of local solid waste handling, these are regarding matters of statewide concern that have been determined by CalRecycle to be necessary to achieve the goals of SB 1383. Second, Public Resources Code Section 40059 contains the introductory phrase, "Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine…aspects of solid waste handling which are of local concern…" This phrase contemplates that other laws exist that may affect local solid waste handling and that the mere existence of those laws does not automatically preempt local governments from regulating the enumerated subject areas. It was designed to make clear that the state was not preempting the entire field of solid waste handling and that local jurisdictions were still allowed to regulate in certain areas. As such, Public Resources Code 40059 is not a limitation on CalRecycle from regulating aspects of solid waste handling to the extent they are of statewide concern.

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		proposed, a single-family dwelling may be subject to a penalty of $100 for the first offense, $200 for the second offense, and $500 for the third and each subsequent offense. In requiring counties and cities to impose steep civil penalties of up to $500 per offense on residents and businesses for non-compliance with each requirement of the regulations, CalRecycle would exceed its authority under the law, notwithstanding the provisions of Government Code Sections 53069.4, 25132 and 36900. Such authority is vested on local governmental agencies by PRC Section 40059, which states that, "each county, city, district, or other local governmental agency may determine…aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services" (emphasis added). The Task Force strongly recommends that the OAL consider the lack of authority, as defined in Government Code 11349 (b), granted to CalRecycle to require local jurisdictions to impose mandatory financial penalties on residents and commercial businesses, when considering the regulations pursuant to Government Code 11349.1. Before approval, the proposed regulations must be revised to delete any and all provisions that require counties and cities to impose civil (monetary) penalties on their residents or businesses. The language may be revised pursuant to PRC Section 42652.5 (a)(1) to authorize counties and cities to do so, as they deem appropriate (emphasis added).	Consistent with rules of statutory construction, Public Resources Code Section 42652.5(a)(1) must be read as a whole and interpreted in a way that renders the text as compatible, not contradictory. This section states that the regulations "May require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction and may authorize local jurisdictions to impose penalties on generators for noncompliance." The first part of this section explicitly contemplates regulatory requirements on entities besides generators as long as they are relevant to meeting the mandates of SB 1383. Thus, the second part of the section regarding penalties must be read harmoniously and as a whole with the first part to permit penalties on the other entities that may be subject to regulatory requirements. Without enforcement penalties on the other entities, the regulatory requirements are not actually requirements but mere suggestions. Bolstering this interpretation is the Assembly Floor Analysis for SB 1383 (August 31, 2016) which stated that the bill, "May require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction and impose penalties for noncompliance." Regarding the language "authorizing" penalties by local jurisdictions, the clear intent of the legislation was that jurisdictions must penalize non-compliance with SB 1383 requirements. First, the language of Assembly Floor Analysis described above makes this intent clear – CalRecycle may require jurisdictions to impose requirements "and impose penalties for noncompliance." Second, the Legislature designed the bill to achieve the organic waste reduction goals in part by requiring local jurisdictions to impose requirements. These requirements must be enforceable through penalties or: (a) they will not actually be requirements but suggestions; and (b) there will be no way to ensure compliance by regulated entities and thus achieve the goals of the statute. Given these considerations, CalRecycle has authorized local jurisdictions to impose penalties as long as they meet the conditions described in the regulations regarding categories of violations, requirements to enforce against those violations, and minimum penalty levels. Regarding Section 18995.1(a)(1)(B)(5), CalRecycle notes that the language of this section was amended to simply specify that jurisdictions enforce according the enforcement timetables and compliance extensions in Section 18995.4 and the administrative civil penalty provisions in 18997.2.
5091	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	By precluding CalRecycle from considering "good faith effort" by local jurisdictions to comply with the regulations, the Third Formal Draft is in conflict with existing state statute. CalRecycle's Statutory Background and Primary Regulatory Policies document states, in part, that "Legislative guidance directs CalRecycle not to…utilize the "Good Faith Effort" compliance model specified in PRC Section 41825." This is inaccurate and contrary to the language of SB 1383. Section 42652.5. (a)(4) of the PRC specifically requires CalRecycle to consider "good faith effort" in determining a jurisdiction's progress in complying with the law. It states that CalRecycle "shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to Section 41825" (emphasis added).	The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction

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		Since PRC Section 41825 establishes the process to determine whether a jurisdiction has made a "good faith effort" to comply with the law, it is clear that CalRecycle is required to consider "good faith effort" in making its determination of a jurisdiction's progress. The Task Force strongly recommends that the Office of Administrative Law (OAL) consider the lack of consistency, as defined by Government Code 11349(d), between the proposed regulations and PRC 41825, when considering the regulations pursuant to Government Code 11349.1. Before approval, the proposed regulations need to be revised to require CalRecycle to consider "good faith effort" in evaluating jurisdictional compliance.	
5092	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	The procurement requirements in the Third Formal Draft exceed the authority granted to CalRecycle in existing state statute. The Third Formal Draft of the proposed regulations requires local governments to purchase recovered/recycled organic waste products targets set by CalRecycle. While the Task Force cannot see any statutory procurement requirement within the provisions of SB 1383, the implementation of these requirements will result in substantial additional costs to local governments over and above the costs jurisdictions already anticipate incurring for complying with the extensive programmatic requirements of the proposed regulations. Therefore, the Task Force respectfully requests that CalRecycle instead work to develop markets for recovered/recycled organic waste products. Further, the additional costs that will result from complying with the proposed regulations' procurement requirements represent an unfunded state mandate under California Constitution, Article XIII B, Section 6 (a) since the Third Formal Draft of the proposed regulations would impose a new program on local governments and neither the draft regulations nor the Amended Initial Statement of Reasons identifies a state funding source. Moreover, local governments generally do not have the authority to impose fees or assessments that would pay for the increased costs that they would incur as a result of these procurement requirements. The Task Force strongly recommends that the OAL consider the lack of authority, as defined in Government Code 11349 (b), granted to CalRecycle to require local jurisdictions to procure specified minimum amounts of recovered organic waste products, when considering the regulations pursuant to Government Code 11349.1. Before approval, the proposed regulations must be revised to remove the procurement requirements.	CalRecycle disagrees with the characterization of procurement requirements as an unfunded mandate. First, the Legislature, in SB 1383, explicitly authorized local jurisdictions to charge and collect fees to recover its costs incurred in complying with the regulations (Pub. Res. Code § 42652.5(b)). In addition, Section 7 of the bill states that, "No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code." Such a fee authorization, and costs being recoverable from sources other than taxes, overcomes any requirement for state subvention of funds for reimbursement for a state mandate (see Gov. Code § 17556, County of Fresno v. State of California, 53 Cal.3d 482 (1991)). Second, local jurisdictions have discretion to design legitimate regulatory fees that charge, collect, and use funds in a manner that meets the exceptions to the definition of a "tax" under Cal. Const. Art. XIII C, Section 1 (e). There are no provisions in the SB 1383 regulations that limit that discretion. As such, it is overbroad and speculative to describe "any fees" that may in the future be imposed by the numerous local jurisdictions in California as "likely" to be treated as taxes. If a fee were to be challenged, the determination would be highly dependent on the particulars of how a local charge is purposed, collected and used. CalRecycle is not aware of any facts indicating that local jurisdictions are outright prevented from designing valid regulatory fees consistent with Prop. 26 and Prop. 218 to offset the costs of complying with SB1383. According to the October 1, 2018 decision in Paradise Irrigation Dist. v. Commission on State Mandates, a statutory authorization to levy fees, such as that provided in SB 1383, is the relevant and dispositive factor in overcoming claims of subvention for a state mandate. This is true whether or not a local fee is subject to, or defeated by, a majority protest procedure. The court found the protest procedure to be a practical consideration for a local government as opposed to a legal factor in determining a requirement for subvention for a state mandate. Finally, it should be recognized that the procurement requirements are designed to apply to existing needs for a jurisdiction, such as for paper products, compost and mulch, and fuel for transport, heating and electricity, and require jurisdictions to instead purchase that material in a form derived from recovered organic waste. Thus, it is not designed to mandate new purchases but instead to make existing needs purchased from an alternate source.

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			Regarding authority, See response to General Comment 24, above. Consistent with CalRecycle's broad rulemaking authority, the proposed procurement requirements are designed to help achieve the organic waste diversion goals in SB 1383 by supporting markets for recovered organic waste products. The regulations have a direct nexus to achieving those organic waste diversion goals by preventing initially diverted organic waste from being disposed due to lack of end uses. Health and Safety Code Section 39730.8, also in SB 1383, refers to CalRecycle considering recommendations in the California Energy Commission's 2017 Integrated Energy Policy Report (IEPR) for the use of biomethane and biogas. The IEPR recommended that "state agencies should consider and, as appropriate, adopt policies and incentives to significantly increase the sustainable production and use of renewable gas." As such, provisions for the procurement of renewable transportation fuel generated from recovered organic waste. The Air Resources Board's Short Lived Climate Pollutant Strategy states, "CalRecycle will continue to work towards strengthening state procurement requirements relative to use of recycled organic products." The inclusion of compost as an eligible recovered organic waste procurement product aligns with policies and mandates for methane reduction as described in the Air Resources Board's SLCP Strategy. The Economic Analysis conducted for the SLCP Strategy notes several scenarios that can achieve the needed reductions in short-lived climate pollutants from the waste sector, and every scenario modeled includes new compost facilities. The purpose of a compost procurement requirement is to establish markets for compost, which is a product generated by organics recycling facilities which the SLCP Strategy identified as in need of market development. Regarding paper procurement requirements, CalRecycle's 2014 Waste Characterization Study found that paper accounts for 17.4 percent of the disposed waste stream. Requirements on jurisdictions to meet the recycled content paper procurement requirements will help grow markets for recycled content paper. Given the prevalence of paper in the disposal stream, increased procurement of recycled paper is needed to grow the market for recycled paper in order to achieve the organic waste reduction goals. This is necessary to help achieve the organic waste diversion goals in SB 1383 by ensuring an end use for diverted organic waste. Regarding funding, SB 1383 (Public Resources Code Section 42652.5(b)) provides that, "A local jurisdiction may charge and collect fees to recover the local jurisdiction's costs incurred in complying with the regulations adopted pursuant to this section."
5093	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	The requirements on local jurisdictions in the Third Formal Draft are excessively prescriptive. The draft regulations contradict Government Code 11340 (d) which states that "The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals." The draft regulations are highly prescriptive, and similar or better results may be achieved by the state establishing performance standards for jurisdictions and providing the necessary tools to achieve	The Legislature set very ambitious organic waste diversion targets in SB 1383 to be achieved on a very short timeline. As such, the provisions of the proposed regulations, while prescriptive, are designed to achieve these targets in a timely manner consistent with the statutory mandate. It is unclear how the example of diversion credit would achieve this.

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		the standards, such as diversion credit for non-combustion thermal conversion technologies processing organic waste, to assist jurisdictions with meeting the performance standards (emphasis added). The Task Force strongly believes that jurisdictions and regulated agencies would like to see the proposed regulations to be less prescriptive, more flexible, and less punitive, as well as to include reasonable timeframes for compliance. At the same time CalRecycle should focus state efforts on market development, technical support, including efforts to investigate emerging technologies leading to the development of new facilities and products, and funding for infrastructure. The Task Force strongly recommends that the OAL consider the excessively prescriptive nature of the regulations which is not consistent (as defined by Government Code 11349(d)) with Government Code 11340 (d) when considering approving the regulations pursuant to Government Code 11349.1. Before approval, the regulations must be significantly revised to reduce the excessive requirements on local jurisdictions.	
5094	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	See comment letter. Section 18981.1 Scope of Chapter 1. Comment(s): Pursuant to SB 1383 (2016), Subdivision 39730.6 (a) of the Health & Safety Code states "Consistent with Section 39730.5, methane emissions reduction goals shall include the following targets to reduce the landfill disposal of organics" by 50 percent from the 2014 level by 2020 and 75 percent by 2025, (emphasis added). However, this section fails to recognize that the said targets being referred to are based on organic waste "landfill" disposal reductions, and failure to indicate this fact causes confusion among regulated communities, governmental agencies, members of public and other stakeholders. • Proposed Regulatory Text and Recommended Changes/Revisions: (a) This chapter establishes the regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to achieve the organic waste landfill disposal reduction targets codified in Section 39730.6 of the Health and Safety Code and Chapter 13.1 of Division 30 of the Public Resources Code.	Comment noted, this comment is not directed at changes made to the second draft of regulatory text. However, CalRecycle does not believe a change is necessary as the term disposal as used in the scoping section clearly refers to landfill disposal. The term disposal and landfill disposal are frequently used interchangeably. In fact, the section of the Health and Safety Code codified by SB 1383 commenter does just that: Health and Safety Code Section 39730.6. (a) Consistent with Section 39730.5, methane emissions reduction goals shall include the following targets to reduce the landfill disposal of organics: (1) A 50-percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020. (2) A 75-percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2025. (b) Except as provided in this section and Section 42652.5 of the Public Resources Code, the state board shall not adopt, prior to January 1, 2025, requirements to control methane emissions associated with the disposal of organic waste in landfills other than through landfill methane emissions control regulations." (emphasis added). As noted in the Initial Statement of Reasons, there is no existing definition of landfill disposal, or organic waste disposal in the Health and Safety code. As a result, Article 2 of the regulations specifically identifies activities that constitute landfill disposal of organic waste for the purposes of the regulations. The regulations also identify activities that constitute a reduction of landfill disposal of organic waste. Activities that constitute landfill disposal were identified in the regulations in consultation with CARB, as required by statute. However in response to comments on this item CalRecycle staff conducted a thorough review to ensure the term disposal and landfill disposal were used properly and consistent with the statutory intent throughout the regulation.

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5095	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	3. Comment(s): see comment letter. (39.5) “Lifecycle greenhouse gas emissions or “Lifecycle GHG emission” - In reference to Section 18983.2 (a) (3), it is our understanding that the calculated greenhouse gas reduction of 0.30 MTCO2e/short ton from composting organic waste is based on a modified assessment as documented in the Initial Statement of Reasons. For example, some factors such as the impact of greenhouse gas emission due to transportation of organic waste to distant facilities were omitted from analysis. We strongly believe that for the purpose of determination of technologies that constitute a reduction in landfill disposal, the impact of GHG emission from transportation need to be considered and the standard of 0.30 MTCO2e/short ton of organic waste standard needs to be adjusted. • Proposed Regulatory Text and Recommended Changes/Revisions: (39.5) “Lifecycle greenhouse gas emissions” or “Lifecycle GHG emissions” means the aggregate quantity of greenhouse gas emissions (including direct and indirect emissions), related to the full lifecycle of the technology or process that an applicant wishes to have assessed as a possible means to reduce landfill disposal of organic waste. The lifecycle analysis of emissions includes all stages of organic waste processing and distribution, including collection from a recovery location, waste processing, delivery, use of any finished material by the ultimate consumer, ultimate use of any processing materials. The mass values for all greenhouse gases shall be adjusted to account for their relative global warming potential. **However, for the purposes of Article 2 of these regulations, the aggregated quantity of greenhouse gas emissions shall not include emissions associated with other operations or facilities with processes that reduce short-lived climate pollutants, as that term is used in Article 2, that are similar to or consistent with those emissions that were excluded as the basis for developing the 0.30 MTCO2e/short ton of organic waste standard.**	Staff used the methodology described in guidance doc referenced in the FSOR to derive the 0.30 MMTCO2e/short ton organic waste threshold specified in Section 18983.2. As noted in the appendix, staff utilized CARB’s Method for Estimating Greenhouse Gas Emission Reductions from Diversion of Organic Waste from Landfills to Compost Facilities, which considers transportation emissions from organic material feedstock collection to compost product delivery to be functionally equivalent to transportation emissions from collection of organic waste to landfill disposal. Therefore, transportation emissions associated with composting (feedstock collection and delivery of finished product) are accounted for in the 0.30 MTCO2e threshold and therefore must be considered in the GHG emissions reduction and the lifecycle GHG emissions calculations.
5096	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	4. Comment(s): In regards to the definition of “Organic Waste” as defined in Paragraph (46), at CalRecycle’s SB 1383 Public Workshop held at the South Coast Air Quality Management District on June 18, 2019, a member of the Task Force asked if “Organic Waste as defined includes Plastic?” to which Mr. Hank Brady responded “NO.” Therefore, the definition of “Organic Waste” needs to be revised to exclude plastic products. The definition of “organic waste” in the regulations conflicts with 14 CCR §18720, which defines “organic waste” as “solid wastes originated from living organisms and their metabolic waste products, and from petroleum, which contain naturally produced organic compounds, and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide, and other simpler organic compounds.” Because this definition of organic waste includes solid waste originating from petroleum, i.e. plastics, the regulations should clarify that plastics are not considered “organic waste.”	Comment noted. CalRecycle disagrees that the definition of organic waste is too broad, or should be limited to the types of organic waste included in the definition used in AB 1826. SB 1383 requires CalRecycle to reduce the disposal of organic waste. These reductions are required as a means of achieving the methane emission reduction targets of the SLCP Strategy. AB 1826 only requires that collection services be offered to commercial businesses. SB 1383 requires the state to reduce the disposal of organic waste that is landfilled, it is a substantially broader legislative mandate and requirement. Organic waste that break down in a landfill and create methane must therefore be included in the regulatory definition, including organic waste that are not generated by commercial businesses. Organic waste defined in the regulation are subject to specific requirements (e.g. collection, sampling etc). These requirements are necessary to achieve the purpose of the statute. Comment noted. The definition of organic waste clearly identifies materials that are types of organic waste. It is not feasible or necessary to state in the negative every conceivable material that is not an organic waste.

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		The "organic waste" definition as proposed in Paragraph 46 includes the phrase "organic textiles and carpets." The proposed regulations do not define the phrase "organic textile and carpets" and the definition needs to be provided (emphasis added). Depending how the phrase is defined, placement of "organic textile and carpets" in green containers, contrary to provisions of the Section 18984.1 (a) (5) (A), must be allowed. • Proposed Regulatory Text and Recommended Changes/Revisions: (46) "Organic waste" means solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges. "**Organic waste" does not include non-compostable plastic products. (53.5) "Plastic products" means any non-hazardous and non-putrescible solid objects made of synthetic or semi-synthetic organic compounds.**	
5097	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	5. Comment(s): As a follow up to Specific Comment No. B.1, the proposed definition of "Organic waste disposal reduction target." Section 18982 (47) is not consistent with provisions of Subdivision 39730.6. (a) of the Health & Safety Code. • Proposed Regulatory Text and Recommended Changes/Revisions: (47) "Organic waste disposal reduction target" is the statewide target to reduce the landfill disposal of organic waste by 50 percent by 2020 and 75 percent by 2025, based on the 2014 organic waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code.	Comment noted. CalRecycle does not believe a change is necessary as the term disposal as used in the scoping section clearly refers to landfill disposal. The term disposal and landfill disposal are frequently used interchangeably. In fact, the section of the Health and Safety Code codified by SB 1383 commenter does just that: Health and Safety Code Section 39730.6. (a) Consistent with Section 39730.5, methane emissions reduction goals shall include the following targets to reduce the landfill disposal of organics: (1) A 50-percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020. (2) A 75-percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2025. (b) Except as provided in this section and Section 42652.5 of the Public Resources Code, the state board shall not adopt, prior to January 1, 2025, requirements to control methane emissions associated with the disposal of organic waste in landfills other than through landfill methane emissions control regulations." (emphasis added). As noted in the Initial Statement of Reasons, there is no existing definition of landfill disposal, or organic waste disposal in the Health and Safety code. As a result, Article 2 of the regulations specifically identifies activities that constitute landfill disposal of organic waste for the purposes of the regulations. The regulations also identify activities that constitute a reduction of landfill disposal of organic waste. Activities that constitute landfill disposal were identified in the regulations in consultation with CARB, as required by statute. However in response to comments on this item CalRecycle staff conducted a thorough review to ensure the term disposal and landfill disposal were used properly and consistent with the statutory intent throughout the regulation.
5098	Clark, M., Los Angeles County Solid Waste	6. See comment letter. Comment(s): The definition of "renewable gas" without any justifiable reason and/or scientifically supported analysis, is limited it to gas derived from in-vessel digestion of organic waste only. The regulations need to expand the definition of "renewable gas" to	In response to expanding the definition of "renewable gas" include biomass conversion utilizing thermal conversion technologies, or any other technologies that are determined to constitute a reduction in landfill disposal, CalRecycle disagrees with the comment's proposed language amendments. The purpose of the current regulatory language is to be consistent with SB 1383

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	Management Committee/ Integrated Waste Management Task Force	include gas derived from other technologies, including biomass conversion utilizing thermal conversion technologies such as gasification and pyrolysis, methane gas generated from municipal solid waste landfills since it is biogenic in origin, and any other technologies that are determined to constitute a reduction in landfill disposal pursuant to Section 18983.2. (emphasis added). Proposed Regulatory Text and Recommended Changes/Revisions: (62) "Renewable Gas" means gas derived from ~~organic waste that has been diverted from~~ a landfill **or organic waste** ~~and~~ processed at an in-vessel digestion facility that is permitted or otherwise authorized by Title 14 to recover organic waste**, a biomass conversion facility that is permitted or otherwise authorized by Division 30 of the Public Resources Code to recycle organic waste, or any other process or technology that is subsequently deemed under section 18983.2 to constitute a reduction in landfill disposal.**	statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. In-vessel digestion facilities are solid waste facilities, which allows the department to verify that these facilities are reducing the disposal of organic waste. Regarding expanding "renewable gas" to include gas from thermal conversion technology, CalRecycle disagrees with this approach. These technologies are not yet in practice on a commercial scale in California and lack the necessary conversion factors to include in Article 12. For the current regulatory proposal, CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products using publicly available pathways and conversion factors. In response to the comment regarding landfill gas, the SB 1383 mandate is to recover organic waste that would be disposed, therefore it is inconsistent with statute to incentivize or mandate activities that do not reduce landfill disposal.
5099	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	see comment letter. Section 17873.1. Landfill Disposal and Recovery 7. Comment(s): SB 1383 requires the state to achieve specified targets to reduce the landfill disposal of organics. However, the regulations consider any disposition of organic waste not listed in Section 18983.1 (b) to be landfill disposal, including any thermal conversion technologies (CTs) besides biomass conversion. Public Resources Code (PRC) 40195.1 defines "solid waste landfill" as "a disposal facility that accepts solid waste for land disposal," indicating that non-combustion thermal CTs which produce energy or fuels from solid waste rather than disposing solid waste on land should not be categorized as landfill disposal. The definition of "landfill" in Section 18983.1 (c) of these regulations contradicts PRC 40195.1. Section 18983.1 (c) defines "landfill" as "permitted landfills, landfills that require a permit, export out of California for disposal, or any other disposal of waste as defined by Section 40192 (c) of the Public Resources Code." The definition of "export out of California for disposal" could potentially include thermal CTs, while the definition of "solid waste landfill" in PRC 40195.1 is clearly limited to land disposal only and does not include thermal CTs. It is our understanding that thermal CTs are classified as landfill disposal due to concerns over their emissions. Although thermal CTs produce some limited emissions of greenhouse gases, dioxins, furans, volatile organic compounds, and criteria pollutants, these emissions do not have the multiplicative effects of methane emissions, which are 72 times more powerful than emissions of carbon dioxide in terms of atmospheric warming according to the California Air Resources Board. By replacing sources of fossil-based energy, thermal CTs actually reduce life-cycle methane emissions. Therefore, the regulations should not exclude any process or technology from being considered a reduction in landfill disposal, except for final deposition at a landfill or organic waste used as alternative daily cover, pursuant to Assembly Bill 1594 (Chapter 719 of the 2014 State Statutes). • Proposed Regulatory Text and Recommended Changes/Revisions:	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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		(a) The following dispositions of organic waste shall be deemed to constitute landfill disposal: (1) Final deposition at a landfill. (2) Use as Alternative Daily Cover or Alternative Intermediate Cover at a landfill. (A) The use of non-organic material as landfill cover shall not constitute landfill disposal of organic waste. ~~(3) Any other disposition not listed in subsection (b) of this section.~~	
5100	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	8. Comment(s): In addition to anaerobic digestion and composting, biosolids and digestate can also be processed through gasification. Biosolids and digestate that are gasified produce biochar, an organic soil amendment. The Task Force recommends that CalRecycle include the land application of biochar produced from biosolids and digestate as a reduction of organic waste landfill disposal. The California Energy Commission's 2017 Integrated Energy Policy Report (2017 IEPR) published on April 16, 2018, states that the gasification of biosolids to produce biochar is a revenue source to promote the development of renewable natural gas (RNG) projects, which will be needed if jurisdictions are to meet the requirements to procure RNG transportation fuel per Section 18993.1 (f)(2) of the proposed regulations. • Proposed Regulatory Text and Recommended Changes/Revisions: (b) (6) Land application of compostable material, consistent with Section 17852 (a) (24.5) of this division is subject to the following conditions on particular types of compostable material used for land application: (A) Green waste or green material used for land application shall meet the definition of Section 17852 (a) (21) and shall have been processed at a solid waste facility, as defined by Section 40194 of the Public Resources Code. (B) Biosolids used for land application shall: 1. Have undergone ~~anaerobic digestion or composting~~ **any of the pathogen treatment processes** as defined in Part 503, Title 40 of the Code of Federal Regulations, Appendix B, **or gasification, as defined in Section 40117 of the Public Resources Code, to produce biochar, as defined in Section 14513.5. of the Food and Agriculture Code**, and, 2. Meet the requirements in Section 17852 (a) (24.5) (B)(6) of this division for beneficial reuse of biosolids. (C) Digestate used for land application shall: 1. Have been anaerobically digested at an in-vessel digestion operation or facility, as described in 14 CCR sections 17896.8 through 17896.13 **or gasified, as defined in Section 40117 of the Public Resources Code, to produce biochar, as defined in Section 14513.5 of the Food and Agriculture Code**; and, 2. Meet the land application requirements described in 14 CCR Section 17852 (a) (24.5) (A). 3. Have obtained applicable approvals from the State and/or Regional Water Quality Control Board requirements.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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5101	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	see comment letter. Section 18983.2 Determination of Technologies that Constitute a Reduction in Landfill Disposal 9. Comment(s): SB 1383, Section 42652 of the PRC reads as follows: “The Legislature finds and declares all of the following: (a) The organic waste disposal reduction targets are essential to achieving the statewide recycling goal identified in Section 41780.01. (b) Achieving organic waste disposal reduction targets require significant investment to develop organics recycling capacity. (c) More robust state and local funding mechanisms are needed to support the expansion of organics recycling capacity.” Based on the foregoing, it is clear that the Legislature and the Governor, as a part of the SB 1383 enactment, emphasized the need for development of alternative technology facilities beyond composting and anaerobic digestion technologies/facilities, upon which CalRecycle has heavily relied, while not placing sufficient emphasis on development of alternative technologies and even subjecting them to heavily restrictive standards that other methods and processes are not subjected to (such as land application). In doing so, the state has created a significant obstacle to development of facilities utilizing these technologies without a clear and scientifically substantiated justification. For example, Section 18983.2 (a) (3) states “To determine if the proposed operation counts as a permanent reduction in landfill disposal, the Department in consultation with CARB’s Executive Office shall compare the permanent lifecycle GHG emissions reduction of metric tons of carbon dioxide equivalent (MTCO2e) per short ton organic waste reduced by the process or technology, with the emissions reduction from composting organic waste (0.30 MTCO2e/short ton organic waste).” (emphasis added). To be consistent with requirements of PRC Section 42652 and technically correct, the analysis should be made in comparison to “landfilling” and not “composting.” The Task Force would like to emphasize that the SB 1383 mandates reduction of organic waste disposal in landfills and not any other type of facilities such as those utilizing conversion technology, (emphasis added). The regulations state that the Department shall provide a response to all applicants requesting verification of new technologies that constitute a reduction in landfill disposal within 180 days. The regulations should be revised so that if the Department fails to provide a response, the application is considered approved and verified as a technology that constitutes a reduction in landfill disposal. • Proposed Regulatory Text and Recommended Changes/Revisions: (2) The Department shall consult with the Executive Officer of the California Air Resources Board to evaluate if the information submitted by the applicant is sufficient to estimate the greenhouse gas emissions and permanent lifecycle GHG emissions reduction of the proposed recovery process or operation. Within 30 days of receiving the application, the Department shall inform the applicant if they have	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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		not submitted sufficient information to estimate the greenhouse gas emissions and permanent lifecycle greenhouse gas emissions reductions associated with the proposed recovery process or operation. For further consideration of any application submitted without sufficient information, the applicant is required to submit the requested information. The Department shall provide a response to the applicant within 180 days of receiving all necessary information as to whether or not the proposed recovery process or operation results in a permanent reduction in greenhouse gas emissions, and therefore counts as a reduction in landfill disposal. **If the Department fails to provide a response to the applicant within 180 days of receiving all necessary information, the application shall be considered approved and the proposed recovery process or operation shall count as a reduction in landfill disposal.**	
5102	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	see comment letter. Section 18984.1. Three-container Organic Waste Collection Services. 11. Comment(s): Facilities should only be required to notify jurisdictions once whether they can process and recover compostable plastics. Subsequently, facilities should be required to notify jurisdictions within 30 days only if their ability to process and recover compostable plastics changes. The same changes should be applied to Section 18984.2. Two-container Organic Waste Collection Services. Proposed Regulatory Text and Recommended Changes/Revisions: (A) Compostable plastics may be placed in the green container if the material meets the ASTM D6400 standard for compostability and the contents of the green containers are transported to compostable material handling operations or facilities or in-vessel digestion operations or facilities that have provided written notification ~~annually~~ to the jurisdiction stating that the facility can process and recover that material. **The facility that ceases capability to process and recover compostable plastics shall provide written notice to the jurisdiction within 30 days of the cessation.**	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
5103	Clark, M., Los Angeles County Solid Waste Management Committee/	12. see comment letter. Comment(s): Facilities should only be required to notify jurisdictions once whether they can process and remove plastic bags when recovering source-separated organic waste. Subsequently, facilities should be required to notify jurisdictions within 30 days only if their ability to process and remove plastic bags changes. The same changes should be applied to Section 18984.2. Two-container Organic Waste Collection Services. • Proposed Regulatory Text and Recommended Changes/Revisions:	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In

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	Integrated Waste Management Task Force	(d) A jurisdiction may allow organic waste to be collected in plastic bags and placed in the green container provided that the allowing the use of bags does not inhibit the ability of the jurisdiction to comply with the requirements of Section 18984.5, and the facilities that recover source separated organic waste for the jurisdiction ~~annually~~ provide written notice to the jurisdiction indicating that the facility can process and remove plastic bags when it recovers source separated organic waste. **The facility that ceases capability to process and remove plastic bags when it recovers source separated organic waste shall provide written notice to the jurisdiction within 30 days of the cessation.**	order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
5104	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	13. Comment(s): Pursuant to Paragraph (1) of Subsection (b), commercial businesses that generate organic waste are required to provide containers for the collection of “organic waste” and “non-organic recyclables” in all areas where disposal containers are provided for customers. While the Task Force is not opposed to placement of containers for collection of “non-organic recyclables,” the Task Force questions the authority of CalRecycle under the provisions of SB 1383.	Requiring businesses to separate organic and non-organic recyclables is necessary to effectuate the purpose of SB 1383. Furthermore, CalRecycle also has authority under AB 827 which specifically requires that on, or before July 1, 2020, certain AB 341/AB 1826 businesses that provide customers access to the business to provide customers with a commercial solid waste recycling or organics container to collect material purchased on the premises.
5105	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	14. Comment(s): Generators that are commercial businesses are not required to provide organic waste collection containers in restrooms. However, the definition of “organic waste” in Section 18982 (a) (46) includes “paper products.” “Paper products” are defined in Section 18982 (a) (51) to include paper janitorial supplies, tissue, and toweling. Therefore, the Task Force requests clarification from CalRecycle on whether paper products generated in the restroom of a commercial business are required to be diverted through any of the activities listed in Section 18983.1 (b) and whether a commercial business or a jurisdiction could be penalized for disposing paper products generated in the restroom of commercial business.	This is already addressed in Section 18984.9(b)(1). The regulations do not require include penalties for contamination.
5106	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	15. see comment letter. Comment(s): There are numerous areas of Los Angeles County with elevations around 1,000 feet above sea level or higher that experience significant issues with bears and other wild animals scavenging for food in trash cans. CalRecycle should consider authorizing the Department of Fish and Wildlife to grant elevation waiver extensions for areas at elevations lower than 4,500 feet above sea level that experience similar challenges to food waste collection. • Proposed Regulatory Text and Recommended Changes/Revisions:	The Department of Fish and Wildlife does not have jurisdiction over waste regulations and cannot oversee a waiver established in the SB 1383 regulations. The elevation in the elevation waiver allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. In conducting the Environmental Impact Report for the proposed regulations CalRecycle reviewed the map provided by the commenter and over-laid it with the areas eligible for waivers under the existing provisions, it does not appear the stakeholders requested allowance would waive an areas not already eligible for waivers. However as noted above, the existing waiver provisions were crafted to reflect waste generation and the organic

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		(d) Elevation Waivers: (1) A jurisdiction may apply to the Department for a waiver for the jurisdiction and some or all of its generators from the requirement to separate and recover food waste and food soiled paper if ~~the entire~~ **a portion of the** jurisdiction is located at or above an elevation of 4,500 feet. **A jurisdiction may apply to the Department of Fish and Wildlife for a waiver for the jurisdiction and some or all of its generators from the requirement to separate and recover food waste and food soiled paper if a portion of the jurisdiction is located at or above an elevation of 1,000 feet and below an elevation of 4,500 feet.** (2) A jurisdiction may apply to the Department for a waiver for some or all of its generators from the requirement to separate and recover food waste and food soiled paper in census tracts located in unincorporated portions of a county that are located at or above 4,500 feet. **A jurisdiction may apply to the Department of Fish and Wildlife for a waiver for some or all of its generators from the requirement to separate and recover food waste and food soiled paper in census tracts located in unincorporated portions of the county if portions of the census tracts are located at or above an elevation of 1,000 feet and below an elevation of 4,500 feet.**	waste reduction targets. Providing a waiver process that could be ever evolving as habitat patterns change eliminates any certainty regarding the total amount of material that would be waived, compromising the ability of the state to achieve the organic waste reduction targets.
5107	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	16. Comment(s): This section does not recognize the good faith efforts of a jurisdiction to comply with the provisions of this chapter but that is unable to fully comply due to circumstances beyond its control. Provisions need to be provided for good faith efforts. • Proposed Regulatory Text and Recommended Changes/Revisions: (e) Nothing in this section exempts a jurisdiction from: (1) Its obligation to provide organic waste collection services that comply with the requirements of this article to businesses subject to the requirements of Section 42649.81 of the Public Resources Code, **although the Department may grant waivers and/or extensions to any jurisdiction that has made good faith efforts to comply with the requirements of this article but has been unable to comply due to circumstances outside its control.** Note: Please see General Comment No. A. 3 and Specific Comment No. B. 25 on Article 15, Section 18996.2, “Department Enforcement Action Over Jurisdiction.”	The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction
5108	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	Comment(s): The Task Force believes that the regulations should not require jurisdictions to separate or recover organic waste discarded in publicly-accessible waste bins, such as at public parks and beaches, to protect public health and safety. It may be very difficult to prevent the public from placing prohibited container contaminants in public organic waste collection bins. Furthermore, public organic waste collection bins may encourage scavenging practices, posing significant public health and safety issues in urban jurisdictions such as Los Angeles County.	The regulations do not require that organics recycling containers be placed next to trash containers in public areas, such as public parks, beaches, etc.
5109	Clark, M., Los Angeles County	The waivers in this section allow organic waste removed from homeless encampments or illegal disposal sites and organic waste subject to quarantine to be	Jurisdictions are not required to separate and recover organic waste removed from homeless encampments. While waste removed from homeless encampments or illegal disposal sites does

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	Solid Waste Management Committee/ Integrated Waste Management Task Force	disposed to protect public health and safety. The regulations should clarify that any organic waste subject to these waiver exemptions that is disposed will not count toward jurisdiction waste disposal calculated for compliance with Assembly Bill 939 (1989) and any future waste disposal reduction or waste diversion compliance mandates.	still count as statewide disposal, the jurisdiction is allowed to dispose of the material and is not subject to enforcement for disposing of the material. As stated in the statement of purpose and necessity for the regulations, specifically Article 3, this regulation does not subject jurisdictions to diversion targets. This regulation cannot alter what activities count as disposal under AB 939.
5110	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	In addition, local county agricultural commissioners have delegated authority from the California Department of Food and Agriculture (CDFA) to regulate quarantined waste. Therefore, the regulations should be revised to allow jurisdictions to receive the necessary approvals from local county agricultural commissioner's instead of the CDFA to dispose of specific types of organic waste that are subject to quarantine.	Thank you for the comment. A change is not necessary because this was added in previously.
5111	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	Proposed Regulatory Text and Recommended Changes/Revisions: (c) A jurisdiction is not required to separate or recover organic waste that is removed from homeless encampments**,** ~~and~~ illegal disposal sites**, and publicly-accessible waste receptacles at beaches, parks, or other similar facilities** as part of an abatement activity to protect public health and safety. If the total amount of solid waste removed for landfill disposal **from homeless encampments and illegal disposal sites** pursuant to this subdivision is expected to exceed 100 tons annually the jurisdiction shall record the amount of material removed. **The Department shall not count any organic waste that is removed from homeless encampments and illegal disposal sites and subsequently disposed toward jurisdiction waste disposal for compliance with any existing or future state waste disposal reduction and/or waste diversion compliance mandates pursuant to Sections 39730.5 and 39730.6 of the Health & Safety Code, and/or the California Integrated Waste Management Act of 1989.** (d) A jurisdiction may dispose of specific types of organic waste that are subject to quarantine and meet the following requirements: (1) The organic waste is generated from within the boundaries of an established interior or exterior quarantine area defined by the California Department of Food and Agriculture for that type of organic waste. (2) The California Department of Food and Agriculture or the County Agricultural Commissioner determines that the organic waste must be disposed at a solid waste landfill and the organic waste cannot be safely recovered through any of the recovery activities identified in Article Two of this chapter. (3) The jurisdiction retains a copy of the California Department of Food and Agriculture **or the County Agricultural Commissioner** approved compliance agreement for each shipment stating that the material must be transported to a solid waste landfill operating under the terms of its own compliance agreement for the pest or disease of concern.	The regulations do not require that organics recycling containers be placed next to trash containers in public areas, such as public parks, beaches, etc.

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		(4) The Department shall not count any organic waste subject to quarantine that is disposed toward jurisdiction waste disposal for compliance with any existing or future state waste disposal reduction and/or waste diversion compliance mandates pursuant to the Health & Safety Code, Sections 39730.5 and 39730.6. and/or the California Integrated Waste Management Act of 1989. Subsection (f) should be renumbered to Subsection (e).	
5112	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	18. Comment(s): The Task Force respectfully disagree with including requirements of this Article as stated in the proposed Sections 18989.1 and 18989.2 of the proposed regulations, and recommends this Article be deleted in its entirety for the following reasons: • Inclusion of the enforcement of the CALGreen standards in the proposed regulations will cause duplication and enforcement confusion with those specified in Articles 14, 15, and 16 of the proposed regulations. Building standards are issued by the Building Standards Commission, implemented and enforced by local Building Departments, and are not subject to the authority of CalRecycle. • Similarly, inclusion of this requirement in the proposed regulations will cause unnecessary regulatory duplication and confusion. Jurisdictions/water purveyors are already required to adopt Model Water Efficient Landscape Ordinance (MWELO) with enforcement mechanism that are different than enforcement mechanism called for in Articles 14, 15 and 16 of the proposed regulations. Additionally, implementation of MWELOs are not subject to the authority of CalRecycle.	CalRecycle is not adopting a new building code. The regulations require jurisdictions to enforce the aspects of CalGreen and MWELO requirements that help reduce the disposal of organic waste. Jurisdictions are already required to comply with these requirements, including them in the regulations ensures that CalRecycle can require that policies that are necessary to reduce organic waste disposal are implemented.
5113	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	19. see comment letter. Comment(s): For the purpose of this Article, and consistent with General Comment No. A.1, the discussion and the procurement targets need to be expanded to include appropriate provisions for compliance by "local education agency" (such as school districts, etc.) and "non-local entities" (such as state agencies, public universities, community colleges, etc.) as further defined in Sections 18982 (a) (40) & (42), respectively. • Proposed Regulatory Text and Recommended Changes/Revisions: (a) Except as otherwise provided, commencing January 1, 2022, a jurisdiction shall 8 annually procure a quantity of recovered organic waste products that meets or exceeds 9 its current annual recovered organic waste product procurement target as determined 10 by this article. For the purposes of this ~~section~~ **article**, "jurisdiction" means a city, a county, ~~or~~ a city and county**, a local education agency or a non-local entity.**	Regarding state agencies. State agency procurement is within the purview of the Legislature through the annual budgeting process, the Governor's office through Executive Orders, the Department of General Services through the establishment of the State Administrative Manual (SAM), and other control agencies that oversee budgeting and procurement. CalRecycle cannot supersede those existing authorities and impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks. There are existing procurement requirements on state agencies and this rulemaking will not be adding to those. CalRecycle currently works with sister agencies to implement existing procurement-related legislation. For example, CalRecycle coordinates with the Department of General Services (DGS) to implement the State Agency Buy Recycled Campaign (SABRC), Public Contract Code 12200 to 12217, which requires state agencies to purchase products, including compost and paper, containing recycled content. Additionally, AB 2411 (McCarty, Statutes of 2018), requires CalRecycle to develop a plan for compost use in wildfire debris removal efforts, and to coordinate with the Department of Transportation to identify best practices for compost use along roadways. CalRecycle also worked with sister agencies through the AB 1045 process, which directed CalEPA, CalRecycle, the Water Board, ARB, and CDFA to "develop and implement policies to aid in diverting organic waste from landfills by promoting the composting of specified organic waste and by promoting the appropriate use of that compost throughout the state." These are examples of how CalRecycle works with sister agencies, but CalRecycle cannot impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks.

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			Regarding “nonlocal entities”, it is important to clarify that the populations in, for example, local education agencies and special districts are already included in a jurisdiction’s population-based procurement target; the population data published by the Department of Finance (DOF) includes universities, community colleges, and other local education agencies. The populations inherent in these entities are built into the procurement target calculation, and jurisdictions are encouraged to work with these entities to meet their procurement targets, which may be accomplished through a contract or agreement, such as a Memorandum of Understanding (MOU). Applying procurement targets to these entities, especially population-based procurement targets, would result in double counting individuals contributing to the procurement requirements.
5114	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	20. see comment letter. Comment(s): The per capita procurement target was increased from 0.07 to 0.08 tons of organic waste per California resident per year. The Amendment to the Original January 2019 Initial Statement of Reasons (ISOR) was not updated to explain why the per capital procurement target is now 0.08 tons per resident per year. The ISOR should be updated to provide a justification for the increase in the procurement target, or the regulations should be revised to change the procurement target back to 0.07 tons per resident per year. • Proposed Regulatory Text and Recommended Changes/Revisions: (c) Each jurisdiction’s recovered organic waste product procurement target shall be calculated by multiplying the per capita procurement target by the jurisdiction population where: (1) Per capita procurement target = **0.07** ~~0.08~~ tons of organic waste per California resident per year.	Please refer to the Final Statement of Reasons for Section 18993.1 which includes text explaining the purpose and necessity of the provisions of the final regulation including the per capita procurement target. The per capita procurement target increase from 0.07 to 0.08 is based on higher than estimated disposal data recently obtained from CalRecycle’s Disposal Reporting System (DRS). The corresponding increase in diversion impacted the per capita procurement target. For reference, the initial per capita procurement target was based on an estimated 21,000,000 tons of organics diversion by 2025. The new DRS data increased the organics diversion estimate to 25,043,272 tons. That number is multiplied by 13% (government GDP), and divided by CA population estimated in 2025 (42,066,880); result is 0.08.
5115	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	21. see comment letter. Comment(s): The recovered organic waste products that a jurisdiction may procure to satisfy its procurement requirements should be expanded to include all recovered organic waste products from composting, anaerobic digestion, biomass conversion, and all other technologies determined to constitute a reduction in organic waste landfill disposal. For example, the Task Force recommends that the procurement of all organic waste products produced from biomass conversion, such as renewable gas used for transportation fuel and heating and not limited to electricity only should also satisfy a jurisdiction’s procurement target. Please also refer to specific comment 4 on Section 18982 which recommends that the regulations expand the definition of “renewable gas” to include gas derived from other technologies, including biomass conversion utilizing thermal conversion technologies such as gasification and pyrolysis. • Proposed Regulatory Text and Recommended Changes/Revisions: (f) For the purposes of this article, the recovered organic waste products that a jurisdiction may procure to comply with this article are: (1) Compost, subject to any applicable limitations of Public Contract Code Section 22150, that is produced at:	CalRecycle disagrees. The purpose of the current regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. In-vessel digestion facilities are solid waste facilities, which allows CalRecycle to verify that these facilities are reducing the disposal of organic waste. Regarding expanding “renewable gas” to include gas from biomass conversion, thermal and noncombustion thermal conversion technology, CalRecycle disagrees with this approach. These technologies are not yet in practice on a commercial scale in California and lack the necessary conversion factors to include in Article 12. For the current regulatory proposal, CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products using publicly available pathways and conversion factors. Regarding allowing an open-ended pathway. CalRecycle disagrees with this approach for procurement. The broad range of potential recovered organic waste products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. As noted above, CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.

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		(A) A compostable material handling operation or facility permitted or authorized under Chapter 3.1 of this Division; or (B) A large volume in-vessel digestion facility as defined and permitted under Chapter 3.2 of this Division that compost on-site. [NOTE: Digestate, as defined in Section 18982 (a) (16.5), is a distinct material from compost and is thus not a recovered organic waste product eligible for use in complying with this Article.] (2) Renewable gas used for fuel for transportation, electricity, or heating applications. (3) Electricity **and/or renewable gas** from biomass conversion (4) Mulch, provided that the following conditions are met for the duration of the applicable procurement compliance year: (A) The jurisdiction has an enforceable ordinance, or similarly enforceable mechanism, that requires the mulch procured by the jurisdiction to comply with this article to meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in Section 17852(a)(24.5)(A)(1) through (3) of this division; and (B) The mulch is produced at one or more of the following: 1. A compostable material handling operation or facility as defined in Section 17852(a)(12), other than a chipping and grinding operation or facility as defined in Section 17852(a)(10), that is permitted or authorized under this division; or 2. A transfer/processing facility or transfer/processing operation as defined in Section 17402(a)(30) and (31), respectively, that is permitted or authorized under this division; or 3. A solid waste landfill as defined in Public Resources Code Section 40195.1 that is permitted under Division 2 of Title 27 of the California Code of Regulations. (g) The following conversion factors shall be used to convert tonnage in the annual recovered organic waste product procurement target for each jurisdiction to equivalent amounts of recovered organic waste products: (1) One ton of organic waste in a recovered organic waste product procurement target shall constitute: (A) 21 diesel gallon equivalents, or "DGE," of renewable gas in the form of transportation fuel. (B) 242 kilowatt-hours of electricity derived from renewable gas (C) 22 therms for heating derived from renewable gas (D) 650 kilowatt-hours of electricity, **21 DGE of renewable gas in the form of transportation fuel, or 22 therms for heating** derived from biomass conversion (E) 0.58 tons of compost, or 1.45 cubic yards of compost. (F) One ton of mulch.	
5116	Clark, M., Los Angeles County Solid Waste	22. Comment(s): For the purpose of this Article, include a section to stipulate appropriate provisions and identify/specify the entity that would be responsible to measure compliance {i.e. take enforcement action(s)} of non-local entities, federal agencies/facilities, and	A change is not necessary. Enforcement against non-local entities, including state agencies, local education agencies and federal facilities is all placed in Article 15, which is under the enforcement authority of CalRecycle.

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	Management Committee/ Integrated Waste Management Task Force	local education agencies with appropriate requirements of this Article. Although a local jurisdiction may educate non-local entities, federal agencies/facilities, universities/colleges and local education agencies (community colleges and school districts) of the requirements of this chapter, a local jurisdiction does not have the authority to enforce compliance on non-local entities, federal agencies/facilities, and local education agencies.	
5117	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	Section 18995.1. Jurisdiction Inspection and Enforcement Requirements 23. Comment(s): This section refers to “solid waste collection accounts” for commercial businesses for which the jurisdiction must complete a compliance review. The regulations should define the term “solid waste collection accounts” in Section 18982 for clarity to allow jurisdictions to satisfy this requirement.	It is not necessary to define the term; the term is used only twice in the regulation and it is explicitly used in the context of compliance reviews of commercial waste generators. The term is used in a manner where is generally understood to be the solid waste account of a commercial business.
5118	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	24. see comment letter. Comment(s): The regulations have been modified to remove the provision stating that jurisdictions are not required to seek penalties for a violation of the container contamination requirements. Section 18997.2 (a) states that a jurisdiction shall impose monetary penalties for violations of the requirements of this chapter. Section 18984.9 (a) (1) requires organic waste generators, including residents and commercial businesses, to comply with the requirements of the organic waste collection service provided by their jurisdiction. Section 18984.9 (b) (2) requires commercial businesses to prohibit employees from placing organic waste in a container not designed to receive organic waste. Therefore, it can be concluded that the regulations will require local jurisdictions to impose monetary penalties on residents, commercial businesses, and other organic waste generators for container contamination. Inspecting containers for contamination and imposing penalties will not effectively reduce contamination because it is not feasible to inspect all containers on a regular basis, nor will the penalties reimburse local jurisdictions for the resources needed to inspect containers, impose penalties, and maintain a record of enforcement actions. Jurisdictions should focus their resources on educating all generators on the requirements of organic waste collection services provided by their jurisdiction instead of imposing penalties for container contamination. • Proposed Regulatory Text and Recommended Changes/Revisions: **(d) A jurisdiction, subject to having appropriate authority pursuant to provision of this article, may, but is not required to, seek penalties pursuant to this section for a violation of the container contamination requirements authorized by Section 2 18984.5(b)(3).**	The comment is not directed at changes in the third draft of the regulations. The comment states that the regulations removed provisions from the regulations stating that jurisdictions are not required to seek penalties for violations of container contamination requirements. That is incorrect as Section 18984.5(b)(3) requirements remain unchanged and still states that a jurisdiction may impose additional contamination processing fees on the generator and may impose penalties. It is implicit in “may” that a jurisdiction is allowed but not required to pursue the action.
5119	Clark, M., Los Angeles County Solid Waste	see comment letter. Section 18996.2. Department Enforcement Action Over Jurisdictions 25. Comment(s):	This comment is not directed at the changes in the third regulatory draft. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB

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	Management Committee/ Integrated Waste Management Task Force	For the purpose of this Article, and consistent with General Comment No. A.3, the implementation of the Department enforcement oversight must provide for “good faith efforts,” and the enforcement oversight in regard to state agencies, “local education agencies” and “non-local entities” need to be expanded to be at a minimum equal to those imposed on a city, a county or a city and county as stipulated in Section 18996.2 with appropriate provisions for the “good faith efforts”, (emphasis added). • Proposed Regulatory Text and Recommended Changes/Revisions: (a) If the Department finds that a jurisdiction ~~is violating~~ **is not in compliance with** one or more of the requirements of this chapter, then the Department **shall confer with the jurisdiction regarding the intent to issue a Notice of Violation, with a first conferring meeting to identify and discuss deficiencies occurring not less than 60 days before issuing a Notice of Violation. The Department shall also issue a Notice of Intent to issue a Notice of Violation not less than 30 days before the Department holds a hearing to issue the Notice of Violation. The Notice of Intent shall specify all of the following:** **(1) The proposed basis for issuing a Notice of Violation.** **(2) The proposed actions the Department recommends that are necessary to insure compliance.** **(3) The jurisdiction proposed recommendations to the Department.** **(b) The Department shall consider any information provided by the jurisdiction pursuant to subdivision (c) of Section 41821 of the Public Resources Code.** **(c) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency’s jurisdiction, and after considering the good faith efforts of a jurisdiction, as specified in subdivision 41825(e) of the Public Resource Code, the Department finds that a jurisdiction has failed to make a good faith effort to implement programs identified in this chapter, the Department** may take the following actions: (1) Issue a Notice of Violation requiring compliance within 90 days of the date of issuance of that notice. The Department may grant an extension up to a total of 180 days from the date of issuance of the Notice of Violation if it finds that additional time is necessary for the jurisdiction to comply. (2) The Department may extend the deadline for a jurisdiction to comply beyond the maximum compliance deadline allowed in Subdivision (c) (1) by issuing a Corrective Action Plan setting forth the actions a jurisdiction shall take to correct the violation(s). A Corrective Action Plan may be issued if the Department finds that additional time is necessary for the jurisdiction to comply and the jurisdiction has made a substantial effort to meet the maximum compliance deadline but extenuating circumstances beyond the control of the jurisdiction make compliance impracticable. The Department shall base its finding on available evidence, including relevant evidence provided by the jurisdiction.	1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction

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		(A). If a jurisdiction is unable to comply with the maximum compliance deadline allowed in Subdivision (~~a~~ **c**) (1) due to deficiencies in organic waste recycling capacity infrastructure **or other extenuating circumstances beyond the control of the jurisdiction, such as inability of state or federal facilities to reduce organic wastes,** the Department may issue a Corrective Action Plan for such violations upon making a finding that: 1. Additional time is necessary for the jurisdiction to comply; 2. The jurisdiction has provided organic waste collection to all hauler routes where it is practicable and the inability to comply with the maximum compliance deadline in Subdivision (~~a~~ **c**) (1) is limited to only those hauler routes where organic waste recycling capacity infrastructure deficiencies **or other extenuating circumstance beyond the control of the jurisdiction has** ~~have~~ caused **the jurisdiction to violate the requirements of this chapter** ~~provision of organic waste collection service to be impractiable~~. 3. The Department ~~may~~ **must** consider implementation schedules **developed by jurisdictions**, as described in Article 11 of this chapter, for purposes of developing a Corrective Action Plan ~~but~~ **and** shall not ~~be restricted in mandating~~ **mandate** actions to remedy violation(s) ~~and~~ **or** ~~developing~~ **develop** applicable compliance deadline(s) ~~to those~~ **that are unreasonable or inconsistent with the actions and timelines** provided in the Implementation Schedule. (B) For the purposes of this section, "substantial effort" means that a jurisdiction has taken all practicable actions to comply. Substantial effort does not include circumstances where a decision-making body of a jurisdiction has not taken the necessary steps to comply with the chapter, including, but not limited to, a failure to provide adequate staff resources to meet its obligations under this chapter, a failure to provide sufficient funding to ensure compliance, or failure to adopt the ordinance(s) or similarly enforceable mechanisms under Section 18981.2. (C) For the purposes of this section, "extenuating circumstances" are: 1. Acts of God such as earthquakes, wildfires, mudslides, flooding, and other emergencies or natural disasters. 2. Delays in obtaining discretionary permits or other government agency approvals. ~~2~~ **3**. An organic waste recycling infrastructure capacity deficiency requiring more than 180 days to cure (3) A Corrective Action Plan shall be issued by the Department ~~with a maximum compliance deadline no more than~~ **within** 24 months from the date of the original Notice of Violation and shall include a description of each action the jurisdiction shall take to remedy the violation(s) and the applicable compliance deadline(s) for each action. The Corrective Action Plan shall describe the penalties that may be imposed if a jurisdiction fails to comply. (4) An initial Corrective Action Plan issued due to inadequate organic waste recycling infrastructure capacity may be extended for ~~up to 12 months~~ **a reasonable**	

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		period if the Department finds that the jurisdiction has demonstrated substantial effort.	
5120	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	see comment letter. Section 18997.2. Penalty Amounts 26. Comment(s): The regulations should allow jurisdictions to provide hardship waivers to certain generators, property owners, or business owners to reduce the financial burden of the penalties. The hardship waivers would not in any way exempt a regulated generator, property owner, or business owner from subscribing to organic waste collection services and would only provide a partial or whole exemption from paying a financial penalty. The criteria for granting hardship waivers would be developed by local jurisdictions and approved by the Department. • Proposed Regulatory Text and Recommended Changes/Revisions: (a) A jurisdiction shall impose penalties for violations of the requirements of this chapter consistent with the applicable requirements prescribed in Government Code Sections 53069.4, 25132 and 36900. The penalty levels shall be as follows: (1) For a first violation, the amount of the base penalty shall be $50-$100 per offense. (2) For a second violation, the amount of the base penalty shall be $100-$200 per offense. (3) For a third or subsequent violation, the amount of the base penalty shall be $250-$500 per offense. **(4) For any first, second, third, or subsequent violations, a generator, property owner, or business owner may request a financial hardship waiver from the jurisdiction imposing the penalty.**	These regulations require local jurisdictions to adopt an ordinance or other enforceable mechanism that is equivalent to or more stringent that the proposed regulations. Provisions in Government Code Sections 53069.4, 25132, and 36900 control how local jurisdictions set penalties for violations of their ordinances and, as such, any criteria as to how to set penalties within the ranges set in Government Code will be subject to the discretion of the jurisdictions.
5121	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	27. Comment(s): The proposed penalty assessment criteria for “minor,” “moderate,” and “major” violations as specified in Subsections (b) (1-3) is extremely vague and may unintentionally result in penalties being imposed inconsistently between various jurisdictions for similar violations. This section should be revised to specify which “aspects” of the requirements will be considered “minimal” compared to “critical” or “substantial.”	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires.
5122	Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	28. see comment letter. Comment(s): The intent of Subsection 18997.3 (d) is unclear. The Task Force assumes that the intent is to provide a mechanism to apply partial fines on a jurisdiction for not meeting the full procurement target of the proposed regulations. However, this needs to be clarified in order to avoid the misperception that the regulation is establishing a daily procurement target/expectation (emphasis added). It is unreasonable to expect that jurisdictions purchase organic waste byproducts (fuel, RNG, compost, etc.) on a daily basis and thus CalRecycle needs to establish a daily penalty if a jurisdiction fails to meet its expected/calculated daily procurement target. Additionally, due to lack of adequate infrastructure, we believe that the	The comment is not directed at changes in the third regulatory draft.

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		subject proposal should be deleted until sometime in the future pending market and infrastructure development. As an alternative, CalRecycle can consider the following: • Proposed Regulatory Text and Recommended Changes/Revisions: (d) For violations of the Recovered Organic Waste Product Procurement requirements in Section 18993.1, where a jurisdiction fails to procure a quantity of recovered organic waste products that meets or exceeds its **annual** recovered organic waste product procurement target, the Department shall determine penalties based on the following: (1) The Department shall calculate the jurisdictions ~~daily~~ **annual** procurement target equivalent for **each jurisdiction** ~~by dividing the procurement target by 365 days.~~ (2) The Department shall determine **each jurisdiction's annual** ~~the number of days a jurisdiction was in~~ compliance **with the annual procurement target** ~~by dividing the total amount of recovered organic waste products procured by the daily procurement target equivalent.~~ ~~(3) The Department shall determine the number of days a jurisdiction was out of compliance with the procurement target by subtracting the number of days calculated in (2) from 365 days.~~ (~~4~~ **3**) The penalty amount shall be calculated by determining an penalty range based on the factors in Subdivision (c), above~~., and multiplying that number by the number of days determined according to subsection (c)(3), above.~~ The penalty amount shall not exceed $10,000 per ~~day~~ **year**.	
1039	Cook, Paul, Irvin Ranch Water District	In order to encourage the use of Class A biosolids for other beneficial uses, the District asks that CalRecycle revaluate Section 18993.l(f) of the proposed regulation. Cities and counties should be incentivized to use Class A biosolids as a healthy soils amendment within the local communities which generate and produce them. IRWD requests that a new subsection be added to Section 18993 .1 (f) allowing use of Class A biosolids products to count towards meeting the procurement target. Class A biosolids produced through anaerobic digestion capture the methane produced by the processing of the organic matter just as composting of other organic material does and thus, beneficial use of Class A biosolids should count towards meeting the target in the same manner as composted material.	Regarding biosolids compost, the current draft regulatory text considers compost an eligible recovered organic waste product as long as the final product meets the definition of compost, per Section 17896.2(a)(4), and is produced either at a compost operation or facility or large volume in-vessel digestion facility that composts on-site (refer to section 18993.1(f)(1)(A) and (B). Biosolids and/or digestate that do not meet the compost definition will not count towards the procurement target. CalRecycle disagrees with adding "other biosolids products". The broad range of potential products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
1040	Cook, Paul, Irvin Ranch Water District	IRWD also asks that CalRecycle amend Section 18983 .1(b) to broaden the provisions defining a reduction in landfill disposal to include other treatments and uses of biosolids, and to clearly state in subsection (b)(6)(B)(1) that all biosolids, which meet the requirements of the United States Environmental Protection Agency (EPA) Part 503 Biosolids Rule (40 CFR Part 503), may be land applied-not only those that have undergone anaerobic digestion or composting.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.
15;0015	Creter, M., San Gabriel Valley	On behalf of the San Gabriel Valley Council of Governments (SGVCOG), we are writing to express our appreciation for the opportunity to comment on the SB 1383 (Lara) formal regulations that were released in October 2019. SGVCOG is a joint	The text regarding linguistic outreach requirements is linked to the requirements of Section 7295. The definitions and provisions governing that section of law shall apply. Government Code 7295 states: "Any materials explaining services available to the public shall be translated into any non-

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	Council of Governments	powers authority of thirty-four-member agencies that are located in the San Gabriel Valley. The SGVCOG is also the largest and most diverse sub-regional government entity in the Los Angeles County. SGVCOG continues to support both a robust waste management system that compiles with California's climate goals as well as reasonable and achievable goals in removing short-lived climate pollutants, including methane from landfills. We deeply appreciate the stakeholder process your agency is undertaking and the ability to weigh in on the proposed regulations. We want to take the opportunity to thank CalRecycle for acknowledging the critical need for infrastructure capacity statewide. Additionally, we appreciate CalRecycle staff for aligning linguistics outreach requirements in accordance to Section 7295 of the Government Code and including more flexibility for compliance in the revised proposed regulation text. However, SGVCOG would like to reiterate several key concerns from our member agencies:	English language spoken by a substantial number of the public served by the agency. Whenever notice of the availability of materials explaining services available is given, orally or in writing, it shall be given in English and in the non-English language into which any materials have been translated. The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency." Comment is on text that was removed from the final regulation and replaced with reference to the Government Code Section 7295 linguistic standards.
15;0016	Creter, M., San Gabriel Valley Council of Governments	Disproportionate Burdens on Cities and Counties: SGVCOG and our member agencies recognize the significant responsibility that CalRecycle bears to achieve the statewide recycling goals and organic waste landfill disposal reduction goals within a limited timeframe; however, the method that CalRecycle has proposed appears to be placing a tremendous burden on cities and counties. In accordance to Section 40001 (a) of the Public Resources Code, the responsibility for solid waste management is a shared responsibility between the state and local governments. Under the existing proposed regulation text, the responsibility of programmatic and penalty requirements appears to weigh more heavily on cities and counties than on state agencies, special districts, school districts, education agencies, and non-local entities. SGVCOG recommends CalRecycle to provide a more equitable distribution of responsibility for achieving the reduction goals amongst all sectors, including state and local governments, school districts, universities, public and private colleges, and other non-local entities.	Comment noted. It is unclear from the comment how the commenter believes requirements should be redistributed. CalRecycle finds that the proposed regulatory requirements are designed to meet the organic waste diversion mandates in SB 1383.
15;0017	Creter, M., San Gabriel Valley Council of Governments	Jurisdictional "Good Faith Efforts" to Comply with SB 1383 Regulations: SGVCOG and our member jurisdictions are extremely concerned with CalRecycle's position to not consider "good faith efforts" in determining a jurisdiction's progress in complying with SB 1383 mandates. We take exception to such a position since it is contrary to provisions of SB 1383 {Section 42652.5.(a)(4) of the Public Resources Code}, which specifically require the consideration of jurisdictional "good faith efforts" by CalRecyle in making its determination of a jurisdiction's progress toward achieving organic waste landfill disposal reduction targets. The SGVCOG respectfully requests CalRecycle to update the SB 1383 proposed regulations to include provisions for the "good faith efforts" as provided and defined by state law.	The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction

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1011	Cross, Kathryn, Orange County Local Enforcement Agency	Page 11, Section 18982 (60.5) Recovery Location definition, "not limited to a transfer facility, recycling facility or recovery facility". a. Comment: There is a definition for material recovery facility but not recovery facility; term needs to be defined. b. Comment: Does this include consolidation sites?	Comment noted, it is not necessary to define the term recovery facility. It is used as an example in the definition of recovery location. The term recovery is defined in the regulation. A recovery facility is a facility where recovery, as defined in the regulation takes place.
1012	Cross, Kathryn, Orange County Local Enforcement Agency	Page 13, Section 18983.l(a)(2)(A), Use as Alternative Daily Cover or Alternative Intermediate Cover at a Landfll: The use of non-organic material as landfill cover shall not constitute landfill disposal of organic waste. a. Comment: Checked current regulations and proposed SB 1383 regulations and cannot find a definition for non-organic material; the term should be defined.	Comment noted, it is not necessary to define the term recovery facility. It is used as an example in the definition of recovery location. The term recovery is defined in the regulation. A recovery facility is a facility where recovery, as defined in the regulation takes place.
1013	Cross, Kathryn, Orange County Local Enforcement Agency	Comment: The first part of the definition, "transfer directly from one container to another or from one vehicle to another", applies to the activities at a sealed container transfer operations, direct transfer operation and possibly a limited volume transfer operation but limited volume transfer operations also includes storing of waste on a tipping floor or bunkers which is not the same as a sealed container or direct transfer.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
1014	Cross, Kathryn, Orange County Local Enforcement Agency	In the Section 17402 Definitions, both sealed container and direct transfer operations have defined storing time limits of 96 hours and 8 hours, respectively. However, limited volume transfer operations definition does not define a storing time limit for waste, therefore the storing limit is 7 days according to Section 17410.1. Is this an acceptable time for the type of waste to be stored at a consolidation site?	Comment noted. Comment is asking for guidance, not a change in language. CalRecycle staff will develop tools to assist in the implementation of the regulations.
1015	Cross, Kathryn, Orange County Local Enforcement Agency	The regulation language, "Consolidation activities include, but are not limited to" seems to imply that a Medium Volume or Large Volume Transfer Facility could be considered a "Consolidation Site", is this the intention of the regulation?	Comment noted. Comment is asking for guidance, not a change in language. CalRecycle staff will develop tools to assist in the implementation of the regulations.
1016	Cross, Kathryn, Orange County Local Enforcement Agency	Measurement Verification -17409.5.12(b), Page 135; Section 17869(i), Page 145; and Section 17896.45(k) Page 151 a. Comment: These sections require EA verification of measurements by review of records and " ... periodic, direct observation of measurements at a frequency necessary .... " To allow for local EA flexibility and discretion regarding verification of composting, in-vessel digestions and remnant organic measurements, the text should be edited to state and/or. b. More suitably, Section 17409.5.12(b), Page 135; Section 17869(i), Page 145; and Section 17896.45(k) Page 151 text should be consistent with organic measurement procedures identified in Section 17409.5.2, Page 123; Section 17409.5.4, Page 126; and 17409.5.7, page 130 that allows " ... measurement in the presence of the EA when requested" and "if it is determined by the EA that the measurements do not accurately reflect the records, the EA may require the operator to increase the frequency of measurements, revise the measurement protocol, or both to improve accuracy."	A change to the regulatory text is not necessary. It is not necessary to change “and” to “and/or” since this section already allows the EA the flexibility and discretion when verifying the measurements. This section requires the EA perform a direct observation of measurements at a frequency they determine necessary to ensure that the operator is conducting the measurements in compliance with the requirements. The EA would be expected to review the records as part their inspection of facilities and operations as required under the EA duties and responsibilities in the existing regulations. The requirement that the EA review the records and observe the operator perform the measurement is necessary to ensure that the operator is conducting measurements accurately and provides the EA an opportunity to oversee the methodology and identity where problems may occur or if it is not performed correctly. Reviewing the records in combination with the observation would better assist the EA determine if the results from the measurements are representative of the waste stream.

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1017	Cross, Kathryn, Orange County Local Enforcement Agency	Page 172, Section 21570(g) ... "hold a public meeting with any affected disadvantage communities"; Section 21570(g)(l) ... "distributed to the affected groups or disadvantage communities" a. Comment: Section 21570(g) and (g)(l) should match, either put "groups or" in or remove from both sections.	CalRecycle has revised this section accordingly.
2060	Daniels, Rick, Needles	The City of Needles is concerned with the revised proposed SB 1383 language that could hinder our local governments' ability to implement the proposed regulations in Article 12. Procurement of Recovered Organic Waste Products. Section 18993.1.(l) provides a rural jurisdiction exemption which specifically excludes them from the procurement requirements. That exemption should be extended to small population jurisdictions as well, especially those that are geographically remote but located in urban counties. Since exempt small population jurisdictions are not collecting organic material, they are not producing products for purchase and face the same obstacles as exempt rural jurisdictions. In addition, the Procurement Policies require procurement from a material handling operation or facility located in California which is limiting to a small border city located near Arizona and Nevada. The City asks that CalRecycle reconsider the rural exemption under Article 12. Procurement of Recovered Organic Waste Products to include remote small population jurisdictions. The closest California facility is located 143.6 miles away. Alternatively, the closest out of state provider is 123.1 miles away. The City is concerned about the high cost of transportation from a California and out of state provider will be uneconomical.	CalRecycle disagrees with the commenter's argument to exempt "small population jurisdictions" since they are not collecting organic material nor producing products. The proposed procurement requirements do not mandate that a jurisdiction must procure back their own organics in the form of a recovered organic waste product. A jurisdiction may procure from anywhere in the state, provided their procurement meets the Section 18982(60) definition of "recovered organic waste products". CalRecycle recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. Regarding procurement from California facilities, this is necessary in order to be consistent with the ambitious organic waste reduction targets required by SB 1383. Achieving these reductions will require the state to reduce landfill disposal to no more than 5.7 million tons of organic waste by 2025. In order to achieve these ambitious targets, the procurement regulations mandate that recovered organic waste products are produced from California, landfill-diverted organic waste. It is inconsistent with SB 1383 to mandate or incentivize activities that do not reduce in-state landfill disposal.
2039	Davis, John, Mojave Desert and Mountain Recycling Authority	1. "Special districts" are still included in the "non-local entities" definition (#42) even though districts with solid waste collection responsibilities are included as jurisdictions (#36). Please clarify the "non-local entities" definition by including only special districts that are not jurisdictions under the regulations.	In response to this comment, CalRecycle defined a "special district" as having the same meaning as Section 41821.2 of the Public Resources Code. Special districts can be jurisdictions or non-local entities depending on the nature of the district and its activities. There are special districts that oversee waste collection services. Accordingly, the definition of jurisdiction was amended to note that a "special district that provides solid waste collection services" is a jurisdiction. Additionally, a special district could be a non-local entity. Non-local entities are specifically defined as entities that are organic waste generators but are not subject to the control of a jurisdiction's regulations related to solid waste. The definition of "non-local entity," lists special districts as an example of a type of entity that could be a "non-local entity" but it does not definitively state that all special districts are non-local entities. Any special district that is a "jurisdiction" and also a "non-local entity" generator would be subject to enforcement by the Department for violations of generator requirements in Chapter 12 unless requirements are waived under Section 18986.3.
2040	Davis, John, Mojave Desert and Mountain Recycling Authority	2. The procurement targets in section 18993.1 exclude special districts from jurisdiction responsibilities. This shifts district population to cities and counties, and the exclusion should be eliminated. Special district population is reported to the California Water Resources Control Board and can be accessed at https://sdwis.waterboards.ca.gov/PDWW/index.jsp .	The populations inherent in these entities are built into the procurement target calculation, and jurisdictions are encouraged to work with these entities to meet their procurement targets, which may be accomplished through a contract or agreement, such as a Memorandum of Understanding (MOU). Applying procurement targets to these entities, especially population-based procurement

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			targets, would result in double counting individuals contributing to the procurement requirements.
2041	Davis, John, Mojave Desert and Mountain Recycling Authority	3. Exempt rural jurisdictions are specifically excluded from the procurement requirements (18993.1(l). That exemption should be extended to small population jurisdictions as well, especially those that are geographically remote but located in urban counties. Since exempt small population jurisdictions are not collecting organic material, they are not producing products for purchase and face the same obstacles as exempt rural jurisdictions.	CalRecycle disagrees with the commenter's argument to exempt "small population jurisdictions" since they are not collecting organic material nor producing products. The proposed procurement requirements do not mandate that a jurisdiction must procure back their own organics in the form of a recovered organic waste product. A jurisdiction may procure from anywhere in the state, provided their procurement meets the Section 18982(60) definition of "recovered organic waste products". CalRecycle recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use.
2042	Davis, John, Mojave Desert and Mountain Recycling Authority	4. CalRecycle's April 2019 "SB 1383 Infrastructure and Market Analysis" shows that California currently produces about 330,000 tons of mulch and 1,755,000 tons of compost (Table ES 4 cubic yards converted to tons). The per capita procurement requirements call for about 3,360,000 tons annually, with some met by RNG. Meeting those requirements not only requires rapidly expanded production, but would remove material now being marketed for use. Killing those markets is not sound market development, since they would need to be renewed once the per capita requirements are met. The procurement requirements should phase in to handle material produced in excess of market demand, as determined annually by CalRecycle. That excess material is likely to be geographically distinct and should not be a standardized statewide number.	CalRecycle disagrees with the suggestion to phase-in procurement. If the state is to achieve the ambitious landfill diversion targets required by SB 1383, it would be detrimental to delay the much-needed organics diversion that these procurement regulations are designed to encourage. However, CalRecycle recognizes the significant effort and resources needed for program implementation, which is why the rulemaking process has been ongoing since 2017. Although the regulations will not take effect until 2022, adopting them in early 2020 allows regulated entities approximately two years to plan and implement necessary budgetary, contractual, and other programmatic changes. Jurisdictions should consider taking actions to implement programs to be in compliance with the regulations on January 1, 2022. Regarding "killing markets", the procurement requirements are designed to build markets, so it is unclear what is meant. Further, jurisdictions have the flexibility to procure products other than compost and mulch, such as renewable gas energy.
5123	De Bord, E., County of Sacramento	Proposed language: Relocate (A) and (B) to within the regulations sections. Comment: This section goes well beyond the definition of a source separated organic waste facility and includes import compliance requirements.	Comment noted. The commenter is not requesting a specific policy change that would have a regulatory effect. The comment requests that the language defining designated source-separate organic waste facility be moved to elsewhere in the regulation. CalRecycle disagrees and believes more clarity is provided by including pertinent standards that apply to a designated source separated organic waste facility in the definition. Regarding the comment on returning good standing. A facility's qualification as a designated source separated organic waste facilities is determined on a rolling annual average threshold. The determination occurs every quarter and is self-executing. A facility either meets the threshold or not. It is unnecessary to establish a specific process for a facility to return to its status. CalRecycle will inform jurisdictions implementing a performance-based source-separated organic waste collection service if the facility they select is no longer a designated source separated organic waste facility. Jurisdictions that contract with facilities are encouraged to maintain an awareness of the recovery efficiency of the facility that they select to receive their organic waste.
5124	De Bord, E., County of Sacramento	Proposed language: 18984.1 (a) (1) (A)...provide written notification ~~annually~~ to the jurisdiction when operational conditions change… Comment: Written notice to the Jurisdiction is only necessary when operational conditions change.	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to

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			allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
5125	De Bord, E., County of Sacramento	Proposed language: 18984.1 (a) (6) (C) d …Upon change in operational conditions, ~~annually~~ provide written notice to the jurisdiction indicating that the facility can process and remove plastic bags when it recovers source separated organic waste. Comment: Written notice to the Jurisdiction is only necessary when operational conditions change.	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.

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5126	De Bord, E., County of Sacramento	Proposed language: 18984.11 (a) (1) (A) 1 & 2 ...organic waste subject to collection ~~in a blue container or~~ a green container as specified in Section 18984.1(a) comprises less than 20 gallons per week ~~per applicable container~~… Comment: This change will require a business to subscribe to an organic service even if the business does not generate materials (food waste) that would be placed in the organics bin. There are many business that generate in excess of 20 gallons per week of paper, but do not generate 20 gallons of food waste. Why should that business be required to subscribe to organics service?	As explained in the FSOR, 10 and 20 gallons respectively equate to roughly 10 percent of waste generation for small businesses that produce 2 cubic yards and 1 cubic yard of organic waste for that specific container per week. This de minimis threshold was established based on input from stakeholders while also ensuring that these waivers do not compromise the state's ability to achieve the organic waste reduction targets.
5127	De Bord, E., County of Sacramento	Proposed language: 18984.11 (a) (3) (A) ...to arrange for the collection of solid waste ~~in a blue container, a grey container, or both~~ once every fourteen days. Comment: If grey container waste can be collected every 14 days, why can't a green container. Both will contain putrescible wastes. Both could be sources of odors and vectors. All putrescible waste should be eligible for collection every 14 days	Nothing in the regulations exempts jurisdictions from existing public health and safety requirements regarding the requirement to collect waste in a manner that does not create threats to public health and safety. The language regarding collection waivers specifies that the jurisdiction must demonstrate to the enforcement agency that a collection frequency waiver will not impact the receiving solid waste facilities ability to comply with solid waste facility permitting standards related to protecting public health and safety from the handling of solid waste. CalRecycle cannot verify that a green or gray container would not include putrescible waste, it is likely that at least one container, which ever contains food will be putrescible. Which is why approval for 14 day collection is subject to review by the EA.
5128	De Bord, E., County of Sacramento	Proposed language: 18993.2(a) (2) ~~…and a general description of how the product was used, and, if applicable, where the product was applied.~~ Comment: Remove this new language. Providing information on how and where organic products are used is an unnecessary burden on jurisdictions. What is Cal Recycle going to do with this information?	The intent of the proposed language is to provide greater accountability for the use of recovered organic waste products by jurisdictions. The information is also intended to provide the Department with information about how and where recovered organic waste products are being used across the state in order to guide future efforts for using recovered organic waste products in California.
5129	De Bord, E., County of Sacramento	Proposed language: 18997.3 (a) Revert to previous version. Comment: The definitions of Minor, Moderate and Major are subjective and open to a broad range of interpretation. This language should be specific and not open to varying interpretations.	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires.
5130	De Bord, E., County of Sacramento	Proposed language: 18998.3 (c) Remove. Comment: This requirement is contrary to the very idea of a performance based system. If the system is meeting the required 50% and 75% goals, why does it matter how many generators of minor amounts of organics participate? Remove this requirement.	Comment noted. This comment assumes that the recovery efficiency standards established in Article 17 are equivalent to an overall jurisdiction diversion target. They are not, as such a requirement is precluded by statute. See response to General Comment 62, also see Specific Purpose and Necessity as presented in the ISOR and FSOR for Article 2 and Article 3.
2081	Dingman, Diedra, Contra Costa County	§ 18997.3(b): CalRecycle does not have the authority nor is it reasonable to require that every Franchise Agreement be amended or jurisdictions would be subject to significant "Major" violation penalties. Whether or not changes are made to any contractual agreements is solely subject to the discretion of the parties to said agreement.	The comment regarding franchise agreements is not directed at changes in the third regulatory draft. This section does not require every franchise agreement to be amended. This section does specify that enforcement of an ordinance, policy, procedure, condition or initiative, that violates provisions of this regulation may be subject to penalties. A jurisdiction is not required to amend an ordinance policy, procedure, condition or initiative that does not conflict with the regulations. Regarding "major violations," it is within CalRecycle's discretion under PRC Section 42652.5 (a)(5) to set penalties for violations so long as they are within the limits of PRC Section 41850 (up to $10,000 per day). CalRecycle has determined that proper collection and transportation of waste is such a key component in achieving the organic waste diversion mandates and timelines in SB

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			1383 that a failure of a jurisdiction to require the collection and transport of waste in the proper manner should be considered a “major violation.”
2082	Dingman, Diedra, Contra Costa County	Article 10: CalRecycle does not have the authority to require that food recovery organizations/services enter into written contracts with every generator who wishes to donate edible food. Furthermore, such a requirement would serve to significantly increase the burden of compliance for generators as well as those recovering edible food. Imposing such burdensome requirements will significantly limit jurisdictions ability to increase edible food donation capacity,. high colla	To clarify, the requirement is that in order for commercial edible food generators to comply with Section 18991.3, they must have their edible food that would otherwise be disposed be recovered through a contract or written agreement with a food recovery organization or a food recovery service. However, there is no requirement in SB 1383’s regulations requiring food recovery organizations and food recovery services to enter into contracts or written agreements with commercial edible food generators. Food recovery organizations and food recovery services can choose not to participate. If a commercial edible food generator approaches a food recovery organization or a food recovery service requesting a contract or written agreement, it is at the discretion of the food recovery organization or the food recovery service to determine if they want to enter into such contract or agreement.
2083	Dingman, Diedra, Contra Costa County	Performance Based: Jurisdictional resources will be fully consumed with waste characterization for quarterly grey container surveys if required quarterly. All three containers should only required to be surveyed once per year so that resources can be dedicated to all the other important work called for by these Regulations.	CalRecycle disagrees that a change is necessary as jurisdictions are not required to pursue this compliance option. The methodology is modeled from existing waste sampling requirements in practice in California; however, a jurisdiction could opt to implement a service under Article 3 instead and meet its contamination monitoring requirements through the performance of route reviews instead of using the waste sampling methodology.
15;0001	Dolfie, D., League of California Cities	The League of California Cities writes to comment on the revised proposed regulations released in October 2019, which seeks to implement SB 1383 (Lara, 2016). The League appreciates the opportunity to comment on these proposed regulations and acknowledges the challenge undertaken by CalRecycle to develop a comprehensive program to meet the ambitious goals set forth by SB 1383. The League is encouraged by several key changes in the most recent draft, such as expanding the scope of organic waste products accepted to comply with procurement targets, and creating a pathway for multiple jurisdictions to request the Department’s enforcement for violations of substantial statewide concern. However, cities remain significantly concerned about critical aspects that hinder local governments’ ability to implement the proposed regulations. Cities key concerns are as follows:	Comment noted. This particular comment does not have specific changes noted.
15;0002	Dolfie, D., League of California Cities; Michael, D., City of Rancho Cucamonga	Infrastructure Capacity: California lacks sufficient capacity to meet the need for new organic waste processing. Other regulatory and permitting issues can impede the construction of these new facilities that are outside of local governments’ control. Cities are concerned that the timelines set forth in these regulations will not be adequate to develop and permit the new facilities required to successfully implement and comply with these regulations. Funding: Insufficient state and local funding continue to be among the major challenges cities face in implementing new organic waste diversion programs. These regulations will be costly to implement, and cities will need to raise their collection rates to compensate. CalRecycle should not rely on the fee authority granted to	"Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: “The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new

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		local jurisdictions in SB 1383 alone, because local governments do not have unrestrained authority to impose costs on waste generators and must comply with the requirements of the California Constitution. Penalties: The League appreciates the added flexibility of the new penalty structure as detailed in these revisions, however, the League is still concerned as to how these violations will be assessed and requests further clarification. Additionally, these significant penalty amounts of up to $10,000 a day could make it difficult for cities to allocate the funds necessary to increase infrastructure capacity and other hindrances to compliance. Procurement: As previously mentioned, the League appreciates the expansion of acceptable organic waste products for procurement compliance. However, the League continues to be concerned with the significant cost burden cities will bear as they are required to purchase these recovered organic waste products at levels set by CalRecycle. The League anticipates these requirements will result in substantial additional costs to local governments, over and above the costs already anticipated to comply with the requirements of the proposed regulations.	mixed waste processing systems provided that the receiving facilities demonstrate they are capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements." The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: "With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of material. For example, metals, paper, and plastics are remanufactured through distinct processes (e.g. metal is smelted, paper is pulped and washed). Largely because of this, while material may be valuable as a homogenous commodity, it can become difficult or impossible to recycle when it is contaminated with other materials (e.g. many materials lose their value when they are commingled with other materials.) This principle holds true, and is perhaps more of a factor in the recovery of organic waste. Required source-separation of organic waste helps ensure that organics are kept clean, separate and recoverable. However; throughout the informal regulatory engagement process stakeholders raised concerns about potential costs associated with providing commercial and residential generators with a third container to source separate organic waste. Stakeholders also noted that several cities and counties implement single container collection services and process all the collected material for recovery. Stakeholders argued that allowing the use of a single-container collection system is a viable and cost-effective alternative that can help the state meet that statutory organic waste recovery targets. To respond to stakeholder requests for additionally flexibility CalRecycle crafted this section and Section 18984.2. These sections allow alternatives to providing a three-container source-separated organic waste collection service. Under these section jurisdictions are allowed to require their generators to use a service that does not provide the generators the opportunity to separate their organic waste for recovery at the curb. In order to ensure that the state can achieve the statutory organic waste reduction targets, these collections services are required to transport the containers that include organic waste to high diversion organic waste processing facilities that meet minimum organic content recovery rates (content recovery rates are specified in Subdivision (b) of this section)…" The commenter has stated in each comment period, that they believe the requirement to recover 75 percent of the organic content collected in these mixed waste collection services is unrealistic and infeasible. In turn CalRecycle staff repeatedly communicated to the commenter that the recovery targets cannot be lowered without compromising the integrity of the regulations. This was further documented for this commenter and the public in the ISOR: "These minimum recovery rates are necessary because when the opportunity to recover material through source separation is lost, the state must ensure that minimum recovery levels are met at processing facilities. While this section provides additional flexibility to jurisdictions, CalRecycle

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			must consider its obligation to ensure that the regulations are designed to achieve the statutory targets. If 100 percent of jurisdictions employed this collection option in 2022 the state could not meet the mandatory recovery target of 50 percent unless at least 50 percent of the organic waste collected from these services is recovered. Similarly, if 100 percent of jurisdictions employed this collection option in 2025 the state could not meet the mandatory recovery target of 75 percent unless 75 percent of the organic waste collected from these services is recovered. Therefore, in order to meet the recovery targets specified in statute and the state's ultimate climate goals the recovery standards included in this section are the minimum standards necessary. As generation of organic waste increases with population growth, these minimum recovery rates may need to be revisited. As stated previously the organic waste reduction targets are linked to a 2014 baseline of 23 million tons. This requires the state to dispose of no more than 5.7 million tons by 2025. If, as CalRecycle projects, generation increases to 26 million tons of organic waste by 2025, recovering 75 percent of 25 million tons will only reduce disposal to slightly more than 6 million tons, resulting in the state missing its organic waste recovery targets. The need for this rate increase could be mitigated if higher recovery rates are achieved through source separation, or if efforts to increase source reduction through food recovery and other methods are successful. However, the recovery rates established in this regulation should be considered an absolute minimum." CalRecycle has, prior to and during this rulemaking, communicated that the recovery efficiency requirements established in the regulation is the minimum level that the statute can tolerate. The commenter suggests existing infrastructure that cannot meet this standard should be "protected" or provided a "safe-harbor." The commenter requests changes in the proposed regulations that cannot be reconciled with the statutory targets because CalRecycle finds that it cannot propose a regulation consistent with a statutory 2025 target that permits an unknown portion of the state from implementing the requirements necessary to achieve that target. CalRecycle acknowledges the role of existing infrastructure and acknowledges that previous investments in infrastructure were consciously made to achieve targets that were established prior to the adoption of SB 1383. However, the legislative direction in SB 1383 is unmistakably clear. The Legislature required CalRecycle to adopt regulations to achieve mandatory organic waste reduction levels. Nothing in the regulations prevents facility operators or jurisdictions from investing in facility upgrades or adapting existing facilities to process waste in a manner that meets the minimum regulatory requirements. Comment noted. CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. The provisions of Section 40004 are general legislative findings and declarations applying to the AB 341 (2011) mandatory commercial recycling program and not specific, affirmative legal requirements CalRecycle is required to adhere to in the proposed regulations. SB 1383 contains

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			specific mandates on organic waste diversion that CalRecycle is required to observe in this rulemaking. The findings and declarations in Section 40004 recognize that adequate processing and composting capacity are essential for diversion and disposal reduction. CalRecycle does not dispute this necessity. But CalRecycle is also more specifically subject to the findings and declarations in SB 1383 (2016, PRC Section 42652) that state that the disposal reduction targets in SB 1383 are essential to achieving the statewide recycling goal of 75% in PRC Section 41780.01 and that significant investment is required to meet these goals and that state and local funding mechanisms are needed to support this expansion. The Legislature acknowledges in this section that infrastructure investment and capacity is a central issue to the success of SB 1383. Since the specific controls the general and the more recent statute controls under common rules of statutory construction, CalRecycle does not find a conflict with Section 40004. Comment noted. The Appendix presents a reasonable estimate of the cost of the procurement requirements. The Appendix notes that if jurisdictions pursue the cheapest compliance option, the total cost of the procurement requirements would equate to $30 million. The Appendix to the ISOR notes: “As the amount of each product category that will be procured by each jurisdiction can’t be projected with certainty, CalRecycle assumed each category would account for an equal portion of procurement with the exception of biomass conversion, which is assumed to process less material as the number of facilities is not anticipated to expand and the facilities face more feedstock limitations then solid waste facilities.” CalRecycle estimated the cost of procurement at $288 million. This is a reasonable estimate given uncertainties regarding products jurisdictions will select to comply with the regulations.
15;0003	Dolfie, D., League of California Cities	Scope of Regulations: These proposed regulations are both complicated and broad in scope. As such, there needs to be a robust effort and accompanying funding source to ensure that cities are able to implement these regulations by adequately providing education and outreach to their residents. Additionally, it is unclear why local jurisdictions are required to adopt Model Water Efficient Landscape Ordinances (MWELO), as these do not appear to be at all related to the implementation of SB 1383.	Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. CalRecycle is not adopting a new building code. The regulations require jurisdictions to enforce the aspects of CalGreen and MWELO requirements that help reduce the disposal of organic waste.

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			Jurisdictions are already required to comply with these requirements, including them in the regulations ensures that CalRecycle can require that policies that are necessary to reduce organic waste disposal are implemented.
15;0004	Dolfie, D., League of California Cities	Chapter 12, Article 1, Section 18982. Definitions. Section 18982.2(a)(56.5) defines project baseline as "…a conservative estimate of the business-as-usual greenhouse gas emissions that would have occurred if the organic waste proposed for recovery was disposed of in activity that constitutes landfill disposal…." The League finds that the use of the term "conservative" in this definition injects unnecessary ambiguity and subjectivity into the definition and fails to aid practitioners, courts, and the public in understanding the requirements of the law. Therefore, the League respectfully requests that CalRecycle delete the word "conservative" from Section 18982.2(a)(56.5).	Comment noted, this definition is modified from the "project baseline" definition in CARB's Cap-and-Trade Regulation, contained in the California Code of Regulations, Title 17, section 95102, and is necessary in calculating GHG emissions reductions pursuant to section 18983.2. The term "conservative" is used and understood in the existing definition.
15;0005	Dolfie, D., League of California Cities	Chapter 12, Article 3. Organic Waste Collection Services. Several sections of Article 3 of the proposed regulations have been amended to provide that notices be given "annually" instead of "within the last 12 months." As currently drafted, it is unclear whether "annual" notices must be given within the last 12 months or whether such notices must now be given within a calendar year. Therefore, the Leagues suggests that CalRecycle clarify when such notices must be given.	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
15;0006	Dolfie, D., League of California Cities	Chapter 12, Article 14, Section 18995.2. Implementation Record and Recordkeeping Requirements. Section 18995.2(d) provides that all records must be included in the implementation record within 60 days. However, it fails to explain when the 60-day timeline is triggered. The League suggests that CalRecycle clarify when the 60-day timeline begins.	This comment is not directed at changes in the third regulatory draft.

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15;0007	Dolfie, D., League of California Cities	Chapter 12, Article 16, Section 18997.5. Department Procedures for Imposing Administrative Civil Penalties. Section 18997.5(c) provides that a jurisdiction must file a request for a hearing with the director of the Department within 15 days of receiving an accusation of violation or the jurisdiction will be deemed to have waived its right to a hearing. The League does not believe that this provides jurisdictions sufficient time to avail themselves of their right to a hearing. The League respectfully requests that CalRecycle extend this deadline to 30 days, so that jurisdictions have sufficient time to analyze the accusation and determine whether a hearing is warranted.	Section 18997.5(c) allows for requests for hearing to contest accusations seeking penalties. An accusation is the culmination of an enforcement process that will follow potentially multiple Notices of Violation to the jurisdiction. As such, a jurisdiction will already be on notice as to the nature of violations and will have already been provided with an opportunity to correct such violations. Moreover, the regulations include provisions in Section 18994.1 that require jurisdictions to report the contact information for the designated employee of the jurisdiction who shall receive communication regarding compliance with the chapter as well as the jurisdiction's agent for service of enforcement process, if different. Accusations will be served upon the appropriate contact named pursuant to that section as updated. The jurisdiction is expected to ensure that this contact person forwards the accusation to the appropriate decisionmakers in a timely manner. The 15 day period is modeled on the 15 day time period for requesting a hearing for regulated parties in solid waste facility permitting under PRC Section 44310(a)(1)(A). CalRecycle notes that the request for hearing in Section 18997.5(c) contains basic sufficiency requirements and does not require a high informational bar to meet. CalRecycle finds that the 15 day period is necessary to move a penalty adjudication process forward quickly and efficiently and finds that this should be sufficient time for highly regulated entities to respond to penalty accusations regarding violations they are already on notice about.
15;0008	Dolfie, D., League of California Cities	Chapter 12, Article 16, Section 18997.6. Department for Hearings and Penalty Orders. Section 18997.6(b) provides that a penalty order may be served by any method described in Section 18997.6(b). However, Section 18997.6(b) does not describe methods of service. The League suggests that CalRecycle clarify the permissible methods of service of a penalty order.	The section was corrected to cross-reference the proper section dealing with methods of service.
15;0009	Dolfie, D., League of California Cities	Chapter 12, Article 17, Section 18998.1. Requirements for Performance-Based Source Separated Collection Service. Section 18998.1(e) provides that the requirements of Subdivision (e) are not applicable to certain haulers. However, Subdivision (e) does not set forth any requirements. The League suggests that CalRecycle correct the cross-reference.	Thank you for your comment, the error was corrected.
2098	Edgar, Neil, CA Compost Coalition	There is a typo on page 19, line 20: the second "the" in the sentence is superfluous.	CalRecycle has revised Section 18984.1(d) and removed a duplicative 'the.'
2099	Edgar, Neil, CA Compost Coalition	Developing markets for the materials diverted from landfills is a key concern of many local governments and other policymakers and it certainly makes sense to have them be a part of the solution by mandating procurement of certain byproducts of these efforts. Beyond the benefits to market absorption of these recycled products, the procurement of the products will provide local governments a feedback loop on the quality of available materials and insight into the importance of proper collection techniques, outreach and education, and processor success in meeting market needs.	Thank you for the comment.
2100	Edgar, Neil, CA Compost Coalition	We support the expanded procurement target for compost and the use of biomethane and biomass for bioenergy or other uses, beyond just its use as transportation fuel. We look forward to language which would mandate that the biomethane be from sources that do not include landfills. Furthermore, we believe	A change to the regulatory text is not necessary. The Section 18982(60) definition of "recovered organic waste products" clearly requires that products be made from California, landfill-diverted organic waste.

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		that all procurement be required from California-based sources only. Incentivizing activities which do not occur in California will not promote much-needed, in-state market development.	
2101	Edgar, Neil, CA Compost Coalition	Additionally, we support the addition of mulch as a separate, required procurement category (not as an option on the same menu with compost, biomass energy, or renewable biomethane use) will be needed in order to build markets required to divert lumber and other wood from landfills, given the decline of the biomass industry and expansion of construction/demolition debris programs growing under green building standards implementation, as well as the requirements of these regulations. We would prefer if mulch procurement was required on a separate schedule.	CalRecycle disagrees with mandating mulch procurement separate from the procurement target. CalRecycle's approach recognizes the diverse number of jurisdictions across the state and allows flexibility for jurisdictions to use any combination of recovered organic waste products, rather a one-size-fits-all mandate to use a specific product, which would not be applicable to all jurisdictions.
2102	Edgar, Neil, CA Compost Coalition	While we support local government procurement requirements, we also believe state agencies and departments, and other non-local entities should be required to be part of the solution for markets and have their own procurement mandates.	Regarding state agencies. State agency procurement is within the purview of the Legislature through the annual budgeting process, the Governor's office through Executive Orders, the Department of General Services through the establishment of the State Administrative Manual (SAM), and other control agencies that oversee budgeting and procurement. CalRecycle cannot supersede those existing authorities and impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks. There are existing procurement requirements on state agencies and this rulemaking will not be adding to those. CalRecycle currently works with sister agencies to implement existing procurement-related legislation. For example, CalRecycle coordinates with the Department of General Services (DGS) to implement the State Agency Buy Recycled Campaign (SABRC), Public Contract Code 12200 to 12217, which requires state agencies to purchase products, including compost and paper, containing recycled content. Additionally, AB 2411 (McCarty, Statutes of 2018), requires CalRecycle to develop a plan for compost use in wildfire debris removal efforts, and to coordinate with the Department of Transportation to identify best practices for compost use along roadways. CalRecycle also worked with sister agencies through the AB 1045 process, which directed CalEPA, CalRecycle, the Water Board, ARB, and CDFA to "develop and implement policies to aid in diverting organic waste from landfills by promoting the composting of specified organic waste and by promoting the appropriate use of that compost throughout the state." These are examples of how CalRecycle works with sister agencies, but CalRecycle cannot impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks. Regarding "nonlocal entities", it is important to clarify that the populations in, for example, local education agencies and special districts are already included in a jurisdiction's population-based procurement target; the population data published by the Department of Finance (DOF) includes universities, community colleges, and other local education agencies. The populations inherent in these entities are built into the procurement target calculation, and jurisdictions are encouraged to work with these entities to meet their procurement targets, which may be accomplished through a contract or agreement, such as a Memorandum of Understanding (MOU). Applying procurement targets to these entities, especially population-based procurement targets, would result in double counting individuals contributing to the procurement requirements.

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2103	Edgar, Neil, CA Compost Coalition	CCC supports the use of market-based mechanisms which limit contamination in the incoming feedstocks to their facilities. Our members believe that mandating specific contamination limits at processing facilities is impractical and difficult to execute; they would prefer to rely on their discretion to evaluate materials and their ability to work with feedstock suppliers to establish improved practices which will yield meaningful reductions in contamination. We believe that setting an artificial contamination limit (10% or otherwise) will have a significant impact on operators which will unnecessarily limit flexibility in systems design. For example, it is not clear why companies with vertically-integrated operations – who would prefer to invest heavily in pre-processing equipment and manpower mainly at their composting operations – would be forced to duplicate much of that investment at materials recovery facilities, transfer stations, or landfills in order to meet this regulatory burden, where it may have limited utility at substantial cost.	CalRecycle has revised this section in response to comments. The section was revised to phase in the acceptable levels of incompatible material and the acceptable levels of organic waste in the material sent to disposal. The phase in will allow entities time to plan and make any adjustments in order to comply with the revised acceptable limits of 20% on and after 2022 and 10% on and after 2024. SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. In order to achieve these targets, regulatory limitations for processing organic waste must be implemented.
2104	Edgar, Neil, CA Compost Coalition	The monitoring and reporting requirements for the conceived schedule of load checks, waste audits and sorts, while less aggressive, will unnecessarily add significant labor costs and slow down processing and transfer of organic inputs and outputs with no apparent material benefit to quality improvement and no change in the status of materials which will still be delivered to another facility for further processing. Operators can (and will) determine which loads contain excessive contamination, beyond the tolerance level for their particular operation, and provide feedback to collectors, who can then push that information back upstream to generators. This market-based feedback loop, where increased fees are accorded to higher contamination levels, is currently (and effectively) working for the large majority of operators.	A change to the regulatory text is not necessary. The measurement protocol is necessary to determine the level of efficiency of a facility to separate organic material for recycling. For statewide consistency, it is necessary to specify how a facility is to measure recovery efficiency to determine if it meets the definition of a high diversion organic waste processing facility. The purpose of these regulations is to meet the established goals of 50% recovery of organic waste by 2020 and 75% by 2025. The 20% limit of organic waste contained in materials sent for disposal on and after 2022 and 10% limit on and after 2024 are necessary in order to meet these established goals. In addition, Section 17409.5.9 allows the EA, with concurrence by the Department, to approve alternatives to the measurement protocols described in these sections if the operator can ensure that the measurements will be as accurate.
2105	Edgar, Neil, CA Compost Coalition	While we are pleased that the limits on outbound residual bound for disposal have been lifted to 20% for the first two years of the regulatory implementation, we still believe it will be difficult and costly to achieve, and will likely result in the increased disposal of residual overs where market options are limited or capacity limits will not allow for retaining and processing materials on an indefinite basis.	A change to the regulatory text is not necessary. The purpose of these regulations is to meet the established goals of 50% recovery of organic waste by 2020 and 75% by 2025. The 20% limit of organic waste contained in materials sent for disposal on and after 2022 and 10% limit on and after 2024 are necessary in order to meet these established goals.
2106	Edgar, Neil, CA Compost Coalition	CCC has long been working to curtail the illegal land application of organic materials: we are unhappy that this new draft has eliminated the requirements for the recording and reporting of the exact locations and volumes of materials delivered to this questionable practice.	Comment noted. Comment is not commenting on the regulatory language
2107	Edgar, Neil, CA Compost Coalition	Direct enforcement will be the key to returning land application materials to productive use in a safe, environmentally sound manner. The potential spread of pathogens, physical contamination, and water quality impacts that result from the current land application practice have largely flown under the radar statewide; the overall practice has been largely unquantified, which may be remedied by the reporting required under AB 901.	Comment noted. Comment is not commenting on the regulatory language.

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2108	Edgar, Neil, CA Compost Coalition	It is our understanding that the Local Enforcement Agencies (LEAs) have significant concerns about their ability to regulate land application sites, given their limited authority to gain access to property where they do not have a clear regulatory authority, and have limited resources with which to undertake this additional activity. We support making land application a clear permitting structure in these regulations, one which would have the LEAs with clear responsibility for the regulation of land application activities.	Comment noted. CalRecycle is not proposing to revise the regulatory permitting tier structure. This is not within the scope of this rulemaking.
2109	Edgar, Neil, CA Compost Coalition	• Chipping and grinding operations/facilities shall be required to provide notification of Title 14 regulatory requirements for direct land application and/or receive certification from any landowner and operator where they send processed materials which will be land applied. These certifications shall be required to be retained with other records pertaining to the operations and subject to inspection by appropriate agencies.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
2110	Edgar, Neil, CA Compost Coalition	• Land application operations over a specified tonnage/volume limit (e.g. 100 tons; 1,000 cubic yards; 10 tons/acre) shall be required to provide notification to LEA, regional water board, and county Agriculture Commissioner under a process similar to current EA Notification regulations for other operations in Title 14. This EA Notification process may require landowner/operator to verify the agronomic benefit being derived from the land application activity by use of appropriate soils testing.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
5131	Etherington; Recycle Smart	The extensive contamination minimization standards for jurisdictions notifying for petfonnance-based collection outlined in Section 18984.S(c), seem unrealistic. As currently written, this waste evaluation process would require substantial time, space, and expense. Space at permitted solid waste facilities is limited, and the logistics of conducting frequent waste evaluations would be very complicated. Space to perform waste evaluations is so limited that consultants are recommending to secure capacity as soon as possible.	Comment noted. The Performance-Based Source-Separated Organic Waste Collection Service provisions in Article 17 are optional requirements and a jurisdiction does not have to choose this regulatory pathway.
5132	Etherington; Recycle Smart	Moreover, as we understand the current draft regulation, the contamination studies would need to be performed per jurisdiction. RecycleSmart has six member jurisdictions and is a CalRecycle recognized "Regional Agency." The logistics and cost of this requirement to study the waste streams on a bi-annual and quarterly basis, per jurisdiction, and record and maintain separate records is significant. It is also duplicative, which is in direct contradiction to the regional agency function. CalRecycle must also keep in mind that collection routes do cross over into multiple jurisdictions routinely, so a waste study per jurisdiction would not be completely accurate.	Comment noted. Samples for waste evaluation studies must be jurisdiction specific in order to be valid. Waste evaluation studies are an optional method for a jurisdiction to use to comply with the contamination monitoring requirements, a jurisdiction does not have to choose this regulatory pathway.
5133	Etherington; Recycle Smart	RecycleSmart recommends the following: • At a minimum, the addition of language clarifying the requirement to allow a Joint Powers Authority or regional agency to perforrn service area wide container contamination studies,and continue reporting as a regional agency. This may require edits or clarification to the definition of "Jurisdiction."	Comment noted. Samples for waste evaluation studies must be jurisdiction specific in order to be valid. Waste evaluation studies are an optional method for a jurisdiction to use to comply with the contamination monitoring requirements, a jurisdiction does not have to choose this regulatory pathway.

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5134	Etherington; Recycle Smart	• Update the requirement to one annual study per waste stream (green, blue and gray), including 25 samples from each stream, for a total of 75 samples per year. The current sampling req uirement within the draft regulation is excessive.	CalRecycle disagrees that a change is necessary as jurisdictions are not required to pursue this compliance option. The methodology is modeled from existing waste sampling requirements in practice in California; however, a jurisdiction could opt to implement a service under Article 3 instead and meet its contamination monitoring requirements through the performance of route reviews instead of using the waste sampling methodology.
5135	Etherington; Recycle Smart	• Preferably, a JPA electing to comply by using performance-based standards should have the option to comply with the contamination minimization requirements set out in Section 18984.S(b).	Comment noted. CalRecycle disagrees that route reviews are appropriate for performance-based source separated collection services. The requirement for jurisdictions providing these services to perform waste evaluation studies section is necessary to ensure that a substantial amount of organic waste is not incidentally or intentionally disposed of in the gray container. Twenty five percent was established as a threshold to mirror the 75% intent and the threshold established in statute. Absent this requirement, a jurisdiction would only be implementing a performance-based source separated organic waste collection system and generating 100 tons of organic waste would only need to send the material collected in the green container to a facility that can recover 75 percent of the material in the green container. If the jurisdiction only collects 50 tons of organic waste in the green container and sends it to a facility that recovers 75 percent of that material, up to 50 tons could be sent directly to disposal in the gray container. Removing this section would compromise the state's ability to achieve the organic waste reduction targets. Further, jurisdictions implementing a performance-based source separated organic waste collection system, are not subject to the strict education and outreach requirements prescribed in Article 4. This exemption is premised on the jurisdiction's existing education programs being sufficient to meet or exceed the state's minimum standards. The organic waste threshold measured in the gray container is a key indicator of efficacy.
15;0049	Eulo, A., City of Morgan Hill	This is our comment to Article 12: Procurement of Recovered Organic Waste Products, Section 18993.1 of SB 1383. Please consider our suggestions below. Concerns with the Procurement Section The City well understands that diverted organic materials cannot truly be recovered unless a market exists for the finished products. There are three significant problems with Article 12 as currently proposed that are both unaffordable and unworkable from the City's perspective. These include: 1. The proposed regulations will require the City to procure significantly more compost than it currently uses. Our required procurement level will be about 2,000 tons of compost (5,220 cubic yards) annually which will cost approximately $125,000. For comparison's sake, we currently purchase less than 100 yards per year and have no idea what we will do with 5,220 cubic yards. The other options for procurement are not viable for us nor the majority of California jurisdictions. 2. Since the requirement is effective in 2022, which is when some of the organic waste diversion regulations take effect, there is not likely to be enough compost in the market to support this level of procurement by all cities and counties. This will further raise prices and increase the above price tag.	Regarding #1: The procurement requirements are designed to build markets for recovered organic waste products, which is an essential component of achieving the highly ambitious organic waste diversion targets mandated by SB 1383. CalRecycle developed an open and transparent method to calculate the procurement target that is necessary to help meet the highly ambitious diversion targets set forth by the Legislature. The city does not need to procure the entire procurement target in compost, as assumed in the comment; rather the draft regulations are designed to account for local needs. The city may procure other products, such as mulch or renewable gas energy products to meet the procurement target. CalRecycle also recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. Regarding #2: If the state is to achieve the ambitious landfill diversion targets required by SB 1383, it would be detrimental to delay the much-needed organics diversion that these procurement regulations are designed to encourage. The comment focuses solely on compost; however, the city may also procure other products to meet their procurement target. CalRecycle recognizes the significant effort and resources needed for program implementation, which is why the rulemaking process has been ongoing since 2017. Although the regulations will not take effect

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		3. The regulations allude to the use of transportation fuel produced with recovered organic materials. The infrastructure to produce this fuel does not currently exist anywhere locally that we could find and likely will not exist in 2022. Furthermore, any investment in non-electric transportation technology is a step backwards. We should be focusing on buying and supporting electric vehicles in order to address the climate crisis. Proposed Solutions to the Procurement Section As indicated above, the City understands and supports the need for developing markets for recovered organic materials. To this end, the City would be very supportive of a regulation requiring jurisdictions to make 100% of their compost and mulch purchases from recovered organic waste products. Most specifically, the following edit is requested in Article 12, Section 18993.1(j): If a jurisdiction's annual recovered organic waste product procurement target exceeds the jurisdiction's total procurement of **compost and mulch** ~~transportation fuel, electricity, and gas for heating applications~~ from the previous calendar year as determined by the conversion factors in Subdivision (g), the target shall be adjusted to an amount equal to its total procurement of those products as converted to their recovered organic waste product equivalent from the previous year consistent with Subdivision (g).	until 2022, adopting them in early 2020 allows regulated entities approximately two years to plan and implement necessary budgetary, contractual, and other programmatic changes. Jurisdictions should consider taking actions to implement programs to be in compliance with the regulations on January 1, 2022. Regarding #3: The comment assumes current availability, but the procurement requirements are designed to build markets for recovered organic waste products. The options available today do not necessarily reflect the options that will be available in the future once the more than 25 million tons of organic waste are diverted and processed. Therefore, revising these regulations to satisfy current availability of recovered organic waste products and current infrastructure would not be forward-looking nor would it match the intent of Article 12. If a jurisdiction cannot procure fuel, it can procure other products. Regarding electric vehicles, the proposed regulatory text recognizes the eligibility of electricity derived from renewable gas. Regarding the comment's proposed revisions to focus on compost and mulch procurement, CalRecycle disagrees with this narrow approach. CalRecycle's approach recognizes the diverse number of jurisdictions across the state and allows flexibility for jurisdictions to use any combination of recovered organic waste products, rather a one-size-fits-all mandate. This approach is commensurate with the highly ambitious organic waste diversion targets mandated by SB 1383. The commenter's approach would not be sufficient to create the necessary markets for recovered organic waste products for the more than 25 million tons that must be diverted by 2025.
15;0018	Fontes, B., Kern County Public Works	Section 18984.5(b). Container Contamination Minimization Concern: Changes to this section indicate that containers may be randomly selected along a hauler route. However, no information is provided regarding the number or percentage of containers that must be selected for review. Are we to understand that this will be left up to each jurisdiction to determine?	For clarity, the regulations allow the jurisdictions to determine random selection, which is the least costly and burdensome approach compared to requiring statistically significant sampling. In regard to if the program will meet compliance, this has been addressed in language changes to Sections 18984.5 and 18984.6. CalRecycle disagrees with making it a requirement that contamination monitoring is random as it would limit flexibility and increase costs.
15;0019	Fontes, B., Kern County Public Works	Section 18990.1(b). Organic Waste Recovery Standards and Policies Concern: Revisions to this section do not allow for a jurisdiction to place limits on a particular solid waste facility, operation, property or activity from accepting organic waste imported from outside of the jurisdiction for processing or recovery. As sited in the State's studies, the bulk of the compostable materials capacity is in the San Joaquin Valley. Kern County, in the San Joaquin Valley, already receives hundreds of thousands of biosolids each year from outside of its jurisdiction. Consideration must be made for the negative impact this will have on the Valley air quality and its infrastructure – road deterioration will drastically increase, with no proposed mitigation measure allowed to a jurisdiction, save only through the permitting process. Recommendation: Allow jurisdictions disposal modification opportunities to off-set increased disposal due to compost facility and organic waste processing residuals.	A change to the regulatory text is not necessary. Article 9 section 18990.1 (b)(2) does not prohibit differential costs but does prohibit a fee designed to prevent material from out of the jurisdiction. This section would not prohibit reasonable fees intended to recoup additional processing or screening costs. Differential fees must be tied to actual costs.

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		Allow for jurisdictions some mechanism to provide for flow control of out-of-jurisdiction generated organic materials.	
15;0020	Fontes, B., Kern County Public Works	General Comment on Enforcement Sections Concern: The 50% diversion goal required by AB 939 has been met in a collaborative effort between jurisdictions and their constituents. While increasing the diversion and organics recycling goals to 75%, as well as the other intents of SB 1383, these new regulations and enforcement protocols will create an antagonistic relationship between the jurisdictions and their constituents. In some cases, this appears to happen without consideration being made for the efforts of individual waste generators. For example, enforcing regulations on individual residential and commercial generators and jurisdictions without consideration to the actual disposal for particular jurisdictions is not responsible. If a jurisdictions' populace is disposing much less per person than the State average, there leniency should be considered. If the average individual is disposing less than the State average, then even after implementing all SB 1383 measures, they will most likely also recycle less (by weight and volume) than the State average. Recommendation: Include a mechanism that allows for jurisdictions to be able to evaluate and determine whether a generator has made a good faith effort to meet the new state mandates. Consider allowing jurisdictions the option of developing their own enforcement penalties, rather than prescribing a set State-wide standard that may not be applicable or able to be implemented in some jurisdictions. Please bear in mind that the constituents of a jurisdiction have the ability to stop adoption and implementation of local ordinances that the State will require jurisdictions to adopt under SB 1383.	Regarding authority to impose requirements on jurisdictions, SB 1383, in Public Resources Code Section 42652.5(a)(4) and (5), specifically allows the proposed regulations to "include different levels of requirements for local jurisdictions…" and may "include penalties to be imposed by the Department for noncompliance." Regarding necessity, please refer to the Final Statement of Reasons. This
15;0021	Fontes, B., Kern County Public Works	Section 18996.7. Department Enforcement Action Regarding Local Education Agencies and Federal Facilities Concern: The Department will formulate and post a "naughty list" for non-compliant schools, prisons and military bases. Yet, in comparison, the Department or jurisdiction is expected to impose fines on insignificant organic waste generators. We understand that the Department has limited jurisdiction over non-local entities, but application and level of enforcement in these cases is not equal, nor responsible. Unfortunately, these regulations also contain whistleblower provisions (Sections 18995.3, 18996.8). We have arrived at the point of encouraging "tattle telling" on neighbors who may have thrown away a banana peel in a gray container. Worse yet would be the case of an individual who places the banana peel in their neighbor's gray container once it is placed on the curb, then notifies the jurisdiction that the neighbor needs to be investigated and fined for disposing of organic material. Unfortunately, we all know this will occur. We understand that the Department has the responsibility to meet mandates at an urgent pace, but does the Department believe we can change behavior at the rate and to the degree which the regulations demand?	Comment noted. With respect to the scenario described, CalRecycle reiterates that under the proposed regulations, jurisdictions may charge processing fees for contamination, but they are explicitly not required to issue penalties for contamination. The provisions in Sections 18995.3 and 18996.8 are modeled on existing complaint procedures in 14 CCR Section 18302 and 18303 for solid waste facility permitting and are designed to recognize that complaints regarding compliance are going to be a reality for jurisdictions and the Department. Public complaints regarding regulatory compliance occur with almost any government program. These provisions are meant to provide a transparent procedure for handling that reality and inevitability.

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		Recommendation: We have no recommendations other than extending out the times of enforcement implementation to coincide with performance measures that trend in an unfavorable direction.	
15;0022	Fontes, B., Kern County Public Works	17409.5.7: Gray Container Waste Evaluations Comment: Solid waste facilities will receive gray container waste from entities subject to waivers or exemptions. We believe this section would not apply to those facilities. Recommendation: Include language that indicates this section would not apply to the waste streams from those with waivers that are accepted at waste processing/transfer facilities.	A change to the regulatory text is not necessary. A waiver granted to a jurisdiction would exempt a jurisdiction from complying with the requirements of the organic waste collection service, education, and enforcement depending on the waiver. Therefore, a jurisdiction that is granted a waiver from the organic waste collection service would not be collecting waste so they would not be sending waste to a landfill. In addition, a solid waste facility is not exempt from complying with this section or any of the other requirements for the solid waste facilities because it is located in a jurisdiction that was granted a waiver.
15;0023	Fontes, B., Kern County Public Works	Section 17409.5.8. Incompatible Materials Limit in Recovered Organic Waste Comment: Placing progressively more stringent contamination compliance limits can create disproportionately negative impacts. Ultimately, this requirement may inadvertently impact organic waste handling capacity. Recommendation: Allow for contamination minimization to be handled through Agreements at a local level; for example, organic waste sent offsite could be accepted at other facilities (composting, etc.) that impose increased processing costs based on the amounts and types of contaminated materials present. This would not jeopardize continued transfer/processing facility viability through more stringent prescriptive requirements.	CalRecycle has revised this section in response to comments. The section was revised to phase in the acceptable levels of incompatible material and the acceptable levels of organic waste in the material sent to disposal. The phase in will allow entities time to plan and make any adjustments in order to comply with the revised acceptable limits of 20% on and after 2022 and 10% on and after 2024. SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. In order to achieve these targets, regulatory limitations for processing organic waste must be implemented.
15;0024	Fontes, B., Kern County Public Works	General Comments on Requirements for Performance-Based Source Separated Collection system Comment: Collection System The 90% quota for commercial business and residential sectors will be challenging to track and compliance interpretation may be controversial. How will the following be counted: 1. Exempted businesses due to no/low organic waste generation or container space issues, 2. Multi-family complexes where organics are handled by gardeners which could preclude the need for green containers and 3. Residential sources that chose not to have a green cart because of rock yards, fake grass and/or xeriscape yards maintained by gardeners? If these non-generators are counted subjectively, this could create varying minimum levels of "90% compliance". A jurisdiction can offer a compliant collection service to 90% of generators but many generators will not subscribe or need the service.	Comment noted. The 90 percent service requirement obviates the need to issue or track waivers. A jurisdiction is only required to provide service to 90 percent of their businesses and therefore is exempt from issuing waivers. If a jurisdiction has multifamily or residential complexes that do not generate green waste, they could exempt them from collection services provided that they continue to provide service to at least 90 percent of their generators. If a jurisdiction is entirely unaware of the number of businesses licensed to operate, or residential properties located within their jurisdiction, they are not required to pursue this compliance option. Comment noted. Jurisdictions are not required to pursue compliance with the collection requirements through Article 17 if the jurisdiction is not able to ensure that 90 percent of generators have service. It is important to clarify that jurisdictions are required to provide collection services to generators. Offering an organic waste collection subscription is not equivalent to requiring participation in service. A jurisdiction may comply through providing a collection service that complies with the requirements of Article 3 which allows jurisdictions to provide waivers on a case-by-case basis.
15;0025	Fontes, B., Kern County Public Works	Comment: Waste Composition Studies Route is not clearly defined, thus creating subjectivity in compliance with waste composition studies. For example, if one (1) route is assumed for the entire area, this equates to an analysis of 40 samples or 8,000 lbs of waste studied per quarter. More realistically, if we have 200,000 single family homes with cart service and assume 700 generators per route, that would be a quarterly survey of 286 routes, 7,143 samples at 200 lbs each would weigh 1,428,571 lbs or 714 tons or about	CalRecycle disagrees that a change is necessary as jurisdictions are not required to pursue this compliance option. The methodology is modeled from existing waste sampling requirements in practice in California; however, a jurisdiction could opt to implement a service under Article 3 instead and meet its contamination monitoring requirements through the performance of route reviews instead of using the waste sampling methodology.

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		11,323 cubic yards of waste. The concept of endeavoring to sort about 3,774 (3 yd) dumpsters per quarter is overwhelming. One would have to sort 42 (3 yard dumpsters) per day for 90 days straight and then start the next quarterly survey. Please note that this waste study example does not include front loader bin routes. The provisions a jurisdiction must comply with to implement a performance-based system are too onerous regardless of compliance exemptions listed in section 18998.2. This is of particular concern since a performance-based system will give the Department a more accurate assessment of program status.	
2015	Gregory, Judi, Go2Zero Strategies & GreenEducation.US	1. How does a jurisdiction know if they meet the requirements for the performance-based program implementation--specifically the "less than 25% organics in MSW" portion? Who performs those waste audits? Is that something each jurisdiction is responsible for?	Jurisdictions that implement a performance-based source separated collection service are required to perform waste evaluations pursuant to Section 18984.5. Jurisdictions that implement a performance-based source separated organic waste collection service are required to notify CalRecycle within 30 days of conducting two samples that exceed 25 percent.
2016	Gregory, Judi, Go2Zero Strategies & GreenEducation.US	2. There have been so many changes with what is required with digested sludge from waste water treatment plant. What does the latest draft allow? Can it be used as ADC? Can it be landfilled? Will it count as "landfilling organics"?	A change to the regulatory text is not necessary. The use of organics as an alternative daily cover would be considered disposal pursuant to Section 18983.1(a). Facilities, operations, end-uses, and activities that are considered a reduction of landfill disposal are described in Section 18983.1(b).
2017	Gregory, Judi, Go2Zero Strategies & GreenEducation.US	3. What about landscape companies that self-haul yard trimmings--are they classified as "organic waste self-haulers"? If so, what is required of them and of jurisdictions in terms of outreach and reporting. Many do not have business licenses, so reaching out to them is near impossible.	The definition of 'hauler' in Section 18982(a)(31) of these regulations refers to existing Title 14 Section 18815.2(32): "'Hauler' means a person who collects material from a generator and delivers it to a reporting entity, end user, or a destination outside of the state. 'Hauler' includes public contract haulers, private contract haulers, food waste self-haulers, and self-haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler." Landscapers are self-haulers as they are the actual entity generating the waste. Landscapers are self-haulers and if the jurisdiction allows landscapers to self-haul, then the jurisdiction needs to explicitly include this in its enforcement ordinance and include infomation in their general education and outreach. The enforcement ordinance needs to require all self-haulers to meet the requirements of Section 18988.3, which while it does not require registration, e.g., the jurisdiction does not need to reach out to each one, does require that self-haulers recycle the organics, either through SSO or hauling to a HDOP.
2018	Gregory, Judi, Go2Zero Strategies & GreenEducation.US	4. Are commercial edible food generators able to donate their edible food to clients, co-workers, or even take them home themselves? Or are they required to donate it to a food recovery organization?	To clarify, only edible food that would otherwise be disposed must be recovered. Nothing in SB 1383's edible food recovery regulations prohibits a commercial edible food generator from giving their surplus food to clients or employees. However, if the food would otherwise be disposed, then it must be recovered by a food recovery organization or a food recovery service.
2019	Gregory, Judi, Go2Zero Strategies & GreenEducation.US	5. Will CalRecycle be considering and online portal for all of the reporting or at least consistent reports? When will templates be available so we can make sure we are tracking the information correctly?	CalRecycle intends to allow jurisdictions to report electronically. Jurisdictions are not required to report the contents of their implementation record, only to maintain copies. CalRecycle's will provide guidance and tools regarding these requirements before the regulations take effect.
5067	Grootenhuis, G., San Diego Food System Alliance	See comment letter. Page 47, Line 1-3: 'A commercial edible food generator shall comply with the requirements of this section through a contract or written agreement with any or all of the following:' Suggested Changes: A commercial edible foodgenerator shall comply with the requirements of this section through a contract or written agreement **- if a food**	Nothing in the regulations prohibits a commercial edible food generator from entering into a contract or written agreement with a food bank. However, some generators will have multiple food types, including food types that food banks are not equipped to handle. In this case, the expectation is that the commercial edible food generator either establish additional contracts or written agreements with recovery organizations or services that can handle their food, or they

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		recovery agency is operating under a food bank's permit, per AB 2178, the contract or written agreement may be established through the food bank - with any or all of the following: Comment: The role of food banks need to be clarified in relation to the contract or written agreements between agencies and generators, specifically given recent passing of AB 2178. Many food recovery organizations are operating under the oversight and permit of a designated food bank. In many cases, the food bank is the organization that actually establishes the relationship between a food donor and a food recovery agency. If this is the case, the contract or written agreement should be allowed to be established through the food bank, eliminating the recordkeeping burden on the food recovery agencies.	find one food recovery organization or food recovery service that is capable of recovering every type of food that the generator has available.
5068	Grootenhuis, G., San Diego Food System Alliance	See comment letter. Page 47, Line 6-8: 'Food recovery organizations that will accept the edible food that the commercial edible food generator self-hauls to the food recovery organizationfor food recovery.' Suggested Changes: 'Food recovery organizations that will accept the edible food that the commercial edible food generator self-hauls to the food recovery organization for food recovery, **with appropriate notification to the food recovery organization.**' Comment: With the deletion of line 9-10 of page 47, it is essential to make clear that food generators self-haul food with notification to the food recovery organization - ensuring edible food is not self-hauled at inconvenient times, and ensuring that "donation dumping" does not occur.	For context, the commenter is concerned that commercial edible food generators could self-haul edible food to a food recovery organization that they do not have a contract or written agreement with for food recovery. Donation dumping and unexpected deliveries and drop offs of food donations are serious issues that can create significant hardships for food recovery organizations and food recovery services. Revisions were made to the regulatory text to address this concern by requiring commercial edible food generators to establish a contract or written agreement with food recovery organizations that will accept edible food that is self-hauled by the generator to the organization. CalRecycle also provided an explanation in the FSOR to address the concern raised in this comment. The explanation in the FSOR clarifies that commercial edible food generators can only self-haul edible food to a food recovery organization that they have established a contract or written agreement with for food recovery where the contract specifies that the generator is permitted to self-haul edible food during pre-established delivery or drop off times. It is at the discretion of the food recovery organization and the commercial edible food generator to include provisions in their contracts or written agreements regarding what the outcome will be if a commercial edible food generator self-hauls edible food outside the designated delivery or drop off times specified in the contract or written agreement. If edible food is self-hauled without the consent of the food recovery organization or does not meet the self-haul provisions included in the contract or written agreement, the commercial edible food generator could potentially be at risk of their contract being terminated by the food recovery organization. It is at the discretion of food recovery organizations and commercial edible food generators to determine the exact self-haul provisions to include in their contracts or written agreements. CalRecycle also developed a model food recovery agreement that can be customized and used by food recovery organizations, food recovery services, and commercial edible food generators. This model food recovery agreement does include a section for self-hauled edible food, which also includes designated delivery and drop off days and times to establish as well as language to protect food recovery organizations and food recovery services from donation dumping and unexpected donations. The model agreement is a template that is intended to be customized based on the needs of food recovery organizations, food recovery services, and commercial edible food generators.

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5069	Grootenhuis, G., San Diego Food System Alliance	See comment letter. Page 52, Line 30: 'Entities contacted by a jurisdiction shall respond to the jurisdiction within 60 days regarding available and potential new or expanded capacity' Suggested Changes: 'Entities contacted by a jurisdiction shall respond to the jurisdiction within **90** days regarding available and potential new or expanded capacity'. Comment: Due to the varied nature of food recovery organizations' open hours and administrative capacity, allowing a longer response time regarding available and potential capacity is important to the success of each jurisdicition's accurate capacity assessment.	Jurisdictions and counties have a timeframe to compile information and therefore need certainty regarding the timeframe when they will receive information from regulated entities. For this reason, the 60-day timeframe was not extended further.
5070	Grootenhuis, G., San Diego Food System Alliance	See Comment Letter: Section 18984.14. Recordkeeping Requirements for Waivers and Exemptions Page 61, Line 35-40 'A jurisdiction shall require food recovery organizations and services that arelocated within the jurisdiction and contract with or have written agreements with commercial edible food generators pursuant to Section 18991.3 (b)to report the amount of edible food in pounds recovered by the service or organization in the previous calendar year to the jurisdiction.' Suggested Changes: 'A jurisdiction shall require food recovery organizations and services that are located within the jurisdiction ~~and contract with or have written agreements with commercial edible food generators pursuantto Section 18991.3 (b)~~to report the amount of **all** ~~edible~~ food in pounds recovered by the service or organization in the previous calendar year to the jurisdiction, **including food recovered outside said jurisdiction, not limited to Tier 1 and Tier 2 generators. Reports can be obtained through established food banks who receive food recovery data from partner food recovery organizations and services, in place of individual food recovery organizations and services reporting directly to the jurisdiction.'** Comment: Clarification is needed as to whether food recovery organizations and services will need to report edible food recovered only within the jurisdiction they are located in, or whether they report all food recovered in a year regardless of the generator's location. Many food recovery organizations and services recover food from a variety of generators in several jurisdictions. Requiring food recovery organizations to separate out jurisdiction-specific data would present an unnecessary reporting burden. In addition, it is unclear whether food recovery organizations will need to separate out Tier 1 and Tier 2 food generators from their total food recovery efforts. This would also present a large burden on the food recovery organizations. We recommend that the Generator Tier system should only be used for jurisdiction's enforcement and not for food recovery organization reporting. To make this reporting requirement as realistic as possible for food recovery organizations, we recommend simplifying the food recovery organization	To help clarify the reporting requirements for food recovery organizations and food recovery services the regulatory text was revised. The revised text clarifies that a jurisdiction shall require food recovery organizations and food recovery services that are physically located within the jurisdiction and contract with or have written agreements with commercial edible food generators pursuant to Section 18991.3 (b) to report the total pounds of edible food recovered in the previous calendar year to the jurisdiction. To clarify, any food recovery organization or food recovery service that has a contract or written agreement with one or more commercial edible food generators is required to report to one jurisdiction. Specifically, they are required to report (to one jurisdiction) the total pounds of edible food that were collected or received directly from the commercial edible food generators that they contract with or have written agreements with. Regulated food recovery organizations and food recovery services should have this data because the regulations require them to maintain records of the pounds collected and received from commercial edible food generators. CalRecycle would like to clarify that food recovery organizations and food recovery services are not required to report the pounds of edible food recovered from entities that are not commercial edible food generators, nor are they required to report residual food waste as this could be overly burdensome and expensive to track. To clarify further, food recovery organizations are only required to report to one jurisdiction. That is, the jurisdiction where their primary physical address is located. Also, there is no requirement in the regulations for food recovery organizations or food recovery services to separate out the pounds recovered by jurisdiction. Only the total pounds collected (from tier one and tier two commercial edible food generators) in the previous calendar year are required to be reported. Regarding the comment about donation dumping. CalRecycle recognizes that donation dumping occurs. The regulations require commercial edible food generators to have a contract or written agreement with a food recovery organization or service. If a food recovery organization or service is concerned that donation dumping could occur, then they should include language in their contract or written agreement to protect themselves against donation dumping. If a commercial edible food generator repeatedly donation dumps, there is nothing in SB 1383's regulations prohibiting a food recovery organization or service from terminating their contract or written agreement with that particular generator.

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		reporting process by requiring food recovery organizations and services to report all food recovered in the previous year (including all food donors, regardless of Tier 1 or Tier 2 status, and regardless of location within a jurisdiction). Cumulatively, this would provide accurate information for food recovery in an entire county, and data analysis could be done at a county-wide level. Lastly, it is highly recommended that a food bank's reporting role is clarified for the food recovery organizations and services that operate under a food bank permit (as designated in AB 2178). Specifically, we recommend that the food banks be allowed to report on behalf of the food recovery organizations within their network. The food banks are already collecting food recovery data from their partner agencies, so having the food banks do the reporting prevents double work that burdens food recovery organizations. In addition, donation dumping is an unfortunate reality for food recovery organizations. If food recovery organizations/services are required to report pounds that were distributed verses trashed due to the poor quality that it was received in this might be hard to report on, and would add an additional burden. Therefore, we recommend removing the word "edible" to describe the food recovered in the previous year that will be reported to the jurisdiction.	
5071	Grootenhuis, G., San Diego Food System Alliance	See comment letter: Page 33, Line 16 'A jurisdiction is not required to separate or recover organic waste that is removed from homeless encampments and illegal disposal sites as part of an abatement activity to protect public health and safety.' Suggested Changes: Add definitions for 'homeless encampments' and 'illegal disposal sites' to 'Article 1. Definitions' and specify tonnage in correlation with said definitions. Comment: Although this language was not changed in this specific round of revisions, we did want to flag that "homeless encampments" and "illegal disposal sites" are not defined. The size of homeless encampments can vary based on the density of homeless population in each jurisdiction and should be defined to make clear what makes an 'encampment'.	Jurisdictions are not required to separate and recover organic waste removed from homeless encampments. While waste removed from homeless encampments or illegal disposal sites does still count as statewide disposal, the jurisdiction is allowed to dispose of the material and is not subject to enforcement for disposing of the material. As stated in the statement of purpose and necessity for the regulations, specifically Article 3, this regulation does not subject jurisdictions to diversion targets. This regulation cannot alter what activities count as disposal under AB 939.
5072	Grootenhuis, G., San Diego Food System Alliance	California Alliance for Community Composting: There is one new phrase added to Article 17, Section 18998.1(b) which may be problematic for the movement of organics to "community compost sites" or to "excluded activities." Does "designated facility" sound as if it needs to be a "fully permitted facility" and/or could it bolster exclusive hauling contracts to their specific "designated" locations? Page 103-104 Section 18998.1(b) reads: "Jurisdictions that delegate collection services to a designee shall include in their contracts or agreements with the designee a requirement that all haulers transport the source separated organic waste collection stream collected from generators subject to the authority of a jurisdiction to a designated source separated organic waste facility." We think the word "designated" leaves it unclear who is doing the designating and how, and are wondering if it's important to tell CalRecycle to leave room for the	Comment noted. This comment is not directed at changes in the third regulatory draft.

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		operation of many and diverse organics facilities (on-farm, community, and other excluded activities), "designated" and otherwise.	
5073	Grootenhuis, G., San Diego Food System Alliance	Californians Against Waste: A public commitment to adopting a second phase of the edible food recovery regulations no later than 5 years after implementation is crucial to achieving the 20% food recovery target identified in SB 1383. ● While we believe the regulations regarding edible food waste are a promising start, we would request that there be a commitment made, in writing, to revisit and revise these regulations no later than 5 years after implementation. Because this type of program has never been administered by a state agency, at this scale, or through the lens of waste collection and organic recovery, it is of the utmost importance to reevaluate the rules once there has been some trial-and-error learning in the program. This would give stakeholders the opportunity to comment on both the shortcomings and successes of the program, and foster a more effective state-wide strategy. ● Moreover, given the inherent uncertain nature of the proposed regulations, the Department has no clear sense of how far the regulations will go towards achieving the 20% target in the regulations. Committing to reevaluating whether additional regulations are necessary is the only way to comply with that provision of SB 1383.	Comment noted, CalRecycle agrees that it is likely that achieving the 20 percent edible food target will require CalRecycle and stakeholders to reassess data that becomes available after the adoption of these regulations. This may require an additional rulemaking prior to 2025, depending on the data.
5074	Grootenhuis, G., San Diego Food System Alliance	PreZero: In keeping with the EPA's food recovery hierarchy, we ask that CalRecycle guide juridictions and haulers to utilize facilities that follow preferred practices when available, such as feeding animals before considering composting, anaerobic digestion, or incineration.	Comment noted. The regulations require jurisdictions and haulers to transport collected organic waste to facilities that recover organic waste as defined in Article 2 of the regulations. Recovery facilities are not tiered according to a specific set of preferences or attributes unique to one type of recovery activity.
5018	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Aligning SB 1383 Regulations with the County-Based Food Recovery System First, we urge CalRecycle to ensure that the implementation be coordinated and standardized across jurisdictions within counties, whether through the creation of Joint Powers Agreements or other mechanisms to improve communication, reduce burdens on recovery organizations, and ultimately improve compliance. The emergency food recovery network is county-based, spanning cities and unincorporated areas, and for the diversion goal to be a success, SB 1383 implementation must align with this and not set up contradictory or competing demands on the network of non-profit food recovery organizations already struggling to recover and distribute food to Californians in need.	Section 18992.2 states that in complying with this section the county in coordination with jurisdictions and regional agencies located within the county shall consult with food recovery organizations and food recovery services regarding existing, or proposed new and expanded capacity that could be accessed by the jurisdiction and its commercial edible food generators. It is inherent in the requirements of Section 18992.2 (a)(2)-(4) that counties, in coordination with jurisdictions and regional agencies located within the county, will have to consult with food recovery organizations and food recovery services. CalRecycle agrees that successful partnerships with food banks will require activities that span jurisdictional boundaries. Therefore, CalRecycle does intend on providing guidance and recommendations through case studies and other model tools once the regulations have been adopted.
5019	Gutierrez, I., Redwood Empire Food Bank;	• In 18992.2 we strongly support the language as is, to have the capacity planning process be led by counties. This will help ensure that any gaps and	A change to the regulatory text was not necessary because this comment is in support of SB 1383's edible food recovery capacity planning process and requirements specified in Article 11.

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	Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	needs identified will support proper capacity expansion of the emergency food recovery system.	
5020	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	• In 18994.2 (h) (2) (a) we ask for the inclusion of "**physically**" located to clarify that food recovery organizations must keep records and report to the jurisdictions where they are physically located.	The language in Section 18994.2(h)(2)(A) states that a jurisdiction shall require food recovery organizations and services that are "located within the jurisdiction" and contract with or have written agreements with commercial edible food generators pursuant to Section 18991.3 (b) to report the total pounds of edible food recovered in the previous calendar year to the jurisdiction. This language clearly indicates that regulated food recovery organizations and services are only required to report to one jurisdiction. That is, the jurisdiction where their primary address is physically located.
5021	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood,	• In 18991.5 (a) (2) we urge the inclusion of language clarifying that food recovery organizations must only keep one set of donation records available to all jurisdictions. This is vital to avoid significant confusion in record-keeping and reporting across the many jurisdictional boundaries that food banks and other food recovery organizations cross during their operations. This is also consistent with the aim of emergency food recovery organization's record keeping as primarily a check to confirm donation by generators, not as a measure of where the food was ultimately distributed as that is outside the scope of the mandate and again would create significant burden.	Only food recovery organizations and food recovery services that contract with or have written agreements with commercial edible food generators pursuant to Section 18991.3 (b) are required to report information to the jurisdiction. Specifically, they are required to report the total pounds collected (from commercial edible food generators) in the previous calendar year to one jurisdiction. That is, the jurisdiction that their primary address is physically located in. They are not required to report to multiple jurisdictions. For example, if a food recovery organization is recovering food in multiple jurisdictions, the food recovery organization is only required to report the total pounds collected (from commercial edible food generators) in the previous calendar year to the one jurisdiction that they are physically located in.

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	M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks		
5022	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	In addition to this regulatory language, CalRecycle should in the Final Statement of Reasons and in subsequent model tools, offer recommendations and guidance to jurisdictions on how to align with the county-based structure of the emergency food system to minimize regulatory burden and maximize the ability of this network to help achieve the overall diversion goal. Successful partnerships with every food bank will require activities that span jurisdictional boundaries.	Section 18992.2 states that in complying with this section the county in coordination with jurisdictions and regional agencies located within the county shall consult with food recovery organizations and food recovery services regarding existing, or proposed new and expanded capacity that could be accessed by the jurisdiction and its commercial edible food generators. It is inherent in the requirements of Section 18992.2 (a)(2)-(4) that counties, in coordination with jurisdictions and regional agencies located within the county, will have to consult with food recovery organizations and food recovery services. The FSOR provides the purpose and necessity of each edible food recovery requirement in the regulations. However, guidance on how jurisdictions can align with the county-based structure of the emergency food system will not be provided in the FSOR. CalRecycle agrees that successful partnerships with food banks will require activities that span jurisdictional boundaries. Therefore, CalRecycle does intend on providing guidance and recommendations through case studies and other model tools once the regulations have been adopted.
5023	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Definition of Edible Food Perhaps the most fundamental component of achieving the diversion goal is defining edible food. In 18982 (a) (18), we appreciate that CalRecycle has taken our request to strike 'unsold and unserved,' but we urge in the strongest terms that the definition should restore prior language: "Edible food" means food intended for human consumption **that is fit to be consumed**… Despite the newly inserted reference to the Health & Safety Code, food banks have significant concerns that this widens the baseline of food beyond what can be reasonably recovered in a food safe manner.	In an early draft of the proposed regulations edible food was defined as: "Edible food" means unsold or unserved food that is fit for human consumption, even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions. For the purposes of these regulations, "edible food" is not solid waste if it is recovered and not discarded." Several commenters made the argument that this definition was too restrictive, because it described "recoverable food" not "edible food." Commenters also raised concerns that keeping this definition would make the edible food baseline much smaller than it would be with a broader definition, and would potentially discourage donations foods that were still safe for human consumption. To address commenters' concerns about the definition of "edible food" being too restrictive, CalRecycle revised the definition. In the final regulations, edible food is defined as the following: "Edible food" means food intended for human consumption. (A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded. (B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. Although the final definition of "edible food" is broader than the previous draft definitions, the final definition includes language to clarify that all edible food that is recovered under SB 1383

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			must still meet the food safety requirements of the California Retail Food Code. This provision provides an objective standard familiar to regulated entities.
5024	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Furthermore, at 18982 (a) (18) we request the restoration of "**even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.**" Not only does this language provide helpful clarification, removing it is also potentially harmful: if deleted, it could potentially discourage donations of blemished but safe food which is often the types of produce and other healthy items that food banks receive, reducing food access and working against the diversion goal. The definition of edible food benefits all stakeholders from the consistency of incorporating the nationally established definition of food eligible for donation by the Bill Emerson Good Samaritan Food Donation Act & mirrored in AB 1219 (Eggman, 2017), which states: "'apparently wholesome food' means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions."	In an early draft of the proposed regulations edible food was defined as: "Edible food" means unsold or unserved food that is fit for human consumption, even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions. For the purposes of these regulations, "edible food" is not solid waste if it is recovered and not discarded." Several commenters made the argument that this definition was too restrictive, because it described "recoverable food" not "edible food." Commenters also raised concerns that keeping this definition would make the edible food baseline much smaller than it would be with a broader definition, and would potentially discourage donations of foods that were still safe for human consumption. To address commenters' concerns about the definition of "edible food" being too restrictive, CalRecycle revised the definition. In the final regulations, edible food is defined as the following: "Edible food" means food intended for human consumption. (A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded. (B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. Although the final definition of "edible food" is broader than the previous draft definitions, the final definition includes language to clarify that all edible food that is recovered under SB 1383 must still meet the food safety requirements of the California Retail Food Code. This provision provides an objective standard familiar to regulated entities.
5025	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Definition & Treatment of Non-Profit Food Recovery Organizations to Limit Unintended Consequences and Maximize the Diversion Goal We reiterate our grave concern grounded in experience, about the unintended consequences of these regulations to weaken the state's ability to fight hunger in the name of edible food diversion, and request that CalRecycle somehow reflect in the regulations the need to divert edible food to the millions of Californians experiencing food insecurity. Despite the limited statutory language in SB 1383, there must be some way to acknowledge existing frameworks such as the EPA's Food Recovery Hierarchy pyramid, which highlights "Feed Hungry People – Donate extra food to food banks, soup kitchens, and shelters" as the primary strategy after "Source Reduction." Such a reference need not specifically refer to food insecurity or other concepts not named in SB 1383, but neutrally as existing federal guidance on food recovery best practices that could inform food diversion activities pursuant to SB 1383 across a range of issues. We recommend 18991.1 and/or 18992.2 as viable locations for such references. Outside of the regulations, we also request that the Final Statement of Reasons and subsequent materials such as model franchise agreements and local jurisdiction implementing legislation reflect this concern.	A change to the regulatory text was not necessary for the following reasons. The first reason is that the U.S. EPA Food Recovery Hierarchy identifies food waste diversion practices that extend beyond the scope of SB 1383's edible food recovery statutory goal. Specifically, the U.S. EPA Food Recovery Hierarchy identifies source reduction of food waste as the most preferred diversion strategy and feeding animals as a key food waste diversion practice as well. Both source reduction of food waste and diverting food waste to feed animals extend beyond the scope of SB 1383's edible food recovery statutory goal and therefore it would not be appropriate to reference the U.S. EPA Food Recovery Hierarchy in SB 1383's edible food recovery regulations. In addition, most food banks, soup kitchens, and shelters in California are non-profit food recovery organizations. SB 1383's statute does not specify that non-profit food recovery organizations should be prioritized over for-profit food recovery entities. Both non-profit and for-profit food recovery organizations and food recovery services are needed to help California achieve the 20% edible food recovery goal established by SB 1383.
5026	Gutierrez, I., Redwood Empire	Related, we ask for a vital clarification at 18982 (a) (25) in the definition of Food recovery organizations, by inserting "**not for profit** food recovery activity…". The	

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	Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	current definition of "including but not limited to" leaves a large loophole to include for-profit entities that must receive separate and appropriate record-keeping and reporting requirements, as is already the case for food recovery services. True food recovery organizations such as food banks occupy precarious spaces in the food system and rely on the generosity of donors to access a sufficient supply of food. We already compete with several secondary markets, from processors to pig farmers, and there are significant concerns with further pressures from revenue-based recovery services as the state achieves the goal to reduce the supply of these foods.	A change to the regulatory text was not necessary because the definition is intended to include both non-profit and for-profit food recovery organizations. Nothing in SB 1383's statute specifies that edible food must be recovered by non-profit food recovery organizations. Or that non-profit food recovery organizations should be prioritized over for-profit food recovery organizations. In California there are for-profit food recovery groups that play a critical role in recovering edible food to help feed people in need. Both non-profit and for-profit food recovery organizations and food recovery services are needed to help California achieve the 20% edible food recovery goal established by SB 1383. For this reason, the language "not for profit food recovery activity" was not added to the definition of "food recovery organization."
5027	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	For consistency, throughout the regulations when both food recovery organizations and services are mentioned, we ask that the document refer to "**food recovery organizations and food recovery services**."	The change proposed in this comment would not serve any specific regulatory purpose. As a result, the proposed change was not made.
5028	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding	Across several issues, we reiterate the serious financial and capacity challenges that SB 1383 raises for food recovery organizations, and as such we encourage CalRecycle to conduct an impact assessment on food recovery organizations. For example, food banks will be wondering: Is the additional food recovery from this equal to, less than, or more than the additional cost on food banks to meet the mandated requirements?	To clarify, nothing in SB 1383's regulations requires a food recovery organization or a food recovery service to enter into a contract or written agreement with a commercial edible food generator. Food recovery organizations and food recovery services can choose not to participate. If a commercial edible food generator approaches a food recovery organization or a food recovery service requesting a contract or written agreement, it is at the discretion of the food recovery organization or the food recovery service to determine if they want to enter into such contract or agreement. In addition, the regulations include language in Section 18990.2 that states, "Nothing in this chapter prohibits a food recovery service or organization from refusing to accept edible food from a commercial edible generator." Food recovery organizations and services are not

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	San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks		mandated to recover food. If their costs to recover edible food are too great, then they are not required to recover any food. Adding a requirement to Article 13 requiring jurisdictions to perform an impact assessment on food recovery organizations and services would be overly burdensome for jurisdictions as they are already required to assess their edible food recovery capacity and increase capacity if it is determined that they do not have sufficient capacity to meet their edible food recovery needs.
5029	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Food recovery organizations already operate on tight budgets, and we ask CalRecycle to encourage jurisdictions to develop and allow funding streams that will support food recovery organizations in recovering more edible food, as well as enable generators and food recovery organizations to establish their own partnerships, including cost-sharing agreements.	CalRecycle recognizes that there is a lack of sustainable funding for food recovery infrastructure and capacity in California. To address this, CalRecycle included language in Article 10, Section 18991.1 stating that a jurisdiction may fund the actions taken to comply with the jurisdiction edible food recovery program requirements through franchise fees, local assessments, or other funding mechanisms. If a jurisdiction decides to fund their edible food recovery program through franchise fees, local assessments, or other funding mechanisms, then it is at the discretion of the jurisdiction, not CalRecycle, to determine how the funding will be dispersed. CalRecycle would also like to clarify that it is at the discretion of food recovery organizations, food recovery services, and commercial edible food generators to determine the specific provisions to include in their contracts and written agreements for food recovery. Nothing in SB 1383's regulations prohibits a food recovery organization or a food recovery service from including cost-sharing provisions in their contracts or written agreements with commercial edible food generators. For further clarification please refer to the FSOR.
5030	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	It is imperative that CalRecycle and jurisdictions exempt non-profit charitable organizations from fees and penalties related to record-keeping if it is maintained in good faith, as many records will be kept by volunteers.	Comment noted. The only direct requirements for food recovery services and organizations are established in Section 18991.5. This section establishes minimum record keeping requirements for services and organizations that elect to establish a contract or written agreement with a commercial edible food generator (as defined in the regulations). A food recovery service or organization that does not have a relationship with a commercial edible food generator, as defined, is not subject to the record keeping requirements. Further the timeline for issuing penalties provides ample time for a recovery organization or service to come into compliance with the record keeping requirements. As noted in the response to comment 15;0094 an entity may have up to seven months to achieve compliance with a violation such as record keeping. CalRecycle believes this provides sufficient time for an entity acting in good faith to achieve compliance with the requirements. A food recovery service or organization, may wish to consider any costs associated with recordkeeping when deciding whether or not to enter into a contract or written agreement with commercial edible food generator, thus subjecting them to the record keeping requirements of the regulations.

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			With respect to fines issues by the department; the department's authority to take enforcement against an entity subject to a jurisdictions enforcement authority (e.g. food recovery organization) is clarified in Section 18996.3. That section articulates that the department's enforcement against entities subject to a jurisdictions authority should occur after a jurisdiction has failed to correct a violation within the timelines established in the regulation.
5031	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	It is similarly imperative that CalRecycle and jurisdictions exempt non-profit charitable organizations from fees or penalties associated with unavoidable Commercial Organics Recycling and compost incurred during food recovery efforts. As the stream of donations increases, there may be more instances where food banks receive donations that have not been handled safely or as represented and if the non-profit charitable organizations are to help get this food out, it is important that they not be penalized for attempting to solve the overall problem. We suggest that the capacity planning process in Article 11 specifically reflect this dynamic, of food recovery organizations needing additional resources to manage the increased flow of recovered edible food, not all of which will be possible to distribute to people in need due to food loss within the food recovery system.	Nothing in SB 1383's regulations requires a food recovery organization or a food recovery service to recover edible food. Section 18990.2 of the regulations states, "(d) Nothing in this chapter prohibits a food recovery service or organization from refusing to accept edible food from a commercial edible food generator." If a food recovery organization or service cannot safely collect and distribute food because it is at maximum capacity, then it should not be collecting any more food.
5032	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ We appreciate the new clarity at 18982 (a) (7) that Food recovery organizations are not Commercial Edible Food Generators, which we believe is a necessary but not comprehensive step to achieve this.	A change to the regulatory text was not necessary because this comment is in support of language that was added to the regulations to specify that for the purposes of this chapter food recovery organizations and food recovery services are not commercial edible food generators and therefore are not required to comply with SB 1383's commercial edible food generator requirements.
5033	Gutierrez, I., Redwood Empire	We reiterate in the strongest terms our request for CalRecycle to restore the 6 ton annual threshold to establish a floor below which small food recovery organizations	The 6-ton threshold was removed because it created an enforcement issue for jurisdictions. Specifically, jurisdictions are required by SB 1383's regulations to monitor commercial edible food

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	Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	(not services) would be exempt from record keeping, reporting and penalties. In consultation with food banks across the state, this would exempt only a few organizations that are the most likely to be all-volunteer and operating on zero budgets, and therefore most vulnerable to the burden of record keeping becoming a barrier and leading to possible closure. Such local agencies are often already at-risk due to aging volunteers, and at the 6 ton threshold the least necessary for compliance with the diversion goal but often the most important to food access in communities. If not this, then allow jurisdictions to establish a 6 ton threshold according to local needs, which would introduce a small amount of inconsistency but avoid vital pathways of food access for organizations that cannot reasonably comply.	generator compliance. If the 6-ton threshold remained in the regulations, then a commercial edible food generator could claim that they have a contract with a food recovery organization that collects less than 6 tons per year, and also claim that they donate the maximum amount of their edible food that would otherwise be disposed to that food recovery organization. Because the food recovery organization that the generator claims they contract with recovers less than 6 tons of food per year, the jurisdiction would not be able to verify if the commercial edible food generator was in compliance. To eliminate this potential enforcement issue, CalRecycle removed the 6-ton threshold from the regulatory text. The final regulations require a food recovery organization or a food recovery service that has established a contract or written agreement to collect or receive edible food directly from commercial edible food generators, pursuant to Section 18991.3 (b) to maintain records of the food they receive from those generators. Removing the 6-ton threshold was also critical for measurement purposes. If the 6-ton threshold remained in the regulations, jurisdictions would not receive a complete data set of total pounds recovered from commercial edible food generators in the previous calendar year. A complete data set is critical in order for jurisdictions to report accurate data to CalRecycle so that CalRecycle can measure the state's progress toward achieving the 20% edible food recovery goal. In addition, a complete data set can be used by jurisdictions to help them assess the impact of their food recovery programs and identify the food recovery organizations and food recovery services in their area that are recovering the most food from commercial edible food generators.
5034	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Finally, while this is outside of our expertise, we ask why the enforcement and penalty for generators was significantly altered from per-day to per-violation structure, and whether this is optimal to ensure compliance with the diversion goal.	These regulations require local jurisdictions to adopt an ordinance or other enforceable mechanism that is equivalent to or more stringent that the proposed regulations. Provisions in Government Code Sections 53069.4, 25132, and 36900 control how local jurisdictions set penalties for violations of their ordinances and, as such, any criteria as to how to set penalties within the ranges set in Government Code will be subject to the discretion of the jurisdictions. Applicable sections of the Government Code do not recognize or allow for per day penalties.
5035	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest	1. Article 1: (a) Definitions (7), the definition of commercial edible food generator, "…includes a Tier One or a Tier Two commercial edible food generator as defined in Subdivisions (a) (73) and (a) (74) of this section. For the purposes of this chapter, food recovery organizations and food recovery services are not commercial edible food generators."	A change to the regulatory text was not necessary because this comment is in support of language that was added to the regulations to specify that for the purposes of this chapter food recovery organizations and food recovery services are not commercial edible food generators and therefore are not required to comply with SB 1383's commercial edible food generator requirements.

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	Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ Thank you for this addition, we are in strong support of this clarification.	
5036	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	2. Article 1: (a) Definitions (18), the definition of edible food: "... means food intended for human consumption **that is fit to be consumed**." ○ Thank you for striking "unserved and unsold" to prevent gaming of the system. ○ We request that "that is fit to be consumed" be restored in the definition, by saying, "… means food fit for human consumption." By using "fit" instead of "intended" we acknowledge the current state of the food at the point it could be diverted, instead of focusing on the original purpose of the food. Without the word "fit" we risk weakening the food/safety and quality standards needed in identifying food that is actually edible.	In an early draft of the proposed regulations "edible food" was defined as: "Edible food" means unsold or unserved food that is fit for human consumption, even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions. For the purposes of these regulations, "edible food" is not solid waste if it is recovered and not discarded." Several commenters made the argument that this definition was too restrictive, because it described "recoverable food" not "edible food." Commenters also raised concerns that keeping this definition would make the edible food baseline much smaller than it would be with a broader definition, and would potentially discourage donations of foods that were still safe for human consumption. To address commenters' concerns about the definition of "edible food" being too restrictive, CalRecycle revised the definition to the following: "Edible food" means food intended for human consumption that is fit to be consumed." (A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded. (B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. A number of commenters expressed concerns about including the language "that is fit to be consumed" in the definition. They argued that the language is problematic because it implies that food needs to be fit for consumption at a particular point in time. Generators could wait until a food is no longer fit for consumption to avoid compliance. CalRecycle agrees with these comments and removed the language "that is fit to be consumed" from the definition. In the final regulations, "edible food" is defined as the following: "Edible food" means food intended for human consumption. (A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded. (B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. Although the final definition of "edible food" is broader than the previous draft definitions, the final definition includes language to clarify that all edible food that is recovered under SB 1383

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			must still meet the food safety requirements of the California Retail Food Code. This provision provides an objective standard familiar to regulated entities.
5037	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ In addition, we request the restoration of the language that was deleted from the January 18th draft, **"... even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions."** Not only do we find this language to provide helpful clarification, removing it is potentially harmful: if deleted, it could potentially discourage donations of blemished but safe food which is often the types of produce and other healthy items that food banks receive, reducing food access and working against the diversion goal.	In an early draft of the proposed regulations edible food was defined as: "Edible food" means unsold or unserved food that is fit for human consumption, even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions. For the purposes of these regulations, "edible food" is not solid waste if it is recovered and not discarded." Several commenters made the argument that this definition was too restrictive, because it described "recoverable food" not "edible food." Commenters also raised concerns that keeping this definition would make the edible food baseline much smaller than it would be with a broader definition, and would potentially discourage donations of foods that were still safe for human consumption. To address commenters' concerns about the definition of "edible food" being too restrictive, CalRecycle revised the definition. In the final regulations, edible food is defined as the following: "Edible food" means food intended for human consumption. (A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded. (B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. Although the final definition of "edible food" is broader than the previous draft definitions, the final definition includes language to clarify that all edible food that is recovered under SB 1383 must still meet the food safety requirements of the California Retail Food Code. This provision provides an objective standard familiar to regulated entities.
5038	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	▪ "(A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded." This is foundational to the success of the regulations and insist it be kept in the final langage.	A change to the regulatory text was not necessary because this comment is in support of language that is included in the definition of "edible food."

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5039	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	▪ "(B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code." • Thank you for the addition of this language in (A) and (B), we are in strong support.	A change to the regulatory text was not necessary because this comment is in support of language that was added to the definition of "edible food."
5040	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	▪ We request the addition of a third sub-bullet here, which would read: **"(C) Nothing in this definition shall preclude such organizations from following internal standards and requirements for acceptance related to nutrition or quality when recovered by those organizations."**	CalRecycle recognizes that a core value of many food recovery organizations and food recovery services is to reduce food insecurity in their communities by rescuing and distributing healthy and nutritious food to help feed people in need. CalRecycle also recognizes that many food recovery organizations and food recovery services have nutrition standards for the food they are willing to accept. To address this, Section 18990.2 Edible Food Recovery Standards and Policies subsection (d) specifies that nothing in SB 1383's regulations prohibits a food recovery organization or a food recovery service from refusing to accept edible food from a commercial edible food generator. Therefore, nothing in SB 1383's regulations prohibits a food recovery organization or a food recovery service from following their own internal standards and requirements for acceptance related to nutrition or quality of the food when it is recovered.
5041	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF	2. Article 1: (a) Definitions (24), the definition of food recovery o We request that the definition conform to the definition in (25) of a food recovery organization: "…means actions to collect and distribute food fit for human consumption which otherwise would be disposed, **where recovered food is first intended for no-cost charitable distribution to communities in need."**	Nothing in SB 1383's statute specifies that recovered edible food should first be provided at no cost to people in need. The statutory goal is that no less than 20% of currently disposed edible food be recovered for human consumption by 2025. SB 1383's statute also does not specify that non-profit food recovery organizations should be prioritized over for-profit food recovery entities. Both non-profit and for-profit food recovery organizations and food recovery services are needed to help California achieve the 20% edible food recovery goal established by SB 1383.

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	Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks		
5042	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ Alternatively, we ask CalRecycle to adopt this language: **"… where recovered food follows the EPA Food Recovery Hierarchy pyramid."** This highlights "Feed Hungry People – Donate extra food to food banks, soup kitchens, and shelters" as the primary strategy after "Source Reduction."	A change to the regulatory text was not necessary for the following reasons. The first reason is that the U.S. EPA Food Recovery Hierarchy identifies food waste diversion practices that extend beyond the scope of SB 1383's edible food recovery statutory goal. Specifically, the U.S. EPA Food Recovery Hierarchy identifies source reduction of food waste as the most preferred diversion strategy and feeding animals as a key food waste diversion practice as well. Both source reduction of food waste and diverting food waste to feed animals extend beyond the scope of SB 1383's edible food recovery statutory goal and therefore it would not be appropriate to reference the U.S. EPA Food Recovery Hierarchy in SB 1383's edible food recovery regulations. In addition, most food banks, soup kitchens, and shelters in California are non-profit food recovery organizations. SB 1383's statute does not specify that non-profit food recovery organizations should be prioritized over for-profit food recovery entities. Both non-profit and for-profit food recovery organizations and food recovery services are needed to help California achieve the 20% edible food recovery goal established by SB 1383.
5043	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA	Article 1: (a) Definitions (25), the definition of food recovery organization ○ As described above, we urge the inclusion of "**not for profit food recovery activity**" to fulfill the intent of (25)(A-C) that these are non-profit entities engaged in charitable food distribution, and close to the current loophole in the "including but not limited to" language.	A change to the regulatory text was not necessary because the definition is intended to include both non-profit and for-profit food recovery organizations. Nothing in SB 1383's statute specifies that edible food must be recovered by non-profit food recovery organizations. Or that non-profit food recovery organizations should be prioritized over for-profit food recovery organizations. In California there are for-profit food recovery groups that play a critical role in recovering edible food to help feed people in need. Both non-profit and for-profit food recovery organizations and food recovery services are needed to help California achieve the 20% edible food recovery goal established by SB 1383. For this reason, the language "not for profit food recovery activity" was not added to the definition of "food recovery organization."

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	Association of Food Banks		
5044	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ As needed, for-profit entities should be separate defined and added, as has already been done with food recovery services. ○ This clarity is vital given the differential treatment under federal and state law on food donation tax incentives, for example. If food generators want to take the federal tax deduction for donated food, it must be provided for free to the ill, needy, or children (See IRS code), and under state law AB 614 (Eggman, 2019) to food banks.	A change to the regulatory text was not necessary because the definition is intended to include both non-profit and for-profit food recovery organizations. Nothing in SB 1383's statute specifies that edible food must be recovered by non-profit food recovery organizations. Or that non-profit food recovery organizations should be prioritized over for-profit food recovery organizations. In California there are for-profit food recovery groups that play a critical role in recovering edible food to help feed people in need. Both non-profit and for-profit food recovery organizations and food recovery services are needed to help California achieve the 20% edible food recovery goal established by SB 1383. For this reason, the language "not for profit food recovery activity" was not added to the definition of "food recovery organization."
5045	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	4. Article 1: Definition (76), the definition of wholesale food vendor: "... means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination." ○ We request the addition of "for-profit" in the definition, such that it would read: "...means a **for-profit** business or establishment…" Under no circumstances shall a non-profit charitable organization be considered a 'wholesale food vendor'.	Several commenters were concerned that a non-profit food recovery organization could potentially be considered a wholesale food vendor and therefore be subject to SB 1383's commercial edible food generator requirements. To address these concerns, language was added to the definition of "commercial edible food generator" to specify that for the purposes of this chapter, food recovery organizations and food recovery services are not commercial edible food generators. Therefore, a non-profit charitable food recovery organization cannot also be considered a wholesale food vendor and is not subject to the commercial edible food generator requirements of SB 1383.
5046	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of	5. Article 4: Section 18985.2. (a)(1)(E): ○ Thank you for striking "hours of operation." ○ Thank you for the addition of (D) about the types of food the food recovery service or organization can accept.	A change to the regulatory text was not necessary because this comment is in support of revisions that were made to the regulatory text.

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	Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks		
5047	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	6. Article 4: Section 18985.2. (b)(1): ○ Thank you for addition of sub-bullet (D) ○ Please add an additional sub-bullet to read: **"(E) Information that makes it clear they must have an agreement (such as an MOU) with a food recovery organization prior to any deliveries or drop-offs."**	CalRecycle provided an explanation in the FSOR to address this comment. The explanation describes how the requirement for commercial edible food generators to have a contract or written agreement with a food recovery organization or a food recovery service, provides greater protections for food recovery organizations and food recovery services than the previous draft language. For context, the commenter is concerned that commercial edible food generators could self-haul edible food to a food recovery organization that they do not have a contract or written agreement with for food recovery. Donation dumping, and unexpected deliveries and drop offs of food donations are serious issues that can create significant hardships for food recovery organizations and food recovery services. The FSOR clarifies that commercial edible food generators can only self-haul edible food to a food recovery organization that they have established a contract or written agreement with for food recovery where the contract specifies that the generator is permitted to self-haul edible food during pre-established delivery or drop off times. It is at the discretion of the food recovery organization and the commercial edible food generator to include provisions in their contracts or written agreements regarding what the outcome will be if a commercial edible food generator self-hauls edible food outside the designated delivery or drop off times specified in the contract or written agreement. If edible food is self-hauled without the consent of the food recovery organization or does not meet the self-haul provisions included in the contract or written agreement, the commercial edible food generator could potentially be at risk of their contract being terminated by the food recovery organization. It is at the discretion of food recovery organizations, food recovery services, and commercial edible food generators to determine the exact self-haul provisions to include in their contracts or written agreements. CalRecycle developed a model food recovery agreement that can be customized and used by food recovery organizations, food recovery services, and commercial edible food generators. CalRecycle's model food recovery agreement does include a section for self-hauled edible food, which also includes designated delivery and drop off days and times to establish as well as language to protect food recovery organizations and food recovery services from donation dumping and unexpected donations. The model agreement is a template that is intended to be

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			customized based on the needs of food recovery organizations, food recovery services, and commercial edible food generators.
5048	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	7. Article 9: Section 18990.2. Edible Food Recovery Standards and Policies ○ "(a) A jurisdiction shall not implement or enforce an ordinance, policy, or procedure that prohibits the ability of a generator, food recovery organization, or food recovery service to recover edible food that could be recovered for human consumption." ▪ We ask for clarification on how coordination will be ensured to prevent duplicate regulation, in light of the passage of AB 2178 (Limon, 2018). Under this new law, local non-profit charities may be required to register and pay fees to their local Environmental Health Departments in order to continue operating. With that in mind, CalRecycle and jurisdiction should coordinate with EHD's about the new food waste diversion goals that local food recovery organizations will be striving to meet.	The commenter did not provide additional information to identify if any of the regulations in SB 1383 are the same as the regulation requirements of AB 2178. Additional context needs to be provided before any changes to the regulations could be considered.
5049	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ "(d) Nothing in this chapter prohibits an edible food recovery service or organization from refusing to accept edible food from a generator. In fact, all generators must have agreements in place with food recovery organizations before deliveries or drop-offs and even in that context, any specific delivery can be refused because of quality, condition, lack of space, quality, type, condition, or any other reason." ▪ Again, we appreciate CalRecycle's addition of this language, and insist that it remain included.	Comment noted. The commenter is in support of language changes made by CalRecycle.
5050	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of	8. Article 10: Section 18991.1 ○ "(a) A jurisdiction shall implement an edible food recover program that shall include the actions that the jurisdiction will take to accomplish each of the following:": ▪ We are in strong support of the language change from "plans to" to "will."	A change to the regulatory text was not necessary because this comment is in support of a revision that was made to the regulatory text.

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	Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks		
5051	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	8. Article 10: Section 18991.1 Jurisdiction Edible Food Recovery Program "(b) A jurisdiction may fund the actions taken to comply with this section through franchise fees, local assessments, or other funding mechanisms." ▪ We request the addition of the following language: "Under no circumstances should jurisdictions charge fees or assessments to food banks or other non-profit food recovery organizations." This language is essential in recognizing the financial and human resource burden that food recovery organizations will face in working to meet the 20% diversion goal, and we are in strong support.	CalRecycle will not identify a specific entity that jurisdictions cannot charge fees to, as this raises an authority issue.
5052	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services;	9. Article 10: Section 18991.2. Recordkeeping Requirements for Jurisdiction Edible Food Recovery Program o "(a)(2): A list of food recovery organizations and food recovery services in the jurisdiction and their edible food recovery capacity." ▪ We request the addition of the following language: "...and how to contact them to put in place a contract or agreement for food recovery." ▪ With the passage of AB 2178 (Limon, 2018), local Environmental Health Departments will be required to keep records of what organizations food banks partner with, and documentation directly from non-food bank affiliated non-profit organizations that are serving ready-to-eat food. In an effort to minimize the duplication of record-keeping efforts, we request that local jurisdictions communicate with EHD's to obtain records of the relevant information to avoid duplicate efforts with food banks.	Section 18985.2 (a)(1) requires jurisdictions to develop a list of food recovery organizations and food recovery services operating within the jurisdiction and maintain the list on the jurisdiction's website. The list must be updated annually. The list must include, at a minimum, the following information about each food recovery organization and each food recovery service that it includes: (A) Name and physical address. (B) Contact information. (C) Collection service area. (D) An indication of types of food the food recovery service or organization can accept for food recovery. The regulations already include the requirement that the list include the contact information for each food recovery organization and service that is included on the list. Adding the commenter's proposed requirement would be redundant, because it is already required that the contact information is listed for each food recovery organization and food recovery service. However, if a

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	Gershon, A., CA Association of Food Banks		jurisdiction is inclined to include 'information on how to contact the food recovery organization to establish a contract or written agreement for food recovery' with their list, then they may do so. As stated in Article 9, Section 18990.1 (a), nothing in this chapter is intended to limit the authority of a jurisdiction to adopt standards that are more stringent than the requirements of this chapter, except as provided in Subdivision (b) of Section 18990.1. Regarding the comment about AB 2178, it was unclear what the commenter's concern was regarding duplication of recordkeeping requirements. The commenter did not provide additional information to identify if any of the recordkeeping requirements in SB 1383 are the same as the recordkeeping requirements of AB 2178. "Duplication of recordkeeping efforts" is vague and additional information needed to be provided before any changes to the regulations could be considered.
5053	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	10. Article 10: Section 18991.3. Commercial Edible Food generators ○ An commercial edible food generator shall may comply with the requirements of this section through a contract or written agreement with any or all of the following: ○ "(b)(1) Food recovery organizations or services that will collect their edible food for food recovery." ○ "(b)(2) Food recovery organizations that will accept the edible food that the commercial edible food generator self-hauls to the food recovery organization for food recovery." ○ With the deletion of (A) on consent, we ask for confirmation and a detailed explanation in the Final Statement of Reasons that the new language in (b) on a contract or written language in fact provides or exceeds the protections for food recovery organizations in that language. We additionally request that subsequent materials, such as model franchise agreements, reflect this as well. ▪ "(A) Food that is self-hauled pursuant to this section shall be done with the consent of the food recovery organization."	For context, the commenter is concerned that commercial edible food generators could self-haul edible food to a food recovery organization that they do not have a contract or written agreement with for food recovery. Donation dumping and unexpected deliveries and drop offs of food donations are serious issues that can create significant hardships for food recovery organizations and food recovery services. Revisions were made to the regulatory text to address this concern by requiring commercial edible food generators to establish a contract or written agreement with food recovery organizations that will accept edible food that is self-hauled by the generator to the organization. CalRecycle also provided an explanation in the FSOR to address the concern raised in this comment. The explanation in the FSOR clarifies that commercial edible food generators can only self-haul edible food to a food recovery organization that they have established a contract or written agreement with for food recovery where the contract specifies that the generator is permitted to self-haul edible food during pre-established delivery or drop off times. It is at the discretion of the food recovery organization and the commercial edible food generator to include provisions in their contracts or written agreements regarding what the outcome will be if a commercial edible food generator self-hauls edible food outside the designated delivery or drop off times specified in the contract or written agreement. If edible food is self-hauled without the consent of the food recovery organization or does not meet the self-haul provisions included in the contract or written agreement, the commercial edible food generator could potentially be at risk of their contract being terminated by the food recovery organization. It is at the discretion of food recovery organizations and commercial edible food generators to determine the exact self-haul provisions to include in their contracts or written agreements. CalRecycle also developed a model food recovery agreement that can be customized and used by food recovery organizations, food recovery services, and commercial edible food generators. This model food recovery agreement does include a section for self-hauled edible food, which also includes designated delivery and drop off days and times to establish as well as language to protect food recovery organizations and food recovery services from donation dumping and unexpected donations. The model agreement is a template that is intended to be customized based on the needs of food recovery organizations, food recovery services, and commercial edible food generators.

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5054	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ We request the addition of an additional bullet (b) (3) to read: "**It is permissible for food recovery organizations to negotiate cost sharing agreements as part of their contractual agreements or MOU's with commercial generators.**" ▪ Should this inclusion not be possible, we similarly request that the Final Statement and subsequent materials clarify and emphasize this as well.	CalRecycle provided information in the FSOR to clarify that the nothing in SB 1383's regulations prohibits a food recovery organization or a food recovery service from negotiating cost sharing as part of their contracts or written agreements with commercial edible food generators. CalRecycle would also like to note that CalRecycle developed a model food recovery agreement that includes cost sharing provisions. The model food recovery agreement is not required to be used, but can be used and customized by food recovery organizations, food recovery services, and commercial edible food generators.
5055	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	11. Article 10: Section 18991.4. Record Keeping Requirements For Commercial Edible Food Generators ○ "(a) A commercial edible food generator subject to the requirements in this article shall keep a record that includes the following: ▪ (3)(C) The established frequency that food will be collected or self-hauled." • We request the addition of the following language: "...the established frequency that food will be collected or transported, **with the exception of 'on call' or 'one-time' donors."** For infrequent donors, donations can vary greatly based on factors such as inventory, season, weather conditions and consumer demand. Likewise, food recovery organizations are sometimes asked to be "on call," meaning they only pick up when asked. Therefore it can be difficult in some cases to establish a regular frequency, and it is not practical or helpful to track this metric.	A change to the regulatory text was not necessary because no commercial edible food generators will be one-time donors. If they only donate once, then they will very likely not be in compliance with SB 1383's commercial edible food generator requirements. In addition, commercial edible food generators should not be infrequent donors because the commercial edible food generator industry groups typically have large amounts of edible food that would otherwise be disposed available for food recovery. As a result, the language requested in this comment was not added to the regulatory text. CalRecycle would like to clarify that nothing prohibits food recovery organizations, food recovery services, and commercial edible food generators from establishing more than one frequency to account for changes in the amount of edible food available for food recovery. For example, a local education agency could have one established frequency for collections during the school year, and a different established frequency during the summer months when school is not in session and there is less food to recover.
5056	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County;	Article 10: Section 18991.4. Record Keeping Requirements For Commercial Edible Food Generators ▪ "(3)(D) The quantity of food collected or self-hauled to a service or organization for food recovery. The quantity shall be measured in pounds recovered per month."	This comment is in support of a change that was made to the regulatory text. The change that was made will eliminate confusion of multiple metrics, and ensure that commercial edible food generator recordkeeping is consistent.

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	Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	• We thank CalRecycle for deleting (D)(2), in favor of maintaining a single metric – pounds – to avoid the confusion of multiple measures and creating the need to translate/reconcile across different metrics.	
5057	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	12. Article 10: Section 18991.5. Food Recovery Services and Organizations There is a typographical error in receives, that should no longer be plural. ○ "(a) A food recovery organization or service that has established a contract or written agreement to collect or receive~~s~~ edible food directly from commercial edible food generators pursuant to Section 18991.3 (b) shall maintain records specified in this section:" ▪ We strongly urge CalRecycle to restore the 6-ton threshold for reporting, so as to read: "... to collect or receive **6-tons or more of** edible food…." From our network of 41 food banks, we have overwhelmingly heard that an even larger threshold of 12-tons would be preferable. Small food recovery organizations are most likely to be all volunteer-run, with very little budget for operations and record keeping. An annual threshold of 6-tons annually is a reasonable compromise that will only exempt the smallest and most vulnerable organizations. • Alternatively, we request CalRecycle to allow jurisdictions to set a threshold up to 6-tons a year or exempt groups with hardships. This may introduce some inconsistency but would provide meaningful flexibility to ensure all groups who are able can contribute to the diversion goal.	Regarding the comment, "There is a typographical error in receives, that should no longer be plural," a change to the regulatory text was be made in response to this comment. The typographical error was corrected by removing the letter "s" from the word "receives." Regarding the comment about restoring the 6-ton threshold, CalRecycle would like to clarify that the 6-ton threshold was removed because it created an enforcement issue for jurisdictions. Specifically, jurisdictions are required by SB 1383's regulations to monitor commercial edible food generator compliance. If the 6-ton threshold remained in the regulations, then a commercial edible food generator could claim that they have a contract with a food recovery organization that collects less than 6 tons per year, and also claim that they donate the maximum amount of their edible food that would otherwise be disposed to that food recovery organization. Because the food recovery organization that the generator claims that they contract with recovers less than 6 tons of edible food per year, the jurisdiction would not be able to verify if the commercial edible food generator was in compliance. To eliminate this potential enforcement issue, CalRecycle removed the 6-ton threshold from the regulatory text. The final regulations require a food recovery organization or a food recovery service that has established a contract or written agreement to collect or receive edible food directly from commercial edible food generators, pursuant to Section 18991.3 (b) to maintain records of the food they receive from those generators. Removing the 6-ton threshold was also critical for measurement purposes. If the 6-ton threshold remained in the regulations, jurisdictions would not receive a complete data set of the total pounds recovered from commercial edible food generators in the previous calendar year. A complete data set is critical in order for jurisdictions to report accurate data to CalRecycle so that CalRecycle can measure the state's progress toward achieving the 20% edible food recovery goal. In addition, a complete data set can be used by jurisdictions to help them assess the impact of their food recovery programs and identify the food recovery organizations and food recovery services located within the jurisdiction that are recovering the most food.
5058	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of	▪ We reiterate that jurisdictions may request to review & audit food recovery donation records if there is a need to verify generator data, but in no circumstances are proprietary food recovery data to be publicly reported.	There are no requirements in the regulations that mandate the reporting of such information. If a public agency does decide to retain copies of commercial edible food generator records or food recovery organization and food recovery service records for enforcement purposes or audit purposes, they would be subject to the Public Records Act as well as any applicable provisions exempting the disclosure of proprietary or trade-secret information.

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	Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks		
5059	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	○ "(a) (2)"A food recovery organization shall maintain a record of.: A food recovery organization that distributes across multiple jurisdictions, such as a county-wide food bank, shall only be required to maintain one standard set of records to be available to all jurisdictions in its service area:" ▪ We appreciate the delineation of food recovery organizations in (a)(2), and we urge the inclusion of this language to avoid significant confusion in record-keeping and reporting across the many jurisdictional boundaries that food banks and other food recovery organizations cross during their operations. This is also consistent with the aim of emergency food recovery organization's record keeping as primarily a check to confirm donation by generators, not as a measure of where the food was ultimately distributed as that is outside the scope of the mandate and again would create significant burden.	Only food recovery organizations and food recovery services that contract with or have written agreements with commercial edible food generators pursuant to Section 18991.3 (b) are required to report information to the jurisdiction. Specifically, they are required to report the total pounds collected (from commercial edible food generators) in the previous calendar year to one jurisdiction. That is, the jurisdiction that their primary address is physically located in. They are not required to report to multiple jurisdictions. For example, if a food recovery organization is recovering food in multiple jurisdictions, the food recovery organization is only required to report the total pounds collected (from commercial edible food generators) in the previous calendar year to the one jurisdiction that they are physically located in.
5060	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services;	13. Article 11: Section 18992.2. Edible food recovery Capacity ○ We thank CalRecycle for the addition of (b) and strongly support its inclusion. ○ Additionally, it is important to note that as the stream of donations increases, there may be more instances where food is not handled safely or as represented and if the non-profit charitable organizations are to help get this food out, it is important that they not be penalized for attempting to solve the overall problem. We suggest that the capacity planning process specifically reflect this dynamic, of food recovery organizations needing additional resources to manage the increased flow of recovered edible food, not all of which will be possible to distribute to people in need due to food loss within the food recovery system.	To clarify, nothing in SB 1383's regulations requires a food recovery organization or a food recovery service to enter into a contract or written agreement with a commercial edible food generator. Food recovery organizations and food recovery services can choose not to participate. If a commercial edible food generator approaches a food recovery organization or a food recovery service requesting a contract or written agreement, it is at the discretion of the food recovery organization or the food recovery service to determine if they want to enter into such contract or agreement. In addition, the regulations include language in Section 18990.2 that states, "Nothing in this chapter prohibits a food recovery service or organization from refusing to accept edible food from a commercial edible generator." Food recovery organizations and services are not mandated to recover food. If their costs to recover edible food are too great, then they are not required to recover any food. In addition, if a food recovery organization or service cannot safely recover food because the organization is at maximum capacity, then the organization should not be recovering any more food.

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	Gershon, A., CA Association of Food Banks		
5061	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	14. Article 13: Section 18994.2. Jurisdiction Annual Reporting ○ "(h)(2) The number of food recovery services and organizations located and operating within the jurisdiction that contract with or have written agreements with commercial edible food generators for food recovery." ▪ As with our recommendation in Section 18991.5, we urge CalRecycle to restore the 6-ton threshold: "... within the jurisdiction **that collect or receive more than 6 tons of food per year."** We similarly ask for this addition in (h)(2)(A).	With regard to the recommendation in this comment to restore the 6-ton recordkeeping and reporting threshold, CalRecycle would like to mention that other commenters recommended removing the threshold completely so that any food recovery organization or food recovery service that contracted with, or had a written agreement with a commercial edible food generator would be required to maintain records and report to the jurisdiction. Another commenter further supported the recommendation to eliminate the 6-ton recordkeeping threshold by stating that the primary focus relative to edible food recovery must be the safe handling of food and protection of public health and safety. The ability to track the source of a food borne illness outbreak rests on the ability to trace food product throughout the food supply chain. By allowing a food recovery organization to avoid maintaining a record of where the food was obtained, a gap in the investigative traceability process is created. The commenter further noted that in their many years of experience working as a food recovery organization, food recovery services or food recovery organizations that are not large enough or are incapable of maintaining a record of the source of the donated food are likely incapable of consistently handling and distributing donated food safely. CalRecycle would like to clarify that the 6-ton recordkeeping and reporting threshold was removed because it created an enforcement issue for jurisdictions. Specifically, jurisdictions are required by SB 1383's regulations to monitor commercial edible food generator compliance. If the 6-ton threshold remained in the regulations, then a commercial edible food generator could claim that they have a contract with a food recovery organization that collects less than 6 tons per year, and also claim that they donate the maximum amount of their edible food that would otherwise be disposed to that food recovery organization. Because the food recovery organization that the generator claims that they contract with recovers less than 6 tons of edible food per year, the jurisdiction would not be able to verify if the commercial edible food generator was in compliance. To eliminate this potential enforcement issue, CalRecycle removed the 6-ton threshold from the regulatory text. The final regulations require a food recovery organization or a food recovery service that has established a contract or written agreement to collect or receive edible food directly from commercial edible food generators, pursuant to Section 18991.3 (b) to maintain records of the food they receive from those generators. Removing the 6-ton threshold was also critical for measurement purposes. If the 6-ton threshold remained in the regulations, jurisdictions would not receive a complete data set of the total pounds recovered from commercial edible food generators in the previous calendar year. A complete data set is critical in order for jurisdictions to report accurate data to CalRecycle so that CalRecycle can measure the state's progress toward achieving the 20% edible food recovery goal. In addition, a complete data set can be used by jurisdictions to help them assess the impact of their food recovery programs and identify the food recovery organizations and food recovery services located within the jurisdiction that are recovering the most food.

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5062	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Section 18994.2. ○ "(h)(3) The jurisdiction shall report on the total pounds of edible food recovered by food recovery organizations and services pursuant to (h) (2) (A)." ▪ We request the addition of (h)(3)(A) to read: "Jurisdictions may request to review and audit food recovery donation records if there is a need to verify generator data, but in no circumstances are proprietary food recovery data to be publicly reported." We are unclear about the mechanism by which food recovery organizations will be required to report annual pounds, and stress that donor information is proprietary. In on circumstances are proprietary food recovery data to be publicly reported.	There is nothing in the proposed regulations requiring the reporting or sharing of proprietary donor information. Pounds are not required to be reported as associated with specific donors. In addition, Section 18991.1(f) states that any records obtained by a jurisdiction through its implementation and enforcement shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act. This section is designed to deal with records in the possession of a public agency in a manner consistent with existing public records law. There are mechanisms allowing public agencies to withhold disclosure of records containing trade secret or proprietary information.
5063	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	Section 18994.2. Please confirm that an individual food recovery organization (recovering over 6-tons per year) is only required to report the total pounds recovered per year, not per year by donor.	To help clarify the reporting requirements for food recovery organizations and food recovery services the regulatory text was revised. The revised text clarifies that a jurisdiction shall require food recovery organizations and food recovery services that are physically located within the jurisdiction and contract with or have written agreements with commercial edible food generators pursuant to Section 18991.3 (b) to report the total pounds of edible food recovered in the previous calendar year to the jurisdiction. SB 1383's regulations do NOT require food recovery organizations or food recovery services to report their donor's names to the jurisdiction. To clarify further, any food recovery organization or food recovery service that has a contract or written agreement with one or more commercial edible food generators is required to report to one jurisdiction. Specifically, they are required to report (to one jurisdiction) the total pounds of edible food that were collected or received directly from the commercial edible food generators that they contract with or have written agreements with. Regulated food recovery organizations and food recovery services should have this data because the regulations require them to maintain records of the pounds collected and received from commercial edible food generators.
5064	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF	15. Article 14: Section 18995.1. Jurisdiction Inspection and Enforcement Requirements ○ "(a)(2): Beginning January 1, 2022, conduct inspections of Tier One commercial edible food generators and food recovery organizations and services for compliance with this chapter. Beginning January 1,2024, conduct inspections of Tier Two commercial edible food generators for compliance with Article 10 of this chapter."	Inspections of food recovery organizations would be limited to enforcement of recordkeeping requirements.

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	Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	▪ Please confirm that such an inspection for food recovery organizations would be limited to the record keeping requirements in Article 10; otherwise we request to strike 'food recovery organizations.'	
5065	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA Association of Food Banks	16. Article 15: 18996.9. Department Enforcement Actions Against Entities ○ "(a) The Department may take enforcement action against the following entities pursuant to the requirements of this section when a jurisdiction has failed to enforce this chapter as determined under Section 18996.3, or lacks the authority to enforce this chapter:. (1) Organic waste generators, commercial edible food generators, haulers, and food recovery organizations and services; and ▪ We ask CalRecycle for clarification in the Final Statement of Reasons that enforcement with food recovery organizations in this context is only referring to their requirement to keep records and report on the total number of pounds of food recovered.	Inspections of food recovery organizations would be limited to enforcement of recordkeeping requirements.
5066	Gutierrez, I., Redwood Empire Food Bank; Herrmann, H., Second Harvest Food Bank of Orange County; Davidson, M., SF Marin Food Bank; Hall, V., Feeding San Diego; Flood, M., Sacramento Food Bank and Family Services; Gershon, A., CA	17. Article 16: Section 18997.2. Penalty Amounts ○ "(a) A jurisdiction shall impose penalties for violations of the requirements of this chapter consistent with the applicable requirements prescribed in Government Code Sections 53069.4, 25132 and 36900. The penalty levels shall be as follows:" ▪ We are concerned that the new per-violation structure, versus the prior per-day violation will make enforcement difficult for jurisdictions and are insufficient for generators to work with their local food recovery organizations.	These regulations require local jurisdictions to adopt an ordinance or other enforceable mechanism that is equivalent to or more stringent that the proposed regulations. Provisions in Government Code Sections 53069.4, 25132, and 36900 control how local jurisdictions set penalties for violations of their ordinances and, as such, any criteria as to how to set penalties within the ranges set in Government Code will be subject to the discretion of the jurisdictions

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1041	Hake, John, EBMUD	Article 12 Section 18993.1(f)(2) deletes pipeline injection as an eligible use of renewable gas for satisfying the procurement requirements. We understand that pipeline injection may not be considered a "use" but instead a conveyance to a use. However, pipeline injection allows for renewable gas uses beyond transportation, electricity, or heating applications that may not be fully developed at this time. The number of renewable gas applications employed by jurisdictions in the future may expand beyond the proposed use list in this draft. For example, renewable gas might be used to produce biodegradable polymers that avoid fossil gas use. These polymers could be used to produce plastic liners for organics bins that might be purchased and used by a jurisdiction for collection purposes. We suggest adding to the list of approved products as follows: "Renewable gas used for fuel for transportation, electricity, heating, or other applications that allow the jurisdiction to avoid fossil gas use."	It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while energy storage and renewable hydrogen may default to "electricity" for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Regarding pipeline injection, CalRecycle deleted pipeline injection as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target. Regarding the commenter's proposed language amendments to allow an open-ended option for "other applications", CalRecycle disagrees with this approach for procurement. The broad range of potential renewable gas products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. As noted above, CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Bioplastics derived from renewable gas is not currently eligible for procurement due to the lack of verifiable conversion factors.
1042	Hake, John, EBMUD Kester, Greg, CASA	Article 12 Section 18993.1(h)(1) states that in order for renewable gas from a POTW to qualify for procurement requirements it must be produced in part from diverted organic waste from a "permitted solid waste facility". There are cases where organic waste may be diverted from a landfill but not be processed at a permitted facility (i.e., out of date items from grocery stores, food scraps from institutions managed in a Grind2Energy type unit, cafeteria, or industrial food processing). We recommend amending the language to add at the end of sub (1) "… **or the organic waste would otherwise have been disposed of in a solid waste landfill.**"	The purpose of the proposed regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. This requirement allows the department to verify that these facilities are reducing the disposal of organic waste.
1043	Hake, John, EBMUD Kester, Greg, CASA Zaldivar, Enrique, City of LA Sanitation	Article 12 Section 18993.1(h)(4) limits the renewable gas eligible for procurement to only that generated due to the diverted organic waste and makes ineligible renewable gas generated from sewage sludge at a POTW. This is problematic for two reasons. First, it eliminates the benefits of digesting sewage sludge, which could otherwise be landfilled, if not for the proactive investment by the wastewater	CalRecycle disagrees with the commenter's argument to allow renewable gas derived solely from sewage sludge to be eligible for procurement because a Publicly Owned Treatment Works (POTW) is not a solid waste facility and therefore not in the scope of the legislative intent of SB 1383. Sewage sludge is also not typically destined for a landfill, so its use does not help achieve SB 1383's landfill diversion goals. It is inconsistent with the requirements of SB 1383 to incentivize or

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		treatment plant to extract renewable resources in the form of renewable gas and biosolids. Second, it discounts the synergistic benefits of co-digesting food waste with sewage sludge which yields more biogas than either would on their own. We strongly recommend deletion of this section and allowing all beneficial use of biogas from co-digestion be eligible as procurement products without bifurcating the production and making ineligible the biogas produced from sewage sludge. We understand the need to require co-digestion to ensure renewable gas is produced from diverted organic waste, but we disagree with the need to separate gas produced by each.	mandate activities that do not contribute to landfill diversion of organic waste. However, POTWs that accept food waste can technically do so without a solid waste facility permit, they are explicitly authorized to do so per Title 14, therefore making it functionally similar to incentivizing biomethane from a solid waste facility. Therefore it is justifiable to allow the portion of renewable gas resulting from the digestion of food waste that is recovered at POTWs that accept food waste from a facility or operation identified in Section 18993.1(h)(1)(A)-(C) to count toward the procurement targets. The comment appears to assume that the regulations require a separate accounting for the exact amount of renewable gas produced from organic waste received from solid waste facilities and the amount gas produced from sewage inflows. The regulations do not require this. The regulatory text is structured in a manner that uses the conversion factors developed with ARB to determine the maximum amount of renewable gas that constitutes a renewable organic waste product that could be produced at a facility. The regulations are agnostic as to the amount of gas produced by sewage inflows. Regarding codigestion, CalRecycle disagrees with the commenter's assumption that the draft regulations disincentivize codigestion of organic waste with sludge. The requirement that renewable gas be derived from diverted organic waste is necessary to ensure that when jurisdictions procure renewable gas from POTWS, CalRecycle can verify that gas is derived from landfill-diverted organic waste. For example, if a POTW receives 100 tons of diverted organic waste from solid waste facilities, digests it either through a standalone process or codigestion with sewage sludge, and produces renewable electricity, a maximum of 24,200 kWh (100 tons x 242 kWh) would be available as an eligible recycled organic waste product for the purposes of procurement (The same would apply to fuel or heating or a mix of products, just apply the appropriate conversion factor). If a jurisdiction(s) is claiming they procured 50,000 kWh of renewable electricity from that facility, that would exceed the maximum production capacity, and would trigger CalRecycle review. The manner of digestion (codigestion or standalone) is not a factor, conversion factors are the same regardless of the process. This is a paper transaction only, the draft regulations do not mandate that the actual gas molecules procured be from the diverted organic waste feedstock. Again, the intent is to ensure recovered organic waste products are derived from landfill-diverted organics in order to meet the legislative mandates of SB 1383.
2090	Halvorson , Rich, Synergy Fuels	In partnership with Sacramento State and other key stakeholders, and in view of the immediate need for reliable new technologies to deal with critical ecological issues: ➢ The next generation of organic waste management is 'nutrient recovery' that puts high quality soil nutrients back into the agriculture cycle rather than putting it into landfill. ➢ We are prepared to deploy a fully functional technology that was funded by the Bill and Melinda Gates Foundation and recently received the Global Manure Challenge Award. ➢ It currently serves more than 50,000 people around the world as a clean and effective sanitation solution, and has been running for more than 5 years of proven results. One other university in the U.S. has a deployed unit.	Comment noted. The commenter is not requesting a change in the regulation.

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		➢ The technology is a process that can handle 'organic waste' - including green and food waste, human municipal sludge waste, cattle, hog and chicken farm waste. ➢ In cities like Denver, Los Angeles, San Francisco, and Sacramento, the steam from the unit output is cleaner than the ambient air - effectively, 'cleaning' the air around it by its operation. It becomes "net negative" by its very operation. ➢ More than 10 tons per day are handled around the world today; the first deployment with Sacramento State will manage 1 ton per day using the same system. ➢ The system reduces odor emissions, air emissions, and solid waste relative to any current solid waste management system in California today (anaerobic digester; compost; etc.). As you are surely familiar, many of the laws and policies regarding waste treatment were shaped decades ago - and the technologies used today were created 50-70 years ago. We are currently in licensing and development agreements with advanced clean technologies deployed actively in Switzerland, Germany, India, Mexico, Chile, and the US, and would like to be of assistance in advancing California's ability to deal with solid waste, clean air, clean water, etc.	
2091	Halvorson , Rich, Synergy Fuels	➢ Recognize biochar as a valuable soil amendment ('nutrient management'), and that it be added to the list of acceptable output products. (Specifically: Farmers need these nutrients, our ag cycle needs them, and the overflowing landfills do not have room for them.)	CalRecycle disagrees with the recommendation to allow various additional products due to lack of verifiable conversion factors. The broad range of potential products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
2092	Halvorson , Rich, Synergy Fuels	➢ Make allowances for clean organic rankin cycle, gasification, and pyrolysis technologies that are "Best Available Technology" for reduced overall impact (i.e. reduced overall solid waste, air emissions, odor, transport impact).	Comment Noted. Comment is not directed at changes made to the third draft of regulatory text.
2093	Halvorson , Rich, Synergy Fuels	➢ Recognize that 'clean pyrolysis' and other new technologies that reduce solid waste to our California landfills by 40%, reduce transport to landfills, and clean the air should be allowed .	Comment Noted. Comment is not directed at changes mde to the third draft of regulatory text.
2094	Halvorson , Rich, Synergy Fuels	➢ We recommend that an overall impact analysis be permitted to show that a new technology provides environmental benefit.	Comment Noted. Comment is not directed at changes mde to the third draft of regulatory text.
2095	Halvorson , Rich, Synergy Fuels	➢ The technologies reduce carbon emission dramatically reducing transport costs, freeway congestion, odor issues, landfill space requirements, etc. We recommend that the state actively seek to permit technologies that advance these criteria.	Comment Noted. Comment is not directed at changes mde to the third draft of regulatory text. Comment suggestions actions that are beyond the scope of the regulatory authority granted by SB 1383.
2096	Halvorson , Rich, Synergy Fuels	➢ Future technologies for the clean recycling of tires, plastics, organic waste, and others will be in the form of clean pyrolysis, clean gasification, and clean organic rankin cycles. We recommend that the state automatically permit	Comment noted. Comment is not directed at changes mde to the third draft of regulatory text. Comment Noted. Comment is not directed at changes mde to the third draft of regulatory text.

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		these if they are expected to, and in operation prove that, they reduce overall environmental impact (i.e. the combination of solid waste, air emissions, landfill capacity, transport carbon emissions, odor issues, etc.).	Comment suggestions actions that are beyond the scope of the regulatory authority granted by SB 1383.
2097	Halvorson , Rich, Synergy Fuels (Attachment singed by Harris, Yvonne, Sacramento State University)	The critical need to reduce greenhouse gas emissions and the amount of waste that is dumped into our landfills, which include green and food waste and sludge, is an issue that we all can agree must be addressed. For his reason, Sacramento State University in partnership with Synergy's co-founder and CEO Rich Halvorson, and Synergy's senior advisor Greg Van Dusen are seeking to introduce and deploy a fully enclosed, zero emission disruptive technology that can convert up to 2,000 pounds per day of green waste and untreated wood waste into a product of commercial grade soil enhancing and high-nutrient water. With this focus and intent, Sacramento State University, led by President Robert Nelsen, have been in productive discussions to stage a research and demonstration project on the Sacramento State Campus. This project will focus on a waste conversion solution for green and food waste. We are excited with the placement of the first California unit at the Sacramento State campus that will position the university, our state and its capitol city as cutting edge leaders in next-generation clean energy and waste technologies. The operational site for the pilot project will be on the university campus in a two- acre area we term the "backyard". It is an ideal location as it currently serves as our university's composting site. The container for the organic reactor is eight feet wide and 40 feet long and the project will involve our faculty and students from our College of Engineering and other appropriate units on campus. After implementation and deployment, the partnership will work collectively to scale the production volume to benefit the community and City of Sacramento while advancing profitability and workforce development opportunities. We fully endorse the Sacramento State Synergy Greenhouse Gas Reduction Project and are seeking your support and collaboration helping to make this project a success for the city and the region.	Comments noted. The commenter is not requesting a specific change to the regulations.
3031	Heaton, S., Rural County Representatives of California	Article 1 Section 18982 (a) (31.5) This revised definition is still not clear. Assuming the intent is to cover the entire service area, the use of segment lends unnecessary and confusing language. Proposed Language: "Hauler route" means the designated itinerary or sequence of stops for **a** ~~each segment of the~~ jurisdiction's collection service area.	CalRecycle added a definition of 'hauler route.' Section 18984.5 requires jurisdictions to minimize contamination of organic waste containers by either conducting route reviews or conducting waste evaluation studies on each hauler route. The term "hauler route" is key to the jurisdiction's compliance with these requirements because it describes where the jurisdiction should direct its contamination minimization efforts in order to increase detection of container contamination by generators. What constitutes a "hauler route" is dependent upon the designated itinerary or geographical configuration of the jurisdiction's waste collection system. For example, a jurisdiction's collection system may consist of one continuous itinerary or series of stops that services both commercial generators and residential generators for garbage, dry recyclables and organics or the system could be divided into two or more itineraries or segments based on each type of generator and/or material type collected. This section is necessary to maximize detection of container contamination so that the jurisdiction's education and outreach and/or enforcement

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			efforts can be targeted to the generators serviced along the affected routes, thereby reducing contamination and increasing the recoverability of organic waste.
3032	Heaton, S., Rural County Representatives of California	Article 1 Section 18982 (42) In addition to the current list of entities that are traditionally outside the local jurisdictions authority to regulate, tribal nations are also outside the local jurisdiction's authority and should be added to the definition's listed entities. Proposed Language: (42)"Non-local entity" means an entity that is an organic waste generator but is not subject to the control of a jurisdiction's regulations related to solid waste. These entities may include, but are not limited to, special districts, federal facilities, prisons, facilities operated by the state parks system, public universities, including community colleges, county fairgrounds, **tribal nations,** and state agencies.	The state cannot enforce civil regulatory requirements, such as state environmental laws, on tribal land. Therefore, it would be inappropriate to include this in the regulations.
3033	Heaton, S., Rural County Representatives of California	Article 2 Section 18983.1 (a)(2) This version removes the mention of material recovery (MRF) fines. MRF fines will contain a portion of organic material. There is no practical means to remove all trace of organic material and there is no other practical use for MRF fines than as alternative daily or intermediate cover. Removing reference to MRF fines leaves the status uncertain. The proposed regulations should clearly identify the status of MRF fines.	Comment noted. The use of organic waste as alternative daily cover constitutes landfill disposal of organic waste. Language was added to clarify that use of non-organic materials does not constitute landfill disposal of organic waste. Facilities are not required to remove organic material from MRF fines. Facilities are required to sample material they send to disposal to determine the portion of organic waste they are sending to disposal. Pursuant to the sampling requirements in the regulations a representative sample of material sent to disposal must be sampled to determine the level of organic waste disposed. This includes sampling of material sent to for use as alternative daily cover. Only the organic fraction of the material sent to disposal is measured as disposal of organic waste. Language was added to clarify that disposal of non-organic materials does not constitute landfill disposal of organic waste.
3034	Heaton, S., Rural County Representatives of California	Article 3 Section 18984.5 (b) This clarification is very helpful.	Thank you for the comment. The comment is in support of the current language.
3035	Heaton, S., Rural County Representatives of California	Article 3 Section 18984.5 (c) The requirement for once per quarter waste composition for the gray container on line 39 is inconsistent with the earlier statement on line 34 that indicates waste composition studies are conducted twice per year. Proposed Language: (A) A jurisdiction that is implementing a three-container or two-container organic wastecollection service pursuant to Sections 18984.1 or 18984.2 shall conduct waste composition studies **per the schedule below** ~~at least twice per year~~ and the studies shall occur in two distinct seasons ofthe year.	Comment noted, the requirements are not inconsistent. The specific text referenced (18984.5(c)(1)(A)-(B) requires that jurisdictions implementing a collection service pursuant to Sections 18984.1 or 18984.2 must conduct waste studies twice per year if they elect to monitor compliance in this form. The section additionally specifies that a jurisdiction that implements a collection service under Section 18998.1 (a performance-based source separated organic waste collection service), must continue to monitor contaminants in the green and blue container twice per year, but must also monitor the gray container every quarter. The gray container must be monitored more frequently in a performance-based source separated organic waste collection service, to ensure compliance with the standards established in that section.
3036	Heaton, S., Rural County Representatives of California	Article 3 Section 18984.5 (c)(1)(E)4. Changes to the preceding lower numbers only goes up to 6,999 generators. Without this change, there would be no sample size for exactly 7,000 generators Proposed Language: 4. For routes with ~~more than~~ 7,000 generators **or more** the study shall include a minimum of 40 samples	CalRecycle agrees that additional clarity is needed. Therefore, language has been changed to "7,000 or more generators" instead of "more than 7,000 generators" for the fourth threshold.

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3037	Heaton, S., Rural County Representatives of California	Article 3 Section 18984.5 (d) The allowance that organics from quarantine areas "is not required" to be measured as organics implies that in some cases these quarantined organics might be counted as organics. This language should be revised to clearly indicate that these quarantined materials should not be counted as organics for purposes of waste characterizations to avoid potential safety concerns for workers and spreading of contamination. The safest method of disposal is direct landfill immediately with no chance or required to sort the wastes. Proposed Language: … textiles, carpet, hazardous wood waste, human waste, pet waste, or material subject to a quarantine on movement issued by a county agricultural commissioner, ~~is not required to~~ **shall not** be measured as organic waste	Provisions were added to state that quarantine materials may be disposed without counting against a jurisdiction as they comprise a minimal portion of the organic waste stream and/or are uniquely difficult or problematic to recover from a health and safety perspective.
3038	Heaton, S., Rural County Representatives of California	Article 3 Section 18984.10 The proposed change is a good clarification for this requirement, but the deleted text is missing. (a) Commercial businesses …	Comment noted, a typographic error incidentally omitted non-substantive language. Thank you for identifying the error. This was corrected in the final draft.
3039	Heaton, S., Rural County Representatives of California	Article 3 Section 18984.12 (a)(2) This change just restates the previously deleted language and continues to disregard the significant "edge effect" common in rural areas where a significant majority of the population in a large census tract is concentrated in a small area where the remaining larger portion of the unincorporated census tract area is sparely populated but the entire census tract is over the proposed 75 people per square mile. Jurisdictions have ability to exclude those sparsely populated areas of the census tract such as consideration of block groups using the same requirement of 75 people per square mile.	Per the regulations, an approved waiver should be applicable for 5 years. However, unlike census tracts, census blocks may change in any year in-between censuses. As a result, census blocks can merge/split/change during the course of the waived period, which could result in waived census blocks changing configuration during the waived period. This would require the Department to completely rebuild a database of 710,000 census block data points whenever a waiver request is being reviewed, as opposed to simply updating the population density from the most recent census. Given the fact that census blocks change, CalRecycle would have no way of quantifying the total amount of organic material potentially exempted. In addition, some census blocks are very low, or no, population areas (parks, businesses, etc.), making it difficult to ascertain which census blocks have populations that should be served and which do not. There also could be commercial census blocks in major cities that are large waste generators but technically do not meet the population density threshold. With respect to greenhouse gas emission, CalRecycle is not able to ascertain any method of objectively defining greenhouse gas emissions within census tracts or blocks, further this only addresses one part of the statute, greenhouse gas reduction, and ignores the central organic waste reduction requirement. For example black carbon generation in a census tract is unrelated to organic waste generation.
3040	Heaton, S., Rural County Representatives of California	Article 3 Section 1894.12 (c)(2) Extending the rural exemption until December 31, 2026 is appreciated.	Thank you for the comment. The comment is in support of the current language.
3041	Heaton, S., Rural County	Article 3 Section 18984.12 We are extremely concerned that CalRecycle has not considered the substantial evidence provided of significant issues with bears attacking solid waste containers	CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than 5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a

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	Representatives of California	throughout California. CalRecycle seems to have dismissed the existing conflicting regulatory requirement raised by one of our rural Agriculture Commissioners that collection of food waste would be considered “harassment of animals” as defined in Title 14, section 251.1. Introducing segregated food waste collection will disrupt bear, racoon, and other animal behavior. It will also bring bears closer to the human population and create an increasing public safety issue. Bears caught attacking garbage and food waste will need to be relocated at considerable expense or destroyed which would increase the amount of organic waste disposal for the bear carcass given the size of bears. We again request that CalRecycle include a provision to address this vital issue. It is also short-sighted of CalRecycle not to have provisions for applying for additional waivers in the future. Proposed Language: Add a statement before subsection (a) that states” “The Department may grant waivers as outlined below and additional waivers to jurisdictions upon demonstration to the Department”	county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the following to be eligible would impact organic waste disposal: 1) cities with disposal of less than 5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA’s definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile but which are located within a census tract with greater than 50 people per square mile; and 7) rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383. Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would

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			impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection. Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals.
3042	Heaton, S., Rural County Representatives of California	Article 3 Section 18984.13 This proposed language continues to not recognize that temporary in ability to process and recover organic waste can also be due to scheduled equipment repair. The proposed revisions would require an operator to wait until equipment failure happens to utilize this allowance resulting in more expensive and likely longer down time than if there is an allowance for scheduled maintenance. Proposed Language: (1) If the facility processing a jurisdiction's organic waste notifies the jurisdiction that unforeseen operational restrictions have been imposed upon it by a regulatory agency or that an unforeseen equipment or operational failure **or scheduled maintenance** will temporarily prevent the facility from processing and recovering organic waste, the jurisdiction may allow the organic waste stream transported to that facility to be deposited in a landfill or landfills for up to 90 days from the date of the restriction or 38 failure.	CalRecycle does not concur with changing the language to 'shall' as there may be instances where a jurisdiction wants the material to be taken to another facility for recycling rather than disposing of the material. It is unclear why CalRecycle would require the disposal of organic waste. If a processing issue extends beyond 90-days a jurisdiction could seek additional time under a corrective action plan for extenuating circumstances. CalRecycle does not concur with the addition of a new waiver because planned and routine maintenance should already be accounted for and the material should not be disposed.
3043	Heaton, S., Rural County Representatives of California	Article 3, Section 18984.13 Under this section, jurisdictions are not required to separate or recover certain organic waste, such as homeless encampments, illegal disposal sites, and waste from quarantine areas (line 16 and 24) and these wastes are allowed to be landfilled. However, the allowance for disposal does not exempt the organics from be counted as disposal especially in gray container sorts. There should be a provision that excludes these landfilled wastes from counting as disposed organics. These wastes should also be granted a "disposal reduction credit" or tonnage modifications for purposes of AB 939 counting in the Electronic Annual Report similar to the one existing for quarantined wastes and others. Proposed Language: … regulations to manage and recover organic wastes that is waived pursuant to subsections (a), (b), and (c) and/or that federal law explicitly requires to be managed in a manner that constitutes landfill disposal as defined in this chapter**. These materials may be subtracted from the "generated" amount and the "disposed organic materials" amount.**	Jurisdictions are not required to separate and recover organic waste removed from homeless encampments. While waste removed from homeless encampments or illegal disposal sites does still count as statewide disposal, the jurisdiction is allowed to dispose of the material and is not subject to enforcement for disposing of the material. As stated in the statement of purpose and necessity for the regulations, specifically Article 3, this regulation does not subject jurisdictions to diversion targets. This regulation cannot alter what activities count as disposal under AB 939.

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3044	Heaton, S., Rural County Representatives of California	Article 4 Section 18985.1 (e) The change to translating education and outreach into "any non-English language spoken by a substantial number of the public provided organic waste collection services by the jurisdiction" is greatly appreciated and in line with other public health requirements.	Comment is on text that was removed from the final regulation and replaced with reference to the Government Code Section 7295 linguistic standards.
3045	Heaton, S., Rural County Representatives of California	Article 7, Section 18988.3 (b)(3)(C) The phrase "employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of waste received," lacks clarity and poses the question on how accurate this would be. The usual reason for this scenario is a small quantity of waste that the facility scale calibrated for larger loads cannot accurately weigh. Proposed Language: After the word "site" delete the rest of the sentence and replace with: **or has scales that cannot accurately measure small loads, the self-hauler shall not be required to record the weight of the material, and shall provide records of the only if requested by the jurisdiction.**	It is unclear from the comment how the language lacks clarity. This language was added to reflect that certain facilities employ scales designed to measure 25 ton packer trucks, but not necessarily designed to accurately weight passenger vehicles. The scaled employed by a facility will either be capable of weighing the self-haulers vehicle or not. While CalRecycle recognizes that this will mean that some self-hauled organic waste is not measured, this is the least costly burdensome approach and still achieves the necessary organic waste disposal reductions.
3046	Heaton, S., Rural County Representatives of California	Article 9 Section 18990.1 (b)(1) The proposed language is vague an invites legal challenges since it establishes no criteria for determining what would be considered an "unreasonable limit or restrict" processing and recovery or organic waste. An example would be imposing odor controls and limiting hours of operation that someone could consider unreasonable. This language should be removed. Proposed Language: (1) Prohibit~~, or otherwise unreasonably limit or restrict,~~ the lawful processing and recovery of organic waste.	A change to the regulatory text is not necessary. CalRecycle disagrees. This section of the regulatory text was previously updated to reflect stakeholder feedback to allow for reasonable local regulation of organic waste recovery activities such as land application of biosolids. For example, local jurisdictions may have legitimate public health and safety reasons to place time and manner restrictions on the land application of biosolids and this language allows for that. The intent of CalRecycle was to place a nexus between any local restriction and public health, safety, and environmental concerns such that the local requirement is closely tailored to deal with a particular public health, safety or environmental issue and doesn't constitute an overbroad, de facto prohibition.
3047	Heaton, S., Rural County Representatives of California	Article 11 Section 18992.1 (c)(3)(C) The change is appreciated that requires information to be provided in "non-English languages spoken by a substantial 8 number of the public in the applicable jurisdiction".	Comment is on text that was removed from the final regulation and replaced with reference to the Government Code Section 7295 linguistic standards.
3048	Heaton, S., Rural County Representatives of California	Article 11 Section 18992.2 (b)(1) The use of the undefined term "entities" is vague and lacks clarity. Proposed Language: (1)~~Entities~~ **Food recovery organization and food recovery services** contacted by a jurisdiction shall respond to the jurisdiction within 60 days regarding available and potential new or expanded capacity	Section 18992.2(b) specifies that in complying with this section the county in coordination with jurisdictions and regional agencies located within the county shall consult with food recovery organizations and food recovery services regarding existing, or proposed new and expanded, capacity that could be accessed by the jurisdiction and its commercial edible food generators. It is inherent that the term "entities" in Section 18992.2(b)(1) includes food recovery organizations and food recovery services. For this reason, a change to the regulatory text was not necessary.
3049	Heaton, S., Rural County Representatives of California	Article 12 Section 18993.1 (e)(2) This subsection should be revised to authorize regional agencies and special districts to coordinate procurement on behalf of their individual members. These entities are included in the definition of jurisdictions in Article 1, Section 18982 (36). Although cities and counties are ultimately responsible for compliance, the benefits of a regional agency to coordinate resources is the most important service to the members. There are currently 27 Regional Agencies representing 142 cities and	Nothing in the proposed regulatory text prohibits a regional agency or special district from coordinating resources for procurement. CalRecycle disagrees with revising language as it is unnecessary. Regarding special districts as direct service providers, the definition of "direct service provider" clarifies that a contract or other written agreement, for example a Memorandum of Understanding (MOU), could be used to prove the direct service provider relationship. Regional agencies could be considered direct service providers if there was a contract or agreement in

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		unincorporated counties (many of them are in rural areas). Explicitly allowing Regional Agencies and special districts to be a means to comply with this requirement is important. The current language does not clarify that a Regional Agency or special district can also be a "direct service provider". Proposed Language: (e)(2) Requiring, through a written contract or agreement, that a direct service provider**, including a regional agency or special district,** to the jurisdiction procure recovered organic waste products and provide written documentation of such procurement to the jurisdiction.	place with the jurisdiction. Without said contract or agreement, any entities that are not part of the jurisdiction's departments, divisions, etc. would not by default be considered part of the jurisdiction nor would their procurement count towards the jurisdiction's procurement target. Jurisdictions are encouraged to work with these entities to meet their procurement targets, which may be accomplished through a contract or agreement, such as a Memorandum of Understanding (MOU).
3050	Heaton, S., Rural County Representatives of California	Article 12, Section 18993.1 The proposed per capita procurement requirements of 0.08 tons per resident per year would force jurisdictions to procure amounts of recovered organic waste products that are an order of magnitude larger than what is currently used. This is unrealistic and impossible for jurisdiction's compliance without significant cost. The huge gap between the procurement requirement and actual markets/consumption needs for organics-derived materials indicates that the assumptions used for calculating imposed procurement quantities must be revisited.	The procurement requirements are designed to build markets for recovered organic waste products, which is an essential component of achieving the highly ambitious organic waste diversion targets mandated by SB 1383. CalRecycle developed an open and transparent method to calculate the procurement target that is necessary to help meet the highly ambitious diversion targets set forth by the Legislature. Regarding the proposal to base the procurement target methodology on "actual need" CalRecycle disagrees. The comments submitted on this lack specific language for quantifying such an approach. Even if the commenter recommended a quantifiable way to determine "actual need", California has over 400 diverse jurisdictions and it would be overly burdensome to account for each jurisdiction's "actual need" and to develop a procurement target and enforcement policy for each one. CalRecycle recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. If, as mentioned in the comment, the city has limited need for compost, mulch, or fuel, the city may procure electricity or heating applications derived from renewable gas. If the city is capable of reducing or eliminating its use of fossil gas entirely, it could correspondingly reduce or eliminate its procurement obligation under the regulation. This provision was added to ensure jurisdictions are not required to procure more material than they can actually use, and to ensure that the requirements do not conflict with other environmental goals to reduce the carbon intensity of products and activities cities procure material for use.
3051	Heaton, S., Rural County Representatives of California	Article 12 Section 18993.1 (f)(4)(A) The addition of mulch for meeting the procurement requirements is much appreciated however the requirement that all mulch undergo testing for pathogens and metal content is unwarranted. A considerable amount of mulch is derived This testing requirements should be deleted as unnecessary. At a minimum, the testing requirement for mulch from wood waste should be exempt. Proposed Language: (A)The jurisdiction has an enforceable ordinance, or similarly enforceable mechanism, that requires the mulch procured by the jurisdiction to comply with this article; ~~to meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in Section 17852(a)(24.5)(A)(1) through (3) of this division;~~	The intent of requiring jurisdictions to establish an ordinance per Section 18993.1(f)(4)(A) is to ensure that mulch is procured from solid waste facilities meets land application environmental health standards. The intent is to ensure these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383. CalRecycle disagrees with the comment that the solid waste facilities and reporting requirements alone will be sufficient to ensure mulch meets the land application standards. Due to the utmost importance of protecting public health and safety, it is necessary for jurisdictions to have the ability to take enforcement action against entities who apply contaminated material on local lands.

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3052	Heaton, S., Rural County Representatives of California	Article 12 Section 18993.1 (f)(4)(B) There is no basis for not allowing chipping and grinding operations or facilities to contribute the mulch procurement target. This limitation should be deleted as unnecessary. Proposed Language: (B) The mulch is produced at one or more of the following: 1. A compostable material handling operation or facility as defined in Section 17852(a)(12), ~~other than~~ **including** a chipping and grinding operation or facility as defined in Section 17852(a)(10), that is permitted or authorized under this division; or	CalRecycle disagrees with the comment. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling "green material". "Green material" is defined in 17852(21) as "any plant material except food material and vegetative food material that is separated at the point of generation…", which in turn is defined in 17852(35) as "material separated from the solid waste stream by the generator of that material." Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.
3053	Heaton, S., Rural County Representatives of California	Article 14 Section 18995.4 (b) Allowing extensions to the compliance deadline for extenuating circumstances is much appreciated; however, some jurisdictions will experience impracticable compliance due to the lack of or limited participation due to state agencies, federal agencies, schools, or other entities that are not required to comply with local ordinances or other enforceable mechanisms. Failure to comply with the proposed regulations for these entities only results in placement on a list of non-complying entities and other minor actions while the jurisdiction could be penalized for their non-participation. A new extenuating circumstance should be added to address this problem that is currently impacting jurisdiction and will be significantly increased to the cost of implementation of these proposed mandates. Add: **(4) The failure of state agencies, federal agencies, and other non-local entities to comply with local requirements.**	It is unclear from the comment exactly how state agencies, federal facilities and other non-local entities will impact the compliance by other entities with regulatory requirements. As such, it is unclear why it is necessary to add another extenuating circumstance to the regulations.
3054	Heaton, S., Rural County Representatives of California	Article 15, Section 18996.2 This section does not provide sufficient flexibility to the Department to address unique challenges that jurisdictions may encounter. The Department may find that extenuating circumstances, such as insufficient facility capacity, require more than 180 days to address. This section should allow the Department the flexibility to grant, at its discretion, a reasonable period. Proposed Language: (1) Issue a Notice of Violation requiring compliance within 90 days of the date of issuance of that notice. The Department may grant an extension for **a reasonable period according to the actions required**. ~~a total of 180 days from the date of issuance of the Notice of Violation, if the jurisdiction submits a written request to the Department within 60 days of the Notice of Violation's issuance thatif it finds that additional time is necessary for the jurisdiction to comply.~~	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section

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			18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets.

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			With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction Finally, CalRecycle notes that the commenter recommends replacing all timelines with "for a reasonable period according to the actions required." The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of "reasonable" is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how "reasonable" would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for "any extenuating circumstance" or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances

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3055	Heaton, S., Rural County Representatives of California	Article 15, Section 18996.2 (a)(2)(B) Another consideration when a jurisdiction is unable to meet a compliance deadline is the extenuating circumstances listed in Section 18995.4 (b) and also as outlined in comments on Section 18995.4 (b) the non-compliance of state agencies, federal agencies, and other non-local entities. The allowance for considering extenuating circumstances should also be considered Proposed Language: (B) For the purposes of this section, "substantial effort" means that a jurisdiction has taken all practicable actions to comply **including extenuating circumstances as identified in Section 18995.4 (b).**	The regulatory language in this section makes clear that, as prerequisites to the issuance of a Corrective Action Plan, there must be a substantial effort to comply by a jurisdiction but that extenuating circumstances make compliance impracticable. These are separate requirements. Extenuating circumstances are not part of an "effort" undertaken by a jurisdiction.
3056	Heaton, S., Rural County Representatives of California	Article 15 Section 18996.2 (a)(4) Allowing 24 months for compliance may be sufficient for some jurisdiction measures but others may take considerable time to resolve beyond 24 months or even 36 months if an extension is granted per section 18996.2 (a)(4). In some cases all new agreements may need to be drafted and approved and limiting that situation to an absolute deadline of 36 months lacks a fundamental understanding of the realties of solid waste agreements. Some circumstances could include the extenuating circumstances identified in section 18995.4 (b). Another circumstance requiring more than 36 months could include if a new hauler or facility agreement is necessary for compliance. A Request for Proposals would need to be developed, circulated, submittals received, evaluated, and then awarded. The amount of such agreements is significant and usually requires approval of an elected body with all of the required public notices including any associated fee increases which have a separate timeline for approval and often subject to the proposition 218 process. Notice will be required to the current contractor and the new contractor, or even the current provided if successful will potentially need to secure new property and collection equipment and possible processing equipment or negotiate agreements for use of a suitable facility. Successful completion of all these steps can easily consume 24 months assuming the facilities to be utilized by the jurisdiction may need to revise the solid waste permit which requires public notices and potential environmental review that could take at least a year or more. In addition, CalRecycle has determined that **there** will **(or will no)** be sufficient capacity in California for processing all of the required organics, **and** that capacity will likely not be available within a reasonable distance to **some** jurisdiction**s**. That lack of organic waste recycling capacity is recognized in the proposed regulations in section 18996.2 (a)(2)(A). Limiting an extension to only a maximum 36 months assumes that sufficient capacity will exist within a few years of the determination of non-compliance. Another factor that could require more than 36 months for a jurisdiction to comply is a major portion of the non-compliant organic recycling is due to organic waste generators located in multiple jurisdictions and enforcement activities are	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP

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		undertaken as identified in section 18996.5. A non-compliant jurisdiction should not be penalized due to delays since the timing for such an action will be determined by CalRecycle and delays in resolving those situations, and then once resolved local jurisdiction compliance will need to be implied. It is a likely situation that the multi-jurisdictional entity is a national or international entity and could even be a federal agency. Allowing for extensions beyond 36 months is necessary and reasonable given the magnitude of the efforts of these proposed regulations and the magnitude of fines for non-compliance. Proposed Language: (4) An initial Corrective Action Plan issued due to inadequate organic waste recycling infrastructure capacity may be extended for a period of up to 12 months if the department finds that the jurisdiction has demonstrated substantial effort. **Additional extensions in 12-month increments may be granted if the department finds that the jurisdiction has demonstrated substantial effort.**	were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets. With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire.

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			The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction Finally, CalRecycle notes that the commenter recommends replacing all timelines with "for a reasonable period according to the actions required." The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of "reasonable" is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how "reasonable" would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for "any extenuating circumstance" or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances
3057	Heaton, S., Rural County Representatives of California	Article 16 Section 18997.3 The replacement of the complicated jurisdiction penalty tables is greatly appreciated. However, as indicated in earlier submitted comments, developing such penalties is premature and CalRecycle's authority under the enacting legislation is not authorized. In addition, the replacement using minor, moderate, and major violations is improved but lacks clarity and specificity on determining the difference between the three classifications. Only "major" violations have a specific list of violation types. Using the vague terms of "minimal" and "moderate" deviations are undefined, arbitrary, and offer no criteria on determining the difference between the levels. Moderate violations are identified as violations that are not minor or major and are a "failure to comply with critical aspects of the requirement". Without a definition or criteria for at least minor violations, the terms are arbitrary. **Previously the minimum fine for jurisdictions started at $50 for Level 1 or "minor violations" and had lower amounts throughout the proposed levels until Level 6**	The comment regarding authority was previously submitted during the first 45 day comment period Comment 1112 From Enforcement Table I - March. Regarding the remainder of the comment, the penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires.

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		violations. We recommend the lower limits for each of the types of violations be reduced. Proposed Language: No recommendation since the concept is arbitrary and lacks clarity and should be referred to a separate regulatory package.	
3058	Heaton, S., Rural County Representatives of California	Article 16 Section 18997.5 (c) Allowing a jurisdiction only 15-days to file a request for a hearing is an unreasonable expectation. The process for a jurisdiction to evaluate whether to file a hearing request involves a jurisdiction to take formal local action which may be subject to a vote of an elected body since jurisdiction resources will be expended in preparing and participating in a hearing that cannot be convened within the 15-day time frame. Allowing time for the jurisdiction to prepare and notice such an action should allow more time. Proposed Language: (c) Upon receipt of the accusation, the respondent shall file a request for hearing with the director of the Department within ~~15~~ **45** days, or the respondent will automatically be deemed to have waived its rights to a hearing.	The timeline for requesting a hearing is set for a short duration because it is expected that, based on the requirements and procedures in the regulations, a jurisdiction will be familiar with the compliance issue. A jurisdiction is required under the regulations to designate a primary contact person and/or agent for service of enforcement process. This individual will be receiving all notices of violation from CalRecycle. By the time a violation gets to the point where penalties will be imposed, it is expected that the contact person or agent for service of process should be familiar with the circumstances of the violation and already in touch with the appropriate departments or individuals within the jurisdiction. In addition, the informational bar for the hearing request is set low and it should not be prohibitive for the jurisdiction to submit such a request even in the absence of legal counsel. To be clear, the request for the hearing and the hearing itself are two separate things. The hearing itself would be held at least 90 days from the request for hearing which should allow the jurisdiction sufficient time to consult with counsel and prepare for the proceeding.
3059	Heaton, S., Rural County Representatives of California	Article 16 Section 18997.5 (d) Similar to the comments on section 18997.5 (c), a jurisdiction will need additional time to prepare a defense. Legal staff and consultants will need to be assigned or retained. These expenses will likely need approval of the elected body. This approval and the subsequent preparation will need a significant more time than 30 days. Given the magnitude of the potential penalties, the penalty phase should not be rushed. Proposed Language: (d) The Department shall schedule a hearing within ~~30~~ **60** days of receipt of a request for hearing that complies with the requirements of this section.	The initial 30 day timeline is only to schedule the hearing date. The actual hearing has to be held within 90 days of that scheduling date.
3060	Heaton, S., Rural County Representatives of California	Article 17, Section 18998.1 We suggest Section 18998.1. (a)(1) requirement to provide 3-container service to 90% of the commercial businesses should be reconsidered. Cities have a large scale of commercial establishments (small to large scale establishments) with a wide-range of waste generation rate. Therefore, we request that the 3-container service providing requirement should be based on 90% of tonnage generated from all commercial businesses combined. Proposed Language: After the words “of this chapter” delete the rest of the sentence and replace it with **generating 90% of the commercial waste that is subject to the jurisdiction’s authority.**	Comment noted. The tons generated by commercial generators can vary from year to year and from day to day. Although the total number of businesses is knowable, the waste each business will generate in a given day is not. It is unclear how a jurisdiction could comply with a requirement to provide service to 90 percent of the tons generated, when the tons are still yet to be generated. This alternative would require jurisdictions to constantly evaluate waste generation on a daily basis to ensure they actually capture 90 percent of the commercial tons generated, which would be unnecessarily burdensome. CalRecycle agrees that jurisdictions should prioritize generators which is why this article allows jurisdictions to forego providing service to 10 percent of their commercial generators. Comment noted. If a jurisdiction cannot provide service to 90 percent of commercial and 90 percent of residential generators, or a jurisdiction is entirely unaware of the number of businesses licensed to operate or residential properties located within their jurisdiction, they are not required to pursue this compliance option. Regarding third-party service, a jurisdiction is authorized to delegate the provision of service to a designee such as a hauler. However, if a generator is not provided service by the jurisdiction or

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			the jurisdiction's designee, it cannot be counted toward the 90 percent of generators that participate in a service provided by the jurisdiction.
3061	Heaton, S., Rural County Representatives of California	Article 17, Section 18998.1 Measurement of the organics content of the "gray container waste" as collected does not account for organics sorted from the gray container by post-collection processing. A methodology that's a combination of front-end source-separated organics and post-collection recovery of organics before disposal is the best way (perhaps the only way) to achieve 75% diversion. Instead of imposing 75% diversion mandate from January 1, 2022, a two-phase compliance schedule should be considered, which would allow facilities to come in compliance in a phased approach which is more realistic. Furthermore, the percentage of organic waste present in the gray container collection stream collected and the percentage of organic waste disposed in a landfill shall be determined by a measurement methodology submitted by the jurisdiction to the department for approval no less than 180 days prior to the start of the performance-based collection system. Proposed Language: Insert a new (a)(3) subsection (4): **Between January 1, 2022 - December 31, 2024: No more than 50 percent of the organic waste collected in the jurisdiction is disposed in a landfill.** **After January 1, 2025: No more than 25 percent of the organic waste collected in the jurisdiction is disposed in a landfill.**	Comment noted. The definition of designated source separated organic waste facility phases in the requirements as proposed in the comment. Several commenters proposing this approach appear to assume that the recovery efficiency target is an overall jurisdiction diversion target. It is not. See response to General Comment 62, also see Specific Purpose and Necessity as presented in the ISOR and FSOR for Article 2 and Article 3. The provisions related to compost operations and facilities were amended to phase in the organic disposal levels from 20 percent in 2022 to 10 percent in 2024. The definition of "designated source separated organic waste recycling facility" in Section 18982(a)(14.5) includes cross-references that make it clear that a facility that is seeking to qualify as a designated source separated organic waste recovery facility can rely upon the sampling and measurement and reporting requirements that are included in Sections 17409.5.8 and 18815.5. Facilities are not required to qualify as designated source separated organic waste facilities. They may demonstrate that they meet the standards through the applicable reporting requirements. The emphasis of the requirements in Article 17 rest with jurisdictions who may only use a facility that has demonstrated that it meets the designated source separation organic waste facility standards.
3062	Heaton, S., Rural County Representatives of California	Article 17 Section 18998.1 (e) This section is a typographical error since it indicates the requirement is not applicable to the same subsection. Proposed Language: (e)The requirements of Subdivision (~~ed~~) are not applicable to:	Thank you for your comment, the error was corrected.
3063	Heaton, S., Rural County Representatives of California	Article 6.2 Section 17409.5.8 (a) It is not clear why the word "only" was inserted in this requirement. As written, the ONLY waste that can leave a transfer/processing facility or operation is "organic waste recovered after processing from the source separated organic waste stream and from the mixed waste organic collection stream". What happens with the rest of the solid waste collected at the transfer/processing facility or operation? Proposed Language: (a) A transfer/processing facility or operation shall ~~only~~ send offsite that organic waste recovered after processing from the source separated organic waste stream and from the mixed waste organic collection stream that meets the following requirements	A change to the regulatory text is not necessary. The purpose of this section is to require transfer/processing facilities to only send organic waste offsite to facilities of their choice if it meets an incompatible materials limit of less than 20% on and after 2022 and 10% on and after 2024. If the material sent offsite is greater than those percentage limits, then it can only go to specific facilities. These facilities include a transfer/processing facility or operation that meets the incompatible materials limit, a compost or in-vessel digestion operation or facility that disposes of less than 20% organic waste on and after 2022 and 10% organic waste on and after 2024 in their materials sent for disposal, or a recycling center that meets the definition specified in Section 17402.5(d). In order to achieve the targets established in SB1383, regulatory limitations for processing organic waste must be implemented.
3064	Heaton, S., Rural County Representatives of California	Article 6.2 section 17409.5.10 (d) There are consolidation sites, such as limited volume transfer stations, that transport collected materials directly to a landfill rather than transfer/processing facility or operation. Also, some of these consolidation sites also collect recyclables or provide containers for customers to source separate recyclables. Mandating that these materials ONLY go to a transfer/processing facility or operation imposes significant costs and double handling. If there is no transfer/processing facility or	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.

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		operation between the consolidation site and the landfill or recycler, the wastes will need to be transported excessive distances increasing vehicle emissions and wasting fuel. Proposed Language: (d) Materials shall be transported only to transfer/processing facilities or operations**,** that comply with Section 17409.5.1. or **landfills, or recycling centers or other location that accepts the material.**	
5136	Heaton, S., RCRC	Definitions Containers Allowing either the lid or body of the container to designate the materials to be collected in the containers provides economical flexibility. However, when the lid designates the materials to be collected, the body should be limited to gray or black. For example, in the definitions, (5) "Blue Container," having a blue lid with any color container, such as a green body could cause inconsistent messaging and confusion.	Throughout the rulemaking process CalRecycle received extensive feedback on the container colors. CalRecycle provided flexibility in the regulations regarding allowing the lid to be the required color as it was the least costly and burdensome approach and would still achieve the statewide organic waste recycling goals. Flexibility was provided to jurisdictions to reduce the potential for stranded assets (containers that do not conform to the color scheme required in this chapter) by allowing jurisdictions several years to paint containers or retire and replace containers through natural attrition and allowing flexibility on what part of the container must have the required color. The definitions in Article 1 for each container provide that the required color can be on the lid; it is not necessary that the entire body of the container comply with the color requirements. This section is necessary to ensure that the educational benefits of container color standardization are realized within a reasonable time frame while reducing the cost of compliance for regulated entities. This subdivision allows jurisdictions to continue to use containers that do not conform to the color requirements of this chapter through 2036. This section also clarifies that if a container has minor repairs and remains functional, it does not need to be replaced prior to 2036. At the public workshops CalRecycle held throughout the informal process, stakeholders raised concerns about potential financial and logistical challenges associated with meeting a newly established statewide container color scheme but did not object to the specific colors proposed for containers or propose alternative container colors. To accommodate the financial concerns, CalRecycle contacted waste companies to inquire about the typical useful life of collection containers. Waste companies contacted indicated that they typically plan for containers to last 7-10 years. Based on this information, CalRecycle provided until 2036 (14 years after the effective date of these regulations) for container replacement. To the extent that collection containers that are in use today do not meet the color requirements of this section, jurisdictions would not have to replace those containers for nearly 16 years (2020-2036). Additionally, a jurisdiction is allowed to replace containers sooner, if it chooses to do so. Finally, nothing precludes a jurisdiction from providing a container that has the lid with the required color and the body is gray or black.
5137	Heaton, S., RCRC	Waivers and Exemptions Most important to our member counties is the inclusion of various provisions for waivers and exemptions to the organic waste collection requirements. The Proposed SLCP Regulations include a delay of implementation of the residential organic collection service to the same 19 "rural jurisdictions" (counties with a population of less than 70,000) that received a five-year delay from the requirements of Assembly Bill 1826 (Chesbro, 2014), Mandatory Commercial Organics Recycling (MORe), section 42649.82 of the Public Resources Code (PRC). In this draft of the regulations, the residential organic waste collection requirement	Rural jurisdictions that need additional time beyond December 31, 2026, may request a low population waiver from CalRecycle. The low population waiver is valid for five years.

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		delay has been extended two years, from January 1, 2025 until December 31, 2026. This additional two-year extension is greatly appreciated for those rural jurisdictions. However, RCRC still maintains that “rural jurisdictions” will need additional time to phase in the MORe requirements before the additional mandates from these regulations take effect. Counties already subject to MORe began phasing in the commercial organic collection requirements in 2016 through 2019, and will begin with the residential component in 2022, a six-year span. We recommend the “rural jurisdictions” that were granted the exemption provided in PRC section 42649.82 be afforded a five-year delay following the initiation of the requirements of PRC Chapter 12.9.	
5138	Heaton, S., RCRC	The Proposed SLCP Regulations also include a provision for rural areas of counties with populations of 70,000 or greater to apply to CalRecycle for up to a five-year waiver for census tracts located in unincorporated areas of the county that have a population density of less than 75 persons per square mile or incorporated cities with a total population of less than 7,500 people and less than 5,000 tons of solid waste as reported in 2014. We were disappointed that this draft did not include a provision to consider the “edge effect” of large census tracts and allow a block or block group to be included in an adjacent high-density tract and subtracted from the lower density tract so that it might qualify as a low population waiver. We again request that block groups within the census tract be allowed to be exempt if those block groups meet the same criteria of population density of less than 75 persons per square mile. While RCRC is most appreciative of the proposed waivers and exemptions, we still believe there needs to be a provision to allow a local jurisdiction to request a waiver from CalRecycle for a proposed area based upon the local circumstances and conditions. Local jurisdictions need to have the ability to appeal to CalRecycle when lack of easily accessible organics facilities, the greenhouse gas impact tradeoffs, or other unique situations, such as problem bear populations below the 4,500’ elevation, occur that are beyond the reasonable ability of the jurisdiction to manage.	Per the regulations, an approved waiver should be applicable for 5 years. However, unlike census tracts, census blocks may change in any year in-between censuses. As a result, census blocks can merge/split/change during the course of the waived period, which could result in waived census blocks changing configuration during the waived period. This would require the Department to completely rebuild a database of 710,000 census block data points whenever a waiver request is being reviewed, as opposed to simply updating the population density from the most recent census. In addition, some census blocks are very low, or no, population areas (parks, businesses, etc.), making it difficult to ascertain which census blocks have populations that should be served and which do not. There also could be commercial census blocks in major cities that are large waste generators but technically do not meet the population density threshold. Given the fact that census blocks change, CalRecycle would have no way of quantifying the total amount of organic material potentially exempted. With respect to greenhouse gas emission, CalRecycle is not able to ascertain any method of objectively defining greenhouse gas emissions within census tracts or blocks, further this only addresses one part of the statute, greenhouse gas reduction, and ignores the central organic waste reduction requirement. For example black carbon generation in a census tract is unrelated to organic waste generation. CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than 5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the

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			following to be eligible would impact organic waste disposal: 1) cities with disposal of less than 5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA's definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile but which are located within a census tract with greater than 50 people per square mile; and 7) rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383. Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for

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			this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection. Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals.
5139	Heaton, S., RCRC	Education and Outreach RCRC appreciates that this draft of the Proposed SLCP Regulations utilizes the current standards of Government Code Section 7295, so that the determination of when non-English materials are appropriate is left to the discretion of the local agency.	Thank you for the comment. The commernter is not requesting a change.
5140	Heaton, S., RCRC	Capacity Planning RCRC appreciates that the "rural jurisdictions" will benefit from a five-year delay of the first organic waste capacity planning period report due August 1, 2024. These jurisdictions will be required to submit the second planning capacity report due August 1, 2029 for the period of January 1, 2030 thru Dec 31, 2039.	Jurisdictions that are exempt from the organic waste collection requirements pursuant to Section 18984.12, are not required to conduct the capacity planning required in Section 18992.1 and are not required to include capacity plans required by Section 18992.1 during any report required by Section 18992.3 as long as the waiver is still in effect.
5141	Heaton, S., RCRC	Procurement of Recovered Organic Waste Products RCRC appreciates the inclusion of mulch as an allowed procurement material, which has more potential for use in rural counties, is easier and less costly to process, and has water saving benefits. However, the requirement for pathogen and metal testing for mulch is excessive, especially if the source of mulch is wood waste. While RCRC still maintains that this procurement mandate was not authorized by SB 1383 and constitutes an unfunded mandate, we appreciate the delay for the "rural jurisdictions" procurement requirements from January 1, 2022 through December 31, 2026.	CalRecycle added mulch to the list of recovered organic waste products that can count toward the procurement targets provided it is derived from certain solid waste facilities and the jurisdiction requires such material to meet environmental health standards for land application, which include that the material meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3). Jurisdictions must also establish an ordinance per Section 18993.1(f)(4)(A) to ensure that mulch procured from solid waste facilities meets these land application environmental health standards. Due to the utmost importance of protecting public health and safety, this is necessary to ensure the prevention of the application of contaminated material on local lands. CalRecycle has determined that the procurement requirements are necessary to achieve organic waste diversion targets by ensuring an end-use for processed organic waste. In addition, CalRecycle disagrees with the characterization of procurement requirements as an unfunded mandate. First, the Legislature, in SB 1383, explicitly authorized local jurisdictions to charge and collect fees to recover its costs incurred in complying with the regulations (Pub. Res. Code § 42652.5(b)). In addition, Section 7 of the bill states that, "No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code." Such a fee authorization, and costs being recoverable from sources other than taxes, overcomes any requirement for state subvention of funds for reimbursement for a state mandate (see Gov. Code § 17556, County of Fresno v. State of California, 53 Cal.3d 482 (1991)). Second, local jurisdictions have discretion to design legitimate regulatory fees that charge, collect, and use funds in a manner that meets the exceptions to the definition of a "tax" under Cal. Const. Art. XIII C, Section 1 (e). There are no provisions in the SB 1383 regulations that limit that discretion. As such, it is overbroad and speculative to describe "any fees" that may in the future be imposed by the numerous local jurisdictions in California as "likely" to be treated as taxes. If a

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			fee were to be challenged, the determination would be highly dependent on the particulars of how a local charge is purposed, collected and used. CalRecycle is not aware of any facts indicating that local jurisdictions are outright prevented from designing valid regulatory fees consistent with Prop. 26 and Prop. 218 to offset the costs of complying with SB 1383. According to the October 1, 2018 decision in Paradise Irrigation Dist. v. Commission on State Mandates, a statutory authorization to levy fees, such as that provided in SB 1383, is the relevant and dispositive factor in overcoming claims of subvention for a state mandate. This is true whether or not a local fee is subject to, or defeated by, a majority protest procedure. The court found the protest procedure to be a practical consideration for a local government as opposed to a legal factor in determining a requirement for subvention for a state mandate. Finally, it should be recognized that the procurement requirements are designed to apply to existing needs for a jurisdiction, such as for paper products, compost and mulch, and fuel for transport, heating and electricity, and require jurisdictions to instead purchase that material in a form derived from recovered organic waste. Thus, it is not designed to mandate new purchases but instead to make existing needs purchased from an alternate source.
5142	Heaton, S., RCRC	Penalties The removal of the penalty tables is much appreciated. The replacement using minor and moderate violations is improved but lacks clarity and specificity on determining the difference. Only “major” violations have a specific list of violation types. Using the vague terms of “minimal” and “moderate” deviations are undefined and offer no criteria on determining the difference. Moderate violations are identified as violations that are not minor or major. RCRC also believes the penalty assessments unfairly put the burden of meeting the “statewide” goal on the backs of local government. It is inappropriate to call these regulations goals and targets when penalties will be imposed on our residents, industry partners, and local jurisdictions. It is even more inappropriate when the State entities, federal agencies, and schools, who are large contributors to the organic waste stream, have no consequence for non-compliance other than getting put on a “list-of-shame.” While removing the penalty tables has simplified implementation of the penalty requirements and is greatly appreciated, we still believe the penalty section is premature and should be considered in a separate set of regulations.	Clarity issues regarding minor/moderate/major penalty issues that were identified by Office of Administrative Law in its initial review were addressed in revisions to the regulatory language that were released to the public for a 30 day comment period on April 20, 2020. Regarding the overall diversion goals, penalties are not imposed on individual jurisdictions for failure to meet a quantified diversion target. CalRecycle has determined penalties are necessary to include in this initial rulemaking as a compliance assurance.
5143	Heaton, S., RCRC	Gray Container Waste Evaluations The reduction of sampling in the gray container waste evaluations at transfer/processing facilities and the removal of gray container waste evaluations at landfills is an enormous improvement and respectfully appreciated. Also, the inclusion of offsite gray container waste evaluations is seriously appreciated, as many of the rural county transfer stations do not have the appropriate site specifications to conduct gray container waste evaluations.	Comment noted. Thank you for the comment as the comment is in support of the language.
5144	Heaton, S., RCRC	Incompatible Materials Limit The phasing of incompatible material limits is very helpful and will provide valuable time to make necessary facility and operating changes to existing processing	A change to the regulatory text is not necessary. The purpose of these regulations is to meet the established goals of 50% recovery of organic waste by 2020 and 75% by 2025. The 20% limit of

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		facilities. RCRC suggests that the 10 percent requirement be extended one year, to January 1, 2025, to coincide with expectation of new facilities online and the increased diversion goal.	organic waste contained in materials sent for disposal on and after 2022 and 10% limit on and after 2024 are necessary in order to meet these established goals.
5145	Heaton, S., RCRC	Organic Disposal Reduction Status Impact Report (SIR) While RCRC is grateful for the elimination of the requirements to make alternative intermediate cover as effective as final cover, we still believe this report imposes excessive requirements on landfills. The report could be included in the next five-year review rather than imposing a separate report. A number of the listed analyses are not impacted by reducing organic disposal including the site development, volumetric capacity (less waste will not change capacity), waste handling methods, operation and closure design, and grading. RCRC recommends this report be folded into the next five-year review.	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2019 draft regulations.
5146	Heaton, S., RCRC	In summary, the regulations in their current form demand jurisdictions to concurrently plan, develop, and implement ordinances, create residential food waste collection services and edible food recovery programs, conduct outreach and education programs, develop infrastructure, monitor sampling programs, conduct enforcement programs and more, and will necessitate significant additional staff resources. It is also commonly accepted that there are currently insufficient existing organic processing facilities in the state to handle the amount of organics needed to be diverted to meet the 75 percent organics reduction goal set by SB 1383. There are currently more than 160 permitted compost facilities and over a dozen anaerobic digesters throughout the state.1 The Draft Programmatic Environmental Impact Report for the SB 1383 Regulations Short-Lived Climate Pollutants: Organic Waste Methane Emission Reduction, anticipates 108 new and/or expanded compost facilities and 61 new and/or expanded anaerobic digesters, with all but six anticipated to be built by 2025. This is not a realistic expectation. To meet the 75 percent organics reduction goal, that number of facilities will need to be sited, permitted, financed, and built in the next six years.	The regulations allow for a Corrective Action Plan (CAP) that provides additional time under specified conditions regarding delays in securing organics recycling capacity. The SB 1383 enforcement structure allows CalRecycle to focus on compliance assistance first and dedicate enforcement efforts to serious offenders. CalRecycle has discretion to address compliance issues with a jurisdiction through compliance evaluations prior to moving to enforcement proceedings. The regulations allow for flexibility and deadline extensions in some instances when there are extenuating circumstances causing compliance issues despite a jurisdiction's substantial efforts. If CalRecycle determines a jurisdiction is violating one or more requirements and decides to take enforcement action, it must issue an NOV: • A jurisdiction will have 90 days to correct the violation. • That timeframe can be extended an additional 90 days to a total of 180 days if the department finds that additional time is necessary. For violations due to barriers outside a jurisdiction's control (extenuating circumstances) and when a substantial effort is made towards compliance: • Jurisdictions can be placed on a Corrective Action Plan, allowing up to 24 months (from the date of the NOV issuance) to come into compliance. • A CAP issued due to inadequate organic waste recycling infrastructure capacity may be extended for a period of up to 12 months if the jurisdiction has demonstrated substantial effort to CalRecycle.
5147	Heaton, S., RCRC	Recognizing the economic and logistical challenges of organic waste recycling in California, RCRC believes a more realistic approach is to focus CalRecycle's resources and efforts in the most urban areas first, and phase in the other counties. California's fifteen most populated counties (over 750,000 persons) represent nearly 83 percent of the State's population (see Attachment 2 for population estimates) and could be subject to the implementation date as proposed. The 24 counties with populations of at least 70,000 but less than 750,000 (representing 16% of the state's population) could begin implementation January 1, 2025. The final 19 counties with populations of less than 70,000 (representing 1.5% of the state's population) could delay implementation until January 1, 2030. It is difficult to justify the state spending their valuable resources ensuring statewide	Rural jurisdictions that need additional time beyond December 31, 2026, may request a low population waiver from CalRecycle. The low population waiver is valid for five years. This flexibility is necessary because under AB 1826 (PRC 42649.82), rural jurisdictions are exempt from early implementation of mandatory commercial organic waste reduction requirements and have been provided additional time to phase in organic waste recycling requirements. Consequently, these jurisdictions were not required to undergo the same organic waste recycling program expansion as jurisdictions that were subject to AB 1826 and therefore may need additional time to comply with the requirements of this Article. Based on CalRecycle analysis of jurisiction disposal, rural jurisdictions qualifying for this wavier cumulatively account for 1.4 percent of total statewide organic waste disposal. Allowing waivers for this amount of material will not significantly impact the state's ability to achieve statutory organic waste recovery targets. In addressing the comment suggestion that rural jurisdictions would implement program

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		compliance from the start, knowing there will be a lack of sufficient processing capacity in 2025. RCRC would like the opportunity to develop interim program alternatives for the less populated counties until their delayed implementation dates. The intent is to provide an incentive to engage communities to implement organic waste programs to minimize food being wasted and organic waste being landfilled.	alternatives nothing in Section 18984.12 exempts a jurisdiction from complying with the other requirements to promote and provide information to generators about waste prevention, community composting, managing organic waste on-site, and other means of recovering organic waste, or any other requirements of this chapter. The purpose of this section is to clarify that jurisdictions granted waivers under this section must still fulfill other regulatory requirements to reduce overall solid waste disposal, through methods of education and source reduction practices. This section is necessary to clarify that the exemptions authorized under this section only apply to the collection requirements of this Article and do not exempt jurisdictions from their obligation to comply with other Articles of this chapter.
2122	Helget, Chuck, Republic Services	As mentioned in our earlier comment letter, we believe these regulations will have a more profound impact than AB 939 on ratepayers, local jurisdictions, other governmental agencies and the solid waste and recycling industries. As such, these implementing regulations must provide a clear and concise framework for compliance. In their current form, these regulations appear to hit the mark. The industry and local governments will need to upgrade existing infrastructure that was built for compliance with AB 939 and add a significant amount of new and in some cases unproven facilities and technologies to process and reuse the more than 20 million tons of additional organics diversion required by SB 1383. We are concerned that the regulations do not anticipate what might happen to our recycling infrastructure as a result of the requirements contained in these regulations without adequate funding, siting support and markets. We urge CalRecycle to begin the progress assessment now that SB 1383 requires to be completed by July 1, 2020. To date, significant infrastructure has not been developed and very little progress has been made to reduce regulatory barriers for organics facilities. In fact, in the past year, air districts and regional boards have elevated barriers at existing facilities and for new facilities. Further, little progress has been made to enhance pipeline access and markets for renewable natural gas. Access and markets are the key components for expanding anaerobic digestions facilities to handle the flow of food waste anticipated from these SB 1383 regulations. In that vein, we again ask that you approach these regulations cautiously and deliberatively, it is out our concern that we get this right rather than impose a regulatory structure that cannot be effectively implemented by jurisdictions, haulers and solid waste facilities. We offer our brief recommendations in that light, in hopes that the final product will be one that we can endorse and effectively implement.	Comment noted. The commenter is not requesting a specific change in the regulation but instead notes conditions that will influence the success of the program. CalRecycle is in the process of undertaking the SB 1383 analysis referred to in the comment.
2123	Helget, Chuck, Republic Services	1. Funding and Infrastructure Expansion Given the magnitude of the estimated cost of implementing these regulations and the ever rising infrastructure costs associated with SB 1383, we continue to believe that these regulations as written will cost ratepayers well over the $21 B estimated in CalRecycle's Standardized Regulatory Impact Assessment (SRIA). We hope that the final supporting documents for these regulations will recognize the magnitude	The SRIA was revised during the rulemaking process, released for public comment, and fully discloses the anticipated costs of the proposed regulations.

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		of the impact that these regulations will have on local programs that have been designed and funded under the AB 939 construct.	
2124	Helget, Chuck, Republic Services	Article 1 1. Organic Waste Definition (Page 9): During the July Workshop, staff was asked if the definition of organics in the June Regulations included plastics. The staff response was "No". We have not found any significant changes on this point and again make the following comment. Recommendation: We recommend that the definition be modified to specifically state that plastics are not included in the definition. We also suggest that plastics be clearly defined to include material consisting of any of a wide range of synthetic or semi-synthetic organic compounds.	Comment noted. The definition of organic waste employed in these regulations is specific to the purpose and necessity of this regulation. Regulations adopted by other agencies or codified in other portions of statute, can employ a different definition for a different purpose. Comment noted. CalRecycle disagrees that the definition of organic waste is too broad, or should be limited to the types of organic waste included in the definition used in AB 1826. SB 1383 requires CalRecycle to reduce the disposal of organic waste. These reductions are required as a means of achieving the methane emission reduction targets of the SLCP Strategy. AB 1826 only requires that collection services be offered to commercial businesses. SB 1383 requires the state to reduce the disposal of organic waste that is landfilled, it is a substantially broader legislative mandate and requirement. Organic waste that break down in a landfill and create methane must therefore be included in the regulatory definition, including organic waste that are not generated by commercial businesses. Organic waste defined in the regulation are subject to specific requirements (e.g. collection, sampling etc). These requirements are necessary to achieve the purpose of the statute. Comment noted. The definition of organic waste clearly identifies materials that are types of organic waste. It is not feasible or necessary to state in the negative every conceivable material that is not an organic waste.
2125	Helget, Chuck, Republic Services	2. Renewable Natural Gas Definition (Page 10) The definition of "renewable gas" without any justifiable reason and/or scientifically supported analysis, is limited it to gas derived from in-vessel digestion of organic waste only. The regulations should expand the definition of "renewable gas" to include gas derived from other technologies, including biomass conversion utilizing thermal conversion technologies such as gasification and pyrolysis, methane gas generated from municipal solid waste landfills since it is biogenic in origin, and any other technologies that are determined to constitute a reduction in landfill disposal pursuant to Section 18983.2.	1383 regulatory definition of "renewable gas" necessarily limits the feedstock to landfill-diverted organic waste processed at an in-vessel digestion facility. This definition is consistent with statutory language per SB 1383 Section 1(b) that mandates the adoption of policies for beneficial uses of biomethane from "solid waste facilities". The definition is specific to the purpose of the statute and these regulations and does not impact or alter other definitions of renewable gas that are specific to the purpose of other statutes and regulations. In-vessel digestion facilities are solid waste facilities, which allows CalRecycle to verify that these facilities are reducing the disposal of organic waste. Regarding including "all beneficial end uses of renewable gas generated from diverted organic waste", the current proposed definition of "renewable gas" is consistent with statutory language per SB 1383 Section 1(b) that mandates the adoption of policies for beneficial uses of biomethane from "solid waste facilities". In-vessel digestion facilities are solid waste facilities, which allows the department to verify that these facilities are reducing the disposal of organic waste. CalRecycle disagrees with the open-ended approach to renewable gas end uses described in the comment. The broad range of potential recovered organic waste products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors
2126	Helget, Chuck, Republic Services	3. Performance-Based Source-Separated Organic Waste Collection Service We are intrigued by this new option and are still evaluating the potential impact to our jurisdictions. We are concerned that a 90% threshold for a three-container service is a very high threshold. With business start-ups and turn over, it will be very	Comment noted. CalRecycle acknowledges that some sectors may be more difficult to meet the service requirements than others. The standards were established to ensure that the state can achieve the organic waste reduction targets. Requirements related to providing organic waste collection services are not a new requirement. Jurisdictions are already required by law to offer organic waste collection services to the commercial sector. Additionally, the Article 17 service

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		difficult to maintain this 90% requirement. With the new requirement that service also be provided to 90% of residential complicates this concern even more! Turnover in commercial accounts can often range to 25% of the customer base with business closures and relocations this number will be very difficult to track with any accuracy. Recommendation: Revise the 90% requirement to 75%.	requirements are specifically designed to apply to an entire jurisdiction. Piecemealing where Article 17 services are provided would unnecessarily complicate enforcement and oversight for the department as well as jurisdictions. Comment noted. If a jurisdiction cannot provide service to 90 percent of commercial and 90 percent of residential generators, or a jurisdiction is entirely unaware of the number of businesses licensed to operate or residential properties located within their jurisdiction, they are not required to pursue this compliance option. Regarding third-party service, a jurisdiction is authorized to delegate the provision of service to a designee such as a hauler. However, if a generator is not provided service by the jurisdiction or the jurisdiction's designee, it cannot be counted toward the 90 percent of generators that participate in a service provided by the jurisdiction.
15;0026	Hilton, H., HF&H Consultants, LLC	Definitions Section 18982 – While the container color definitions have been updated in the October draft, the color requirements for C&D boxes is not covered under SB 1383. It is common for C&D waste haulers to interchange boxes or re-purpose roll-off boxes. HF&H requests that CalRecycle clarify if it is acceptable to use only signage on roll-off boxes so that these boxes can be used interchangeably for Recyclable Materials, Organics, Solid Waste, Mixed Materials, and C&D. The signage would include sufficient information to comply with the container labeling requirements of Section 18984.8.	The regulations allow labels to be applied to existing bins or lids until the containers are replaced either at the end of their useful life or by 2036. Correctly-colored labels may be applied to existing bins or lids until the containers are replaced at the end of their useful life or by 2036.
15;0027	Hilton, H., HF&H Consultants, LLC	Article 3. Organic Waste Collection Services Section 18984.3. – HF&H appreciates the modifications made in this draft regarding the requirements of uncontainerized collection service for Three-Container and Two-Container collection Systems (Sections 18984.1(e)(2) and 18984.2(f)(2)). The previous language stating that generators receiving uncontainerized service "must be provided an option" for the collection of other organic waste was modified to "must be provided a collection service" for the collection of other organic waste. This is an important modification to avoid potential loopholes in the provision of service. However, this modification was not made in Section 18984.3(f)(1) for uncontainerized collection service in Single-Container collection systems. HF&H recommends mirroring the modifications made in Sections 18984.1(e)(2) and Section 18984.2(f) in Section 18984.3(f)(1) and revising the text of Section 18984.3(f)(1)as follows: **"(1) Generators receiving that service must be provided a collection service for the collection of other organic waste in a manner that complies with this section."**	CalRecycle has revised Section 18984.1(e)(2) and all other relevant sections to remove the words 'an option' and add 'collection service.' The change is necessary because the use of 'must be provided as an option' may create a loophole that implies that service for material not typically collected loose in the street, such as food scraps, is an option rather than a requirement pursuant to the regulations.
15;0028	Hilton, H., HF&H Consultants, LLC	Section 18984.5(b) – This contamination minimization subsection states "containers may be randomly selected along a hauler route" when conducting a route review. This language suggests that random selection of containers is not required. However, random selection ensures that containers are not selected based on their contents and can provide a more accurate representation of the contamination along a particular route. Additionally, while we appreciate the clarification that the regulations are not intended to require all containers on all routes to be monitored	For clarity, the regulations allow the jurisdictions to determine random selection, which is the least costly and burdensome approach compared to requiring statistically significant sampling. In regard to if the program will meet compliance, this has been addressed in language changes to Sections 18984.5 and 18984.6. CalRecycle disagrees with making it a requirement that contamination monitoring is random as it would limit flexibility and increase costs.

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		annually, including specifications on the minimum number of containers reviewed will ensure consistent and effective monitoring across routes. HF&H requests that CalRecycle restore the random selection requirement for containers to ensure more representative data; as well as specify the minimum number of containers required per route review, similar to the specifications in section 18984.5(c)(1)(E) for waste composition studies.	
15;0029	Hilton, H., HF&H Consultants, LLC	Section 18984.5(b)(1)(B) – This subsection has been modified to read: "The notice may be left on the generator's container, gate, or door at the time the violation occurs, and/or be mailed or e-mailed to the generator." HF&H appreciates the addition of an email option for leaving notices of violation. With the ever increasing use of technology, text message may also be an ideal way to communicate with customers. HF&H recommends that text messaging be included as an acceptable method of communication for leaving notices of violation.	Follow-up for container contamination may be done electronically, which may include electronic messaging such as e-mails or text messages.
15;0030	Hilton, H., HF&H Consultants, LLC	Section 18984.5(c)(1)(E) – HF&H appreciates the addition of "hauler route" as a defined term to this draft. However, more specificity is needed as it relates to the routes used to determine the sample size required for the waste composition studies outlined in this section. The references to the number of generators per route does not clarify whether it is a daily route or a weekly route. In our experience of analyzing route data, no one route would have 7,000 or more generators per day. A specification of a weekly route may be more appropriate for these generator tiers. HF&H suggests either: 1) Refining the definition of hauler route in Section 18982 to specify that a route is a designated itinerary or sequence of stops on a weekly basis; or, 2) Provide more clarity in this subsection 18984.5(c)(1)(E) by explaining that the number is based on the "weekly route average of generators."	CalRecycle added a definition of 'hauler route.' Section 18984.5 requires jurisdictions to minimize contamination of organic waste containers by either conducting route reviews or conducting waste evaluation studies on each hauler route. The term "hauler route" is key to the jurisdiction's compliance with these requirements because it describes where the jurisdiction should direct its contamination minimization efforts in order to increase detection of container contamination by generators. What constitutes a "hauler route" is dependent upon the designated itinerary or geographical configuration of the jurisdiction's waste collection system. For example, a jurisdiction's collection system may consist of one continuous itinerary or series of stops that services both commercial generators and residential generators for garbage, dry recyclables and organics or the system could be divided into two or more itineraries or segments based on each type of generator and/or material type collected. This section is necessary to maximize detection of container contamination so that the jurisdiction's education and outreach and/or enforcement efforts can be targeted to the generators serviced along the affected routes, thereby reducing contamination and increasing the recoverability of organic waste.
15;0031	Hilton, H., HF&H Consultants, LLC	Section 18984.5(d) – This section states "A jurisdiction that notifies the Department that it intends to implement a performance-based source separated collection service pursuant to Section 18998.1 shall notify the Department within 30 days of conducting two consecutive gray container samples that each demonstrate prohibited container contaminants in the gray container exceed 25 percent of the measured sample by weight." It is unclear if the text should be interpreted to mean that a notification is required after two consecutive individual samples or after two consecutive full evaluations. For further clarity, HF&H recommends amending this section to read: **"A jurisdiction that notifies the Department that it intends to implement a performance-based source separated collection service pursuant to Section 18998.1 shall notify the Department within 30 days of conducting gray container evaluations in two consecutive quarters that demonstrated a weighted average of**	Comment noted. CalRecycle agrees that a jurisdiction is only required to notify CalRecycle if two consecutive evaluations exceed 25 percent by weight. "Sample," as used in the applicable subdivision, means the entirety of the samples that constitute a waste evaluation.

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		prohibited container contaminants in the gray container that exceeds 25 percent of the measured sample by weight."	
15;0032	Hilton, H., HF&H Consultants, LLC	Section 18984.5(e) – This section states "…a representative of the Department to oversee its next scheduled quarterly sampling of the gray container." The use of the term "oversee" could imply that the representative would have some responsibility for the conduct of the process, rather than being an observing party. HF&H suggests changing the word "oversee" to "observe" to mitigate potential confusion regarding the responsibility of the selected representative.	The term "oversee" is not intended to give CalRecycle responsibility for how the sampling is conducted. It is to determine whether the jurisdiction is performing the sampling properly.
15;0033	Hilton, H., HF&H Consultants, LLC	Section 18984.11(a)(2)(A) – This section describes the requirements associated with physical space waivers. New language was added specifying that commercial businesses or property owners could apply for the waiver; however, as "property and business owner" was deleted from Section 18984.10, it appears property owners no longer have to adhere to specific requirements. HF&H requests clarification as to whether property owners do have specific requirements. If property owners do have specific requirements, HF&H requests that such requirements be explicitly stated; if property owners no longer have specific requirements, as implied by revisions made to Section 18984.10, HF&H recommends eliminating "or property owner's obligation" from Section 18984.11(a)(2)(A).	A change to delete property owners from Section 18984.11(a)(2)(A) is not necessary because Section 18984.9(a) requires all organic waste generators to comply, therefore a physical space waiver may be necessary for a property owner. Further, a commercial business leasing a space may not be the property owner, and therefore may not be able to apply for a waiver from collection requirements for the property. With regard to section 18984.10, it was appropriate to delete property owners from that section. As previously constructed, that section would have required property owners that manage multifamily housing properties of less than five units to educate new tenants on the commercial organic waste recycling requirements. This would have been unnecessarily burdensome and was removed from the requirements.
15;0034	Hilton, H., HF&H Consultants, LLC	Section 18984.11(a)(3) Collection frequency waivers – This subsection states waivers may be issued for blue or gray containers to be collected once every fourteen days from an owner, tenant, or other establishment. It is unclear if these waivers only apply to individual residents, tenants, or businesses, or if the waiver may be applied across an entire jurisdiction or hauler route. For cost effectiveness and efficiency of routing, it is more common to make changes on a route-basis rather than an individual basis.	A jurisdiction may provide a collection frequency waiver to all of the owners or tenants of any residence, premise, business establishment or industry that are located within the jurisdiction or that are on specified routes provided that existing requirements cited in 18984.11(a)(3) are complied with. The regulation also specifies that this waiver only applies to gray or blue containers.
15;0035	Hilton, H., HF&H Consultants, LLC	Additionally, there could be potential confusion regarding whether green containers are excluded from the waivers, and the regulations would benefit from this being more explicitly stated. HF&H requests two clarifications on collection frequency waivers: 1) If waivers apply to individual residents, tenant or businesses, or if this waiver could apply to an entire jurisdiction or hauler route. 2) If this waiver does not apply to green containers, which need to be picked up every week.	A jurisdiction may provide a collection frequency waiver to all of the owners or tenants of any residence, premise, business establishment or industry that are located within the jurisdiction or that are on specified routes provided that existing requirements cited in 18984.11(a)(3) are complied with. The regulation also specifies that this waiver only applies to gray or blue containers.
15;0036	Hilton, H., HF&H Consultants, LLC	Article 11. Organic Waste Recycling Capacity Planning Section 18992.1(a)(1)(B)(1) – This section now states that local studies may be used if they were performed within the last five years. HF&H greatly appreciates the expanded ability to use local studies, as obtaining multiple sources of data will support more robust capacity planning. However, it is unclear what timeframe the studies are relevant without an understanding of when "within the last five years"	Section 18992.3 identifies the reporting date, and the timeframes those reporting dates cover.

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		begins. Does this refer to within the last five years of the implementation date or the current time period? HF&H requests that CalRecycle clarify the reference date being used to determine the five year time frame for which local studies are valid and acceptable for use.	
15;0037	Hilton, H., HF&H Consultants, LLC	Article 12. Procurement of Recovered Organic Waste Products Section 18993.1(e)(1) – This subsection outlines how a jurisdiction may comply with meeting its recovered organic waste product procurement target and reads "Directly procuring recovered organic waste products for use or giveaway." HF&H suggests modifying the language to read "Directly procuring recovered organic waste products for use by the jurisdiction or for the jurisdiction to sell or giveaway to other persons or entities."	Section 18993.1(e)(1) limits procurement to "use or giveaway," not for sale. The intent is to encourage the demand and use of recovered organic waste products, as this is where most of the environmental benefits are realized. Procuring compost and then selling it via a 3rd party does not meet the intent of these regulations, which is to build markets for the use of recovered organic waste products. While a direct service provider cannot sell products on the jurisdiction's behalf for procurement credit, the draft regulations do not prohibit a jurisdiction from hiring a broker to procure and use products on the jurisdiction's behalf.
15;0038	Hilton, H., HF&H Consultants, LLC	Section 18993.1(f)(4) – HF&H greatly appreciates the addition of Mulch as an acceptable recovered organic waste product. While introduced in this Section, no corresponding definition of "Mulch" is included in Section 18982 - Definitions. Other terms related to this section such as Compost, Renewable Gas, and Biomass Conversion have corresponding definitions. HF&H recommends that CalRecycle add a brief definition of the term "Mulch" to Section 18982.	A change to the regulatory text is not necessary. The land application standards and the facility origin limitations referenced in Section 18993.1(f)(4)(A) and (B), respectively, are sufficient to define the material for purposes of procurement.
15;0039	Hilton, H., HF&H Consultants, LLC	Section 18994.2(a)(1) – This subdivision deals with the due dates for annual reports. Subdivision (a) states the report submitted on August 1, 2022 shall cover the period of January 1, 2022 through June 30, 2022. Directly after, subdivision (a)(1) states that a jurisdiction may submit the report covering the period of January 1, 2022 through June 30, 2022 on October 1, 2022. Now that the reference to the performance-based compliance section has been struck from subdivision (a)(1) in this draft it is not clear how these two requirements are different and which jurisdictions, if any, are permitted to submit on October 1, 2022 rather than August 1, 2022. HF&H requests clarification on what the reporting deadline is and the difference between subdivision (a) and subdivision (a)(1) in this section.	This section is intended to require annual reporting to be filed on August 1 of each year. However, for the first reporting period in 2022, for which jurisdictions are only required to report for the period from January 1st through June 30th, the report may be submitted anytime up to October 1st. The intent was to provide the flexibility of additional time for jurisdictions to file the first report given that for subsequent years, jurisdictions will have 7 months to prepare reports for the prior calendar year.
15;0040	Hilton, H., HF&H Consultants, LLC	Article 15. Enforcement Oversight by the Department Section 18996.5 Enforcement Actions Organic Waste Generators Located in Multiple Jurisdictions This section, if the joint referral is approved, allows the Department to take enforcement action in lieu of the jurisdictions. HF&H requests that CalRecycle specify if a jurisdiction is still responsible for the record keeping and reporting requirements relating to enforcement and compliance reviews if a joint referral is approved and the Department conducts the enforcement actions in lieu of the jurisdiction.	A jurisdiction is responsible for recordkeeping and reporting requirements relating to enforcement and compliance reviews it has actually conducted. A jurisdiction is not responsible for recordkeeping and reporting related to enforcement actions undertaken by CalRecycle.
15;0041	Hilton, H., HF&H Consultants, LLC	Article 16. Administrative Civil Penalties	Penalty amounts are controlled by the Government Code. These regulations require local jurisdictions to adopt an ordinance or other enforceable mechanism that is equivalent to or more stringent that the proposed regulations. Provisions in Government Code Sections 53069.4, 25132,

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		Section 18997.1 Scope – This section previously stated that a jurisdiction may adopt penalty amounts that are equivalent or stricter than the amounts provided. This appears to have been removed from the October draft. In order to support compliance efforts, jurisdictions may wish to set penalty levels in a manner that is appropriate to their jurisdiction and programs. Stricter penalties can be a helpful tool for jurisdictions to reach compliance, which will help contribute to the State's organic waste diversion goals. HF&H recommends that CalRecycle restore the original language in Section 18997.1.b of "A jurisdiction shall adopt ordinance(s) or enforceable mechanisms to impose penalties that are equivalent or stricter than the amounts prescribed in Section 18997.2"; or, include an additional subsection (c) to Section 18997.2 that reads "Nothing in this section shall be construed as preventing a jurisdiction from adopting penalty amounts stricter than those prescribed in this Section."	and 36900 control how local jurisdictions set penalties for violations of their ordinances and, as such, any criteria as to how to set penalties within the ranges set in Government Code will be subject to the discretion of the jurisdictions.
15;0042	Hilton, H., HF&H Consultants, LLC	Section 18998.1(e) – This section states: The requirements of Subdivision (e) are not applicable to: (1) A hauler that is consistent with Article 1, Chapter 9, Part 2, Division 30, commencing with Section 41950 of the Public Resources Code, transporting source separated organic waste to a community composting site; or, (2) A hauler that is lawfully transporting construction and demolition debris in compliance with Section 18989.1. HF&H believes this section should reference Subdivision (d) or another section that describes hauler requirements. As currently described, this section does not reference a subsection that includes requirements from which haulers may be exempt, but rather it only references haulers for which the exemption applies. HF&H recommends that CalRecycle review and confirm the intended section reference.	Thank you for your comment, the error was corrected.
15;0043	Hilton, H., HF&H Consultants, LLC	Title 14 Section 17409.5.7 Gray Container Waste Evaluations – This section requires the transfer station operator to conduct waste evaluations on the gray container collection stream, however the new draft regulations removes the requirement for the evaluations to be conducted per jurisdiction. Without the requirement to conduct these evaluations on a per jurisdiction basis, the information collected cannot be used in a meaningful way to measure the progress of each jurisdiction. Costly evaluations still being required, without meaningful results of such evaluations, does not seem to benefit the regulated entities nor further compliance goals. It may also create confusion regarding the responsibility for the reporting and record keeping of the evaluations for each jurisdiction. HF&H recommends that CalRecycle restore the requirement to conduct the waste evaluations on a per jurisdiction basis; or to remove the requirement entirely if not conducted on a per jurisdiction basis.	A change to the regulatory text is not necessary. The purpose of this section is measure how much organic waste is collected in the gray container, as part of a three-container organic waste collection system. This is necessary to determine how effective organic waste is being recovered and use the results to gauge the accuracy of the jurisdictions container contamination minimization results that send their waste to that specific facility. The result from the above measurements independently will help provide an overview of how the jurisdictions and facilities are doing and allow to cross-check the measurements, even though it is not per jurisdiction. In addition to providing information on the type and quantities of organic waste not being recovered for possible future regulations in order to help recover those materials.
15;0044	Hilton, H., HF&H Consultants, LLC	Title 27	Comment noted. Comment is not commenting on the regulatory language.

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		Section 20901 – 20901.2 Gray Container Waste Evaluations – The requirement for gray container waste evaluations to be conducted at landfills has now been removed from this draft. Pending the response to the previous comment, if the requirement for transfer stations to conduct gray container waste evaluations is retained in the regulations, this requirement should also be required of landfill operators. By removing the requirement for waste evaluations to be conducted at landfills, it may create an uneven playing field and make transfer stations less competitive than landfills due to the uneven burden of requirements. The intention for landfills to conduct evaluations is to measure how much organic material is going to landfills, not to regulate that amount, and it is an important step for successful implementation and monitoring. Additionally, this may have the unintended consequence of increasing vehicle miles travelled and resultant emissions. HF&H recommends restoring the requirement to conduct gray container evaluations at landfills if retaining the requirement for gray container waste evaluations to be conducted at transfer stations. This will create more effective monitoring, reduce unintended consequences, and ensure a level playing field across regulated entities.	However, the purpose of the gray container waste evaluations is to determine how much organic waste is present in the gray container, as part of a three-container organic waste collection stream. This is necessary to determine how effective organic waste is being recovered and use the results to gauge the accuracy of the jurisdictions container contamination minimization results that send their waste to that specific facility. The result from the above measurements independently will help provide an overview of how the jurisdictions and facilities are doing and allow to cross-check the measurements, even though it is not per jurisdiction.
1019	Kester, Greg, CASA	Article 1 Section 18982(a)(62) Defines Renewable Gas as being generated only from diverted organic waste. This discounts the significant greenhouse gas reduction benefits of anaerobically digesting sewage sludge. Wastewater treatment plants should not be penalized for being early adopters of beneficial technologies such as anaerobic digestion. This definition should add the words "…**and/or sewage sludge**…." after Landfill.	CalRecycle disagrees with the commenter's argument to allow renewable gas derived solely from sewage sludge to be eligible for procurement because a Publicly Owned Treatment Works (POTW) is not a solid waste facility and therefore not in the scope of the legislative intent of SB 1383. Sewage sludge is also not typically destined for a landfill, so its use does not help achieve SB 1383's landfill diversion goals. It is inconsistent with the requirements of SB 1383 to incentivize or mandate activities that do not contribute to landfill diversion of organic waste. However, POTWs that accept food waste can technically do so without a solid waste facility permit, they are explicitly authorized to do so per Title 14, therefore making it functionally similar to incentivizing biomethane from a solid waste facility. Therefore it is justifiable to allow the portion of renewable gas resulting from the digestion of food waste that is recovered at POTWs that accept food waste from a facility or operation identified in Section 18993.1(h)(1)(A)-(C) to count toward the procurement targets.
1020	Kester, Greg, CASA	Additionally, our understanding is that CalRecycle does not intend (and lacks the authority) to ban any organic waste stream from landfills. Rather, future use was to be negotiated between a wastewater treatment plant and their jurisdiction of origin. We request that these regulations be revised to explicitly articulate that approach.	Comment noted. Section 18987.2 was removed from the regulations. The regulations do not ban any organic waste stream from landfills. This is prohibited in statute and it is therefore unnecessary to explicitly articulate this.
1021	Kester, Greg, CASA Lorance, Shauna, City of San Diego Public Utilities Department	In order to clarify that alternative treatment processes and end uses of biosolids are allowed, and do not constitute landfill disposal, we recommend the following language be inserted in the deleted section below. **Article 6 Section 18987.2. Biosolids and Sewage Sludge Handling at a POTW** **(a) Biosolids generated at a POTW shall meet one or more of the following:** **(1) Treated and managed in accordance with the Land Application, Incineration, or Surface Disposal requirements specified in 40 CFR part 503,**	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.

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		(2) Transported to a solid waste facility or operation for additional processing, composting, in-vessel digestion, or other recovery as specified in Section 18983.1(b) of this division, including public distribution, and for landscaping, public parks and other facilities, golf courses, and reclamation projects, or **(3) Be treated and managed in other manners, approved by the regional, state, or federal agencies having appropriate jurisdiction.**	
1022	Kester, Greg, CASA	Article 9 Section 18990.1(b)(1). CASA strongly supports and appreciates the additional language in this section which makes clear that local ordinances cannot either prohibit or otherwise limit or restrict recovery activities outlined in Article 2.	Thank you for this comment. The comment supports the draft language.
1023	Kester, Greg, CASA Lorance, Shauna, City of San Diego Public Utilities Department	Article 9 Section 18990.1(c)(3) seems inconsistent with the language added to s. 18990.1(a & b) which restricts local ordinances such that they may not impede organics recycling. Sub (c)(3) seems to supersede that restriction. Deletion of this language is requested to ensure an open market across California for organics recycling.	Section 18990.1 (a) clarifies that it does not limit a jurisdiction in adopting more stringent standards than the ones outlined in this chapter. The purpose of the specific limitations set forth in paragraphs 1-5 of section 18990.1 (b) are to ensure that jurisdictions do not impose restrictions on the movement and handling of waste and waste-derived recyclables that would interfere with or prevent meeting the organic waste recovery targets established in SB 1383. Meanwhile, section 18990.1 (c) clarifies that this chapter does not prohibit a jurisdiction from adopting operational zoning limits, setting facility hours, and other standards provided that the action is lawful and is consistent with section 40053 of the Public Resources Code. A revision to the regulatory text is not necessary.
1024	Kester, Greg, CASA	Article 11 Section 18992.1(a)(2) allows capacity planning to include reports generated which would account for organic waste not currently accounted for in the most recent Waste Characterization Study and cites biosolids and digestates as examples. Why would biosolids and digestates not be included in future waste characterization studies? This especially concerning given the requirements of AB 901 which should easily facilitate such inclusion.	CalRecycle has revised Section 18992.1(f) in response to this comment. The change adds another information source that can be used for this requirement. The change is necessary because statewide or local characterization studies typically do not characterize digestate/biosolid, as they are not a part of the commercial and residential waste stream. However, this information should be limited to using a published report or another form of data generated by the appropriate solid waste management entities within the county that provides organic waste disposal tonnages or percentages for digestate/biosolids. This data would be used in addition to either statewide or local characterization studies. The RDRS system will have some reporting of the disposal and other end destinations for some digestate and biosolids (if the reporting entity is over the tonnage thresholds and is not just sending it to another POTW or if they are using it onsite). Since this data will include large generators, CalRecycle will include this data in the capacity planning tool.
1025	Kester, Greg, CASA Lorance, Shauna, City of San Diego Public Utilities Department	Article 12 Section 18993.1(f) defines eligible recovered organic waste products which satisfy the procurement requirements of s. 18993.1(e). i. Sub (f)(1) stipulates that compost is an eligible product. We assume this includes biosolids compost but request explicit confirmation of that. Furthermore, there are many other biosolids products which should be considered as eligible recovered organic waste products. A jurisdiction should be given broad latitude in meeting this requirement and all biosolids products meeting the land application requirements of 40 CFR part 503 should be eligible. This includes use of biosolids for home use, on public parks and other property, golf courses, community gardens, etc.	Regarding biosolids compost, the current draft regulatory text considers compost an eligible recovered organic waste product as long as the final product meets the definition of compost, per Section 17896.2(a)(4), and is produced either at a compost operation or facility or large volume in-vessel digestion facility that composts on-site (refer to section 18993.1(f)(1)(A) and (B). Biosolids and/or digestate that do not meet the compost definition will not count towards the procurement target. CalRecycle disagrees with adding “other biosolids products”. The broad range of potential products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.

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1026	Kester, Greg, CASA	Article 12 Section 18993.1(f)(2) deletes pipeline injection as an eligible use of renewable gas for satisfying the procurement requirements. We understand that pipeline injection may be considered conveyance rather than an end use. However, there are numerous other potential end uses than the current definition allows. We recommend amending the definition as follows: Renewable gas used for fuel for transportation, electricity, ~~or~~ heating applications, **production of renewable hydrogen, energy storage, creation of bioplastics, or pipeline injection for use offsite for residential, industrial or commercial applications other than electricity, transportation or heating, and all other such applications that allow jurisdictions to avoid fossil gas use.**	It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while energy storage and renewable hydrogen may default to "electricity" for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Regarding pipeline injection, CalRecycle deleted pipeline injection as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target.
1027	Kester, Greg, CASA	2014 Waste Characterization Table – Please confirm that this Table has been updated to include biosolids data from 2014, since this serves as the baseline upon which compliance with the draft regulations is based. Please also provide clarity as to where this table can be found.	The table has not been updated. For the purposes of these regulations, the biosolids data were gathered from US EPA and the California Association of Sanitation Agencies. For 2014, the reported number was 173,000 dry metric tons (ADC 113,000 and landfilled 60,000).
15;0045	Lapis, N., Californians Against Waste	There are three things that I'm still hung up on that I'd like to discuss with you. This is from our last letter: 1. The determination of "technologies that constitute a reduction in landfill disposal" (Section 18983.2) must include a stronger and more transparent public process and address impacts on disadvantaged communities. • Multiple statutes, adopted policies and executive orders require the Department to address the environmental justice impacts of the regulations that they adopt[1]. Government Code Section 65040.12 defines that as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." If a technology applies for a determination pursuant to 18983.2, any potential disproportionate impacts on disadvantaged communities must be evaluated by both the applicant and the Department in making their determination. • Additionally, the proposed process for technologies will likely be used by some technologies and facilities that are not contemplated or evaluated in the environmental impact report for these regulations and that have a history of having a disproportionate impact on disadvantaged communities.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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		A separate, formal, administrative process and environmental review must be employed for technologies that have not been analyzed for this rulemaking. • Furthermore, when such a determination is be contemplated, the communities impacted by a new technology or facility must be adequately informed of the project and given the opportunity to submit comments.	
15;0046	Lapis, N., Californians Against Waste	2. Allowing the use of plastic bags for the collection of organic waste (Section 18984.1 (d)) will hinder the successful implementation of these regulations. • Non-compostable plastic bags pose a serious contamination threat to the organic waste stream as they break down and contaminate both finished compost and the environment more broadly. • The use of plastic bags encourages increased contamination, makes it significantly more difficult to verify generator compliance, makes contamination more difficult to see at composting facilities, and creates consumer confusion about what types of materials can be composted. Furthermore, programs that have allowed the use of plastic bags for food waste collection (such as Sacramento's Elmhurst pilot project) have not proven successful. • In order to reduce this threat and divert the maximum amount of organic waste from the landfill, we recommend there be a requirement to only use compostable bags. These can be certified by BPI, or another entity no less stringent. This will ensure that efforts to segregate organic waste do not go wasted, and instead allow for the most efficient and effective use of organic waste for the end means outlined in the regulations. As a cost-efficient alternative, waste generators can use a lining on the inside of their organics bins that remains intact while only the contents of the container are emptied into the collection trucks upon pick-up.	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
15;0047	Lapis, N., Californians Against Waste	3. A public commitment to adopting a second phase of the edible food recovery regulations no later than 5 years after implementation is crucial to achieving the 20% food recovery target identified in SB 1383. • While we believe the regulations regarding edible food waste are a promising start, we would request that there be a commitment made, in writing, to revisit and revise these regulations no later than 5 years after implementation. Because this type of program has never been administered by a state agency, at this scale, or through the lens of waste collection and organic recovery, it is of the utmost importance to reevaluate the rules once there has been some trial-and-error learning in the program. This would give stakeholders the opportunity to comment on both the shortcomings and successes of the program, and foster a more effective state-wide strategy.	CalRecycle will not make any commitment at this time to adopting a second phase of edible food recovery regulations because placing direct requirements on tier one and tier two commercial edible food generators should be sufficient for California to achieve the 20% edible food recovery goal. Food facilities and food service establishments that are not a tier one or tier two commercial edible food generator are exempt from SB 1383's regulations because they typically have smaller amounts of edible food that would otherwise be disposed available for food recovery.

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		• Moreover, given the inherent uncertain nature of the proposed regulations, the Department has no clear sense of how far the regulations will go towards achieving the 20% target in the regulations. Committing to reevaluating whether additional regulations are necessary is the only way to comply with that provision of SB 1383.	
15;0048	Lapis, N., Californians Against Waste	Finally—I'd like to talk about another concept with you. I think you should more explicitly identify that jurisdictions have the option to procure compost for use in "carbon farming" / "healthy soils" projects outside of their cities. (Similar to the project that San Francisco PUC developed for their biosolids based on the Marin Carbon Project research: https://www.eiseverywhere.com/file_uploads/e63cb884288b2efb1916742cfd1afa4a_Batjiaka-BiofestSFPUCbiosolids.pdf) I bring it up because jurisdictions are still freaking out about how they are going to procure X amount of compost if they don't have that much need, but this can help reduce those concerns since you can procure for use by somebody else. For instance, say the City of Lapis has a procurement requirement of 100,000 tons of compost, but we have very few parks and not much landscaping. We would be able to pay for the compost purchase and spreading on rangeland, which would otherwise be too low-value of a crop to purchase compost for.	The intent of the draft regulations is to allow jurisdictions to procure (either purchase or produce) recovered organic waste products for use or giveaway. For example a city could procure compost for use and application on rangelands. A city could use compost for "carbon farming" or "healthy soils" projects outside of city boundaries, but the compost must be donated to the landowner, not sold, in order to count for procurement. The city could also establish a direct service provider relationship with the landowner who would procure compost on the jurisdiction's behalf for use on their land. The city could also procure other recovered organic waste products, such as mulch or renewable gas energy products to meet the procurement target. These are examples for illustrative purposes only, recognizing that jurisdictions have different circumstances. CalRecycle plans to provide tools to jurisdictions once the rulemaking is finalized.
2068	Levin, Julie, Bioenergy Association of California	The Bioenergy Association of California (BAC) submits these comments on the proposed changes to the Organic Waste Reduction Regulations issued pursuant to SB 1383. BAC urges CalRecycle to expand the allowable end uses of renewable gas to provide as many beneficial alternatives for diverted organic waste as possible. Each jurisdiction's needs and infrastructure access will be different, so it is important to include all beneficial end uses of renewable gas generated from diverted organic waste. BAC represents more than 70 public agencies, private companies, local governments, utilities, community groups, non-profits, and others working to promote sustainable bioenergy development. BAC strongly supports the adoption of the Organic Waste Reduction Regulations with the modifications described below. With these modifications, the proposed regulations will ensure that organics diversion meets the requirements of SB 1383, maximizes co-benefits, and maintains flexibility so that implementation will be as cost-effective and beneficial as possible.	Regarding including "all beneficial end uses of renewable gas generated from diverted organic waste", the current proposed definition of "renewable gas" is consistent with statutory language per SB 1383 Section 1(b) that mandates the adoption of policies for beneficial uses of biomethane from "solid waste facilities". In-vessel digestion facilities are solid waste facilities, which allows the department to verify that these facilities are reducing the disposal of organic waste. CalRecycle disagrees with the open-ended approach to renewable gas end uses described in the comment. The broad range of potential recovered organic waste products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors
2069	Levin, Julie, Bioenergy Association of California	BAC urges CalRecycle to broaden Section 18993.1(f)(2) to include additional end uses of renewable gas generated from diverted organic waste, including industrial and commercial end uses, residential cooking, energy storage, and production of renewable hydrogen. Many studies have found that industrial, commercial and manufacturing processes may be difficult to electrify, but can be decarbonized by converting to renewable gas generated from organic waste. The current draft regulations may not include all industrial, commercial, and manufacturing end uses as currently written. In addition, the draft regulations do not include cooking, either resid ential or commercial. Finally, the current draft does not include use of	It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while energy storage and renewable hydrogen may default to "electricity" for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the

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		renewable gas for energy storage or for renewable hydrogen, both of which will be important to meet the requirements of SB 100 (de León, 2018) for 100 percent clean energy by 2045.	eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
2070	Levin, Julie, Bioenergy Association of California; Carmichael, Tim, Southern California Gas Company	BAC recommends that CalRecycle amend this section as follows from the October 2 version: (2) Renewable gas used for fuel for transportation, electricity, ~~or~~ heating applications, **production of renewable hydrogen, energy storage, or pipeline injection for use offsite for residential, industrial or commercial applications other than electricity, transportation or heating.**	It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while energy storage and renewable hydrogen may default to "electricity" for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Regarding pipeline injection, CalRecycle deleted this as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target.
2071	Levin, Julie, Bioenergy Association of California; Carmichael, Tim, Southern California Gas Company	BAC urges CalRecycle to expand Section 18993.1(g) to include the following additional metrics for the amount of pipeline biomethane and renewable hydrogen generated from one ton of diverted organic waste. **(G) 2925.3 SCF (standard cubic feet) of biomethane for pipeline injection1** (1 This metric is based on the U.S. Department of Energy's conversion rate for diesel gallon equivalents to standard cubic feet of gas, which is 139.30 SCF/DGE. See, https://afdc.energy.gov/fuels/equivalency_methodology.html.) **(H) 23.803 kg of hydrogen2** (2 This metric is based on the US DOE's conversion rates for diesel gallon equivalents to gasoline gallon equivalents to kg of hydrogen, available at: https://epact.energy.gov/fuel-conversion-factors.) **(I) for any other use of renewable gas included in section (f)(2) above, the jurisdiction must demonstrate the appropriate metric for qualification under this Article.**	It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while energy storage and renewable hydrogen may default to "electricity" for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Regarding pipeline injection, CalRecycle deleted pipeline injection as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target.

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2072	Levin, Julie, Bioenergy Association of California	By adding these provisions, the regulations will give local jurisdictions maximum flexibility to determine the highest and best end use of biogas from diverted organic waste. This is important since each jurisdiction and waste facility has different energy needs and proximity to different infrastructure (transmission lines, pipelines, vehicle fueling infrastructure, etc.). The final regulations should not exclude beneficial end uses of renewable gas, which are broader than electricity, heating, and vehicle fuels.	The current regulatory proposal provides jurisdictions with flexibility to choose the recovered organic waste products that fit local needs, including various renewable gas options. Other industrial, commercial, or residential uses may fit into the existing framework, but it would be overly burdensome and unnecessary to identify and develop individual conversion factors for every potential end use. It is not the intent of the proposed regulatory text to exclude the end uses, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while energy storage and renewable hydrogen may default to "electricity" for the purposes of establishing a conversion factor. To specify and develop conversion factors for every conceivable end use of renewable gas, including those not currently in existence or operation would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
2073	Levin, Julie, Bioenergy Association of California	Finally, BAC supports the recommendation of EBMUD and CASA to include sewage sludge in the definition of "renewable gas."	CalRecycle disagrees with the commenter's argument to allow renewable gas derived solely from sewage sludge to be eligible for procurement because a Publicly Owned Treatment Works (POTW) is not a solid waste facility and therefore not in the scope of the legislative intent of SB 1383. Sewage sludge is also not typically destined for a landfill, so its use does not help achieve SB 1383's landfill diversion goals. It is inconsistent with the requirements of SB 1383 to incentivize or mandate activities that do not contribute to landfill diversion of organic waste. However, POTWs that accept food waste can technically do so without a solid waste facility permit, they are explicitly authorized to do so per Title 14, therefore making it functionally similar to incentivizing biomethane from a solid waste facility. Therefore it is justifiable to allow the portion of renewable gas resulting from the digestion of food waste that is recovered at POTWs that accept food waste from a facility or operation identified in Section 18993.1(h)(1)(A)-(C) to count toward the procurement targets.
1028	Lorance, Shauna, City of San Diego Public Utilities Department	1. The definition of 'renewable gas' in Article 1 should be broadened to reflect all actual possible sources of renewable gas. The language of §1892(a)(62) defines 'renewable gas' as only that gas produced from (1) diverted organic waste material that is (2) subjected to in-vessel digestion treatment. San Diego urges CalRecycle not to adopt a limited, special definition of renewable gas applicable only to the SB 1383 regulation. There are two reasons this change is suggested. First, there are already ongoing issues surrounding the renewable gas/biogas/biomethane vernacular in California public policy, and creating a new definition here will only add to this confusion. The definition here should be broadened to state simply that 'renewable gas' is that gas generated by the processing of organic waste material. In later portions of the regulation, language may then be added to limit the types of 'renewable gas' that may qualify for certain requirements1. (1 For example, the procurement requirement in Article 12 could be amended to state that a jurisdiction may procure renewable gas	The proposed SB 1383 regulatory definition of "renewable gas" necessarily limits the feedstock to landfill-diverted organic waste processed at an in-vessel digestion facility. This definition is consistent with statutory language per SB 1383 Section 1(b) that mandates the adoption of policies for beneficial uses of biomethane from "solid waste facilities". The definition is specific to the purpose of the statute and these regulations and does not impact or alter other definitions of renewable gas that are specific to the purpose of other statutes and regulations. In-vessel digestion facilities are solid waste facilities, which allows CalRecycle to verify that these facilities are reducing the disposal of organic waste. Regarding "other new and exciting technologies", CalRecycle disagrees with this approach for procurement. The broad range of potential recovered organic waste products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.

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		produced from diverted organicwastefeedstocks, so that the provision will function as intended, as a driver for recycling end-product gas market development.) Second, the definition should not be limited to renewable gas resulting from anaerobic digestion only, as many other new and exciting technologies exist to process organic wastes while also capturing the resultant methane for reuse (while also creating other useful biproducts to help avoid the need to landfill material). The fundamental purpose of SB 1383 is to reduce methane emissions through the capture and beneficial reuse of that methane, and the implementing regulation should not impose unwarranted restraints on the technology solutions available to affected jurisdictions. These unnecessary limits will only serve to drive up the cost of SB 1383 compliance for localities and ratepayers, and further delay the state's ability to meet the stated goals of the legislation. Requested amendment: Amend §1892(a)(62) as follows: **'Renewable gas' means gas produced during processing of organic waste.**	
1029	Lorance, Shauna, City of San Diego Public Utilities Department	2. The definition of 'landfill disposal' is overbroad. Article 2 §18983.1(a)(3) states that any disposition of organic waste that is not expressly listed in subsection (b) is deemed 'landfill disposal.' San Diego is concerned that structuring the definition of this practice beyond the normative understanding of the term will have unintended and negative consequences. Since the express goal of SB 1383 is to reduce fugitive methane emissions and beneficially reuse the captured methane, any management approach that achieves this goal, and wherein the material does not physically end up in a landfill (under any type of regulatory classification or purpose), should not be defined per se as 'landfill disposal.' If a given management approach, when subjected to the review and analysis procedure outlined in §18983.2, is deemed not to qualify as a 'reduction in landfill disposal,' the jurisdiction would likely not get diversion credit for that process. However, it should not also be penalized a second time for the same action, by the state then adding that amount to the jurisdiction's total waste landfilled, since it is not actually going to the landfill at all. In order to ensure that the SB 1383 regulation aligns with how solid waste disposal is tracked at the local level, it is requested that §18983.1(a)(3) be stricken. Requested amendment: strike text of §18983.1(a)(3)	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.
1030	Lorance, Shauna, City of San Diego Public Utilities Department	Second, it is unclear why §18993.1(f) does not expressly allow the use of other types of solid products beyond compost and mulch that have beneficial uses, such as biosolids for land application, or biochar.	CalRecycle disagrees with adding "other biosolids products" or biochar. The broad range of potential products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
1031	Lorance, Shauna, City of San Diego Public Utilities Department	Third, regarding applications of the gas resources that are a biproduct of the organics recycling process, the express allowance of 'pipeline injection' has been stricken from §18993.1({)(2). This is fundamentally problematic in that it implies that the end use of the gas must be identified, ensured and monitored by jurisdictions in order for a pipeline gas project to qualify under Article 12. It also	It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to "heating applications", while

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		necessitates a list of 'approved' beneficial applications of pipeline biogas in the regulation itself that will be difficult to amend in order to recognize new uses in the future. Moreover, it is not clear that CalRecycle has the authority to discredit certain uses of pipeline biogas by not including them in the list here. Again, the fundamental goal of SB 1383 is to reduce methane emissions through the capture and reuse of that methane. If methane is captured and processed so that it meets the existing requirements for injection into a common carrier pipeline, it should be presumed that its end use is beneficial when compared to it being simply emitted or flared. It is inappropriate for CalRecycle to micromanage the end use of pipeline-quality biogas, especially given how costly these projects are to implement already (hence there only being a couple operating in California currently, including the City of San Diego's facility), and how much this use may vary from day to day. Striking this language casts doubt on the eligibility of pipeline-injected gas to meet this regulatory requirement, devaluing the resource and essentially contradicting the current proceeding at the California Public Utilities Commission, which is intended to expand the use of biogas pipeline injection projects around the state.	energy storage and renewable hydrogen may default to “electricity” for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Regarding pipeline injection, CalRecycle deleted pipeline injection as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction’s procurement target.
1032	Lorance, Shauna, City of San Diego Public Utilities Department	Fourth, new language in §18993.1(h) places a number of new restrictions on the eligibility of biogas from a publicly-operated treatment work (POTW) to meet the Article 12 procurement requirement. In (h)(I) there is a limitation on eligibility based on the nature of the facility that the feedstock organic waste is received from. Given the rapid expansion currently occurring in the waste management and processing industry, this section should be open to a POTW's receipt of organic waste for processing from any entity available, as long as that waste would've otherwise been landfilled. It is not clear that all types of entities that are currently performing organic waste pre-processing services in the market are covered under the list included in (h)(1).	The purpose of the proposed regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. This requirement allows the department to verify that these facilities are reducing the disposal of organic waste.
1033	Lorance, Shauna, City of San Diego Public Utilities Department	Fifth, new language in §18993.1(h)(4) seems as though it would limit a POTW's procurement-eligible biogas generation by capping it at rate used in the algorithm to determine the minimum requirement imposed on a jurisdiction to procure. This would serve as a disincentive to facilities that are able to optimize their process enough to exceed the standard generation rate used in the algorithm. Why would the regulation's component that is intended to spur growth in the organics byproduct market include language prohibiting recognition of advancements in efficiency in that very same market? It is unclear why this limitation was included, and it should be removed. As long as a POTW is producing renewable gas from waste that would otherwise be landfilled/generate emissions, that gas should qualify under Article 12 if it is put to one of the long-recognized applications of (1) pipeline injection, (2) transportation fuel, or (3) power generation.	CalRecycle disagrees with the assumption that the draft regulations disincentivize codigestion of organic waste with sludge. The requirement that renewable gas be derived from diverted organic waste is necessary to ensure that when jurisdictions procure renewable gas from POTWS, CalRecycle can verify that gas is derived from landfill-diverted organic waste. The commenter appears to assume that the regulations require a separate accounting for the exact amount of renewable gas produced from organic waste received from solid waste facilities and the amount gas produced from sewage inflows. The regulations do not require this. The regulatory text is structured in a manner that uses the conversion factors developed with ARB to determine the maximum amount of renewable gas that constitutes a renewable organic waste product that could be produced at a facility. The regulations are agnostic as to the amount of gas produced by sewage inflows. For example, if a POTW receives 100 tons of diverted organic waste from solid waste facilities, digests it either through a standalone process or codigestion with sewage sludge, and produces renewable electricity, a maximum of 24,200 kWh (100 tons x 242 kWh) would be available as an eligible recycled organic waste product for the purposes of procurement (The same would apply to fuel or heating or a mix of products, just apply the appropriate conversion factor). If a

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			jurisdiction(s) is claiming they procured 50,000 kWh of renewable electricity from that facility, that would exceed the maximum production capacity that is possible. This would trigger CalRecycle review. The manner of digestion (codigestion or standalone) is not a factor, conversion factors are the same regardless of the process. This is a paper transaction only, the draft regulations do not mandate that the actual individual gas molecules procured by a jurisdiction be from the diverted organic waste feedstock. Again, the intent is to ensure recovered organic waste products are derived from landfill-diverted organics in order to meet the legislative mandates of SB 1383. Regarding facilities that "exceed the standard generation rate used in the algorithm", it is assumed this comment is referring to the conversion factors in Section 18993.1(g)(1). These conversion factors are intended to be a straightforward and transparent means for jurisdictions to convert the recovered organic waste product procurement target, measured in tons, to amounts of finished product. This approach does not require jurisdictions to submit individual measurements for the purposes of meeting their procurement target. If individual measurements were required or allowed to be submitted, the broad range of potential conversion factors raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
1034	Lorance, Shauna, City of San Diego Public Utilities Department	Sixth, the new language in (h)(4) is also problematic on a practical level, as it would serve as a disincentive for co-digestion of organic wastes with sewage sludge, as opposed to processing this material in dedicated digesters. Considerable research has shown the benefits of co-digestion of organics, that this process can yield significant increases in biogas production (and therefore capture and beneficial reuse) when compared to the digestion of each of these feedstocks on their own. Moreover, co-digestion as an infrastructure approach is sometimes more cost-effective for jurisdictions to implement, as it utilizes existing facilities as opposed to building entirely new self-contained ones. In order to provide maximum flexibility to localities to design cost-effective solutions that meet the fundamental requirements of SB 1383, San Diego urges CalRecycle to reconsider these kinds of constraints that will only push 'one size fits all' solutions on jurisdictions. Requested amendments: • Clarify that the definition of 'compost' under §18993.1(/)(1) includes biosolids compost. • Expand Article 12 procurement eligibility of organics recycling solid byproducts beyond compost and mulch. • Reinsert **'pipeline injection'** in §18993.1(!)(2). • Modify §18993.1(h)(1) so that any gas produced from organic waste otherwise landfilled would be eligible for Article 12 procurement. • Clarify or delete the gas credit 'cap' imposed by §18993.1(h)(4).	CalRecycle disagrees with the assumption that the draft regulations disincentivize codigestion of organic waste with sludge. The requirement that renewable gas be derived from diverted organic waste is necessary to ensure that when jurisdictions procure renewable gas from POTWS, CalRecycle can verify that gas is derived from landfill-diverted organic waste. The commenter appears to assume that the regulations require a separate accounting for the exact amount of renewable gas produced from organic waste received from solid waste facilities and the amount gas produced from sewage inflows. The regulations do not require this. The regulatory text is structured in a manner that uses the conversion factors developed with ARB to determine the maximum amount of renewable gas that constitutes a renewable organic waste product that could be produced at a facility. The regulations are agnostic as to the amount of gas produced by sewage inflows. For example, if a POTW receives 100 tons of diverted organic waste from solid waste facilities, digests it either through a standalone process or codigestion with sewage sludge, and produces renewable electricity, a maximum of 24,200 kWh (100 tons x 242 kWh) would be available as an eligible recycled organic waste product for the purposes of procurement (The same would apply to fuel or heating or a mix of products, just apply the appropriate conversion factor). If a jurisdiction(s) is claiming they procured 50,000 kWh of renewable electricity from that facility, that would exceed the maximum production capacity that is possible. This would trigger CalRecycle review. The manner of digestion (codigestion or standalone) is not a factor, conversion factors are the same regardless of the process. This is a paper transaction only, the draft regulations do not mandate that the actual individual gas molecules procured by a jurisdiction be from the diverted organic waste feedstock. Again, the intent is to ensure recovered organic waste

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		• Restructure §18993.1(h) (4) so that all gas produced through co-digestion of organics with sewage sludge is eligible for Article 12 procurement.	products are derived from landfill-diverted organics in order to meet the legislative mandates of SB 1383. Regarding facilities that "exceed the standard generation rate used in the algorithm", it is assumed this comment is referring to the conversion factors in Section 18993.1(g)(1). These conversion factors are intended to be a straightforward and transparent means for jurisdictions to convert the recovered organic waste product procurement target, measured in tons, to amounts of finished product. This approach does not require jurisdictions to submit individual measurements for the purposes of meeting their procurement target. If individual measurements were required or allowed to be submitted, the broad range of potential conversion factors raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
1035	Lorance, Shauna, City of San Diego Public Utilities Department	CalRecycle should have-and utilize-more flexibility in its enforcement provisions so as to not unduly penalize jurisdictions making good faith efforts toward compliance. In general, the CalRecycle enforcement provisions and timeframes seem unreasonably aggressive in light of the fundamental lack of organics recycling infrastructure in California today, and the cost and difficulty of building these facilities. Article 15 §18996.2 provides for 90-day Notices of Violation (NOVs) with an option of 180-day extensions. However, in many cases it will be highly unlikely that a lack of access to recycling capacity can be seriously addressed in 6-9 months. Construction of these facilities can take years, if not longer, and other extenuating circumstances can also lead to significant delays that are not the fault of the regulated jurisdiction. The enforcement provisions should be modified to provide CalRecycle with greater discretion to structure their enforcement based on the actual on-the-ground circumstances with a given jurisdiction deemed out of compliance. Requested amendments: • In §18996.2(a) (1) strike "~~180 days~~" and insert "**for a reasonable period according to the actions required**." • In §18996.2(a) (3) strike "~~12 months~~" and insert "**for a reasonable period according to the actions required**." • In §18996.2(a) (2)(A) strike "~~due to deficiencies in organic waste recycling capacity infrastructure~~" and insert "**any of the extenuating circumstances listed in §18996.2(a)(2)(C).**" • In §18996.2(a)(2)(A)(2), after "deficiencies" insert "**or other extenuating circumstances as listed in §18996.2(a)(2)(C)**." • In §18996.2(a)(2)(A)(2) strike "~~provision of organic waste collection service to be impracticable~~" and insert "**jurisdiction to violate the requirements of this chapter**."	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation.

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			The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets. With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to

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			comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction Finally, CalRecycle notes that the commenter recommends replacing all timelines with “for a reasonable period according to the actions required.” The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of “reasonable” is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how “reasonable” would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for “any extenuating circumstance” or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances are not limited to infrastructure deficiencies. They also include circumstances such as natural disasters. The section identified by the commenter applies additional prerequisites to the use of CAPs that are issued due to a lack of infrastructure, but it does not preclude CAPs from being issued for circumstances not related to infrastructure. No change to the regulatory text is necessary as the existing text accommodates the policy requested by the commenter.
1036	Lorance, Shauna, City of San Diego Public Utilities Department	9. CalRecycle should not be allowed to ignore the practicability determinations of jurisdictions when conducting enforcement. Article 15 §18996.2(a)(2)(A)(3) appears to make the consideration of jurisdictions' implementation schedules and determinations of feasibility of specific actions only a permissive consideration for CalRecycle3 (3 See "The Department may consider ... " at page 70, line 35. [emphasis added]), then goes on to expressly state that the Department shall not be restricted in imposing mandates on jurisdictions. Due to	Requiring CalRecycle to strictly follow an implementation schedule prepared by a jurisdiction would remove enforcement discretion from CalRecycle and allow jurisdictions to set compliance timelines in a manner that could potentially frustrate the statutory timelines organic waste diversion mandates in SB 1383. As such, CalRecycle will maintain the discretion to consider the implementation plans prepared by local jurisdictions, but not be mandated to follow them to the letter.

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		the variety of unique circumstances facing each jurisdiction that must comply with the SB 1383 program, it is inappropriate to allow the state to ignore the locality's perspective on their situation and approach. CalRecycle should be required to consider the implementation actions and schedules developed by jurisdictions, and precluded from imposing requirements that are Impracticable. In order to ensure that compliance occurs as swiftly and cost-effectively as possible, collaboration will be key going forward. Requested amendments: • In §18996.2(a)(2)(A)(3) strike "~~may~~" and insert "**shall**." • In §18996.2(a)(2)(A)(3), after "Corrective Action Plan," insert "**or**." • In §18996.2(a)(2)(A)(3) strike "~~but shall not be restricted in~~." • In §18996.2(a)(2)(A)(3), after "provided in the Implementation Schedule," insert a new sentence as follows "**In exercising its authority under this section, the Department shall not impose on jurisdictions actions that are impracticable.**"	
1037	Lorance, Shauna, City of San Diego Public Utilities Department	10. CalRecycle should not penalize jurisdictions for the actions of the state or federal government that are beyond their control. San Diego appreciates the fact that this proposed regulation takes into account factors beyond the control of jurisdictions that can fundamentally impact their ability to comply with the program's requirements. However, the current list of 'extenuating circumstances' at In §18996.2(a)(2)(C) does not include actions of the state or federal governments. Due to the many permits and approvals from these entities that will likely be required as a fundamental part of any locality's compliance solution, jurisdictions should be provided with assurances that they will not be penalized for the acts of these entirely separate entities. Requested amendments: in §18996.2(a)(2)(C), include "**acts of state or federal government entities**."	"Extenuating circumstances" under Section 18996.2 is already defined to include "delays in obtaining discretionary permits or other government approvals."
1038	Lorance, Shauna, City of San Diego Public Utilities Department	11. The Department Penalty Amounts for CalRecycle enforcement are extremely high, and clarification is needed as to when they will be imposed so that jurisdictions can appropriately manage risk. Although San Diego understands that enforcement authority is a critical component of program implementation, it should be pointed out that the penalty schedule in the SB 1383 proposed regulation is extremely high. Absent more clarity as to how these major fines will be levied, it is conceivable that a jurisdiction could face fines so sizable so as to bankrupt it. For example, §18997.3 specifies a minimum $500 for a "minor" violation, but it is unclear what actions or failures of action would trigger this classification. Penalties of up to $4,000 per violation per day are excessive for minor violations. Additionally, it is unclear what a "critical" component of the chapter would be, resulting in fines of up to $7,500 per violation, per day. "Major" violations, resulting in up to $10,000 per violation per day could be levied for "failing to report any information to the Department as required in §18994.1 and §18994.2." In addition, it should be specified that accidentally leaving a piece of information out of the voluminous reporting does not constitute a "major" violation.	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires. It is unclear from the comment under what circumstances a "minor" violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines. With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is

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		We would urge CalRecycle to add language to the regulation providing clarity regarding what kinds of violations relate to each penalty tier, and to consider restructuring the penalty section somewhat to allow for ramp-ups of enforcement and penalties that can be better tailored to the unique circumstances facing a given jurisdiction. Requested amendments: • Clarify the specific actions and violations that could lead to a penalty at each tier. • At §18997.3(b)(3)(F), after "jurisdiction" insert "**intentionally**."	considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation. Regarding factors taken in to consideration when penalty amounts are set, in addition, the regulatory language defining a "major" violation takes into account knowing, willful or intentional actions. And the factors in subdivision (d) of this section allow consideration of the willfulness of the violator's conduct in setting a penalty level within the appropriate range. The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires. It is unclear from the comment under what circumstances a "minor" violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines. With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation.
5001	Lovison, S., Unknown	First and foremost, I do believe that there is a severe lack of infrastructure capacity to support this regulation and its goals for new organic waste processing, and that the timeline provided by SB1383 falls short of allowing enough time for jurisdictions and facilities operators and/or owners to expand their current facilities or build new ones and to develop a system capable of accommodating the new requirements to achieve compliance.	Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.

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			Comment noted. This rulemaking does not put performance standards on facilities relating to organic waste diversion. Instead, it places measurement requirements on facilities that were crafted pursuant to stakeholder feedback. Jurisdictions are required, for example with mixed waste collection systems, to route waste to high diversion organic waste processing facilities meeting a 75% diversion standard. However, that standard is not mandatory on all facilities. It may be, rather, an incentive for facilities to increase efficiency in order to draw business.
5002	Lovison, S., Unknown	There are several barriers to the needed fast-expansion and an urgent, substantial alteration to our current infrastructure required by SB1383, that did not seem to have been taken into account when drafting this regulation, more precisely several regulatory requirements, a possible community push-back and a lack of guaranteed feedstock, that may retard even further the concretization of such infrastructural projects, and as a consequence, the achievement of SB1383's goals.	"Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. Comment noted. This rulemaking does not put performance standards on facilities relating to organic waste diversion. Instead, it places measurement requirements on facilities that were crafted pursuant to stakeholder feedback. Jurisdictions are required, for example with mixed waste collection systems, to route waste to high diversion organic waste processing facilities meeting a 75% diversion standard. However, that standard is not mandatory on all facilities. It may be, rather, an incentive for facilities to increase efficiency in order to draw business."
5003	Lovison, S., Unknown	Indeed, to propose improvements or add new infrastructure and facilities, current and new facilities operators may need to request and get approval for new air district, solid waste, or land use permits, as well as undergo lengthy environmental review processes. These review processes may require even longer period of times, should they be faced by a strong pushback coming from the local communities, that often do not want to be affected by such changes and have to deal with traffic and odor concerns related to the new or expanded facilities.	"Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that

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5004	Lovison, S., Unknown	This leads me to my next point, which is the fact that no matter where the new facilities will be built, someone will have to face the consequences of it. Unless we heavily invest in new technologies and build extremely modern and state-of-the-art facilities running on clean energy as other countries have already done, (realization that would require a stellar amount of funds and capital and that are simply not currently supported), this new infrastructural system will cause new externalities and issues, that will affect both the environment and quality of life of many local communities.	"Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. Comment noted.
5005	Lovison, S., Unknown	All the points stated above, can easily make facility operators reluctant to commit to additional resources without first securing feedstock contracts. In short, facilities will expand once that entities will show that they collect more material than the amount that current facilities can process. Unfortunately, at the moment the collection and recovery rate for organic material in our jurisdictions is still pretty low, and your own report shows that there are existent facilities that still have extra room and capability for processing more organic material than what is currently recovered.	Comment noted. A change to the regulatory text is not necessary. Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383

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5006	Lovison, S., Unknown	From here, the need for cites and jurisdiction to create and develop more effective organics collection programs as key to driving processing facility expansion, but this leads us to my next issue: lack of state and local funding to implement them.	Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
5007	Lovison, S., Unknown	In order for this regulation to achieve its set goals of organic recovery, and for processing facilities to be able to process all the organic waste more easily and effectively, what would make more sense is a separation of the organic material at the source. Too many houses, apartments complexes and commercial activities still utilize commingled or single-stream waste receptacles, and this leads to incredibly high rates of contamination and the need for lengthy and elaborate separation activities and many extra steps at the processing facilities , in order to be able to recover, some percentage of organic material from a mixed stream waste.	Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: "The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new mixed waste processing systems provided that the receiving facilities demonstrate they are

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			capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements." The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: "With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of material. For example, metals, paper, and plastics are remanufactured through distinct processes (e.g. metal is smelted, paper is pulped and washed). Largely because of this, while material may be valuable as a homogenous commodity, it can become difficult or impossible to recycle when it is contaminated with other materials (e.g. many materials lose their value when they are commingled with other materials.) This principle holds true, and is perhaps more of a factor in the recovery of organic waste. Required source-separation of organic waste helps ensure that organics are kept clean, separate and recoverable. However; throughout the informal regulatory engagement process stakeholders raised concerns about potential costs associated with providing commercial and residential generators with a third container to source separate organic waste. Stakeholders also noted that several cities and counties implement single container collection services and process all the collected material for recovery. Stakeholders argued that allowing the use of a single-container collection system is a viable and cost-effective alternative that can help the state meet that statutory organic waste recovery targets. To respond to stakeholder requests for additionally flexibility CalRecycle crafted this section and Section 18984.2. These sections allow alternatives to providing a three-container source-separated organic waste collection service. Under these section jurisdictions are allowed to require their generators to use a service that does not provide the generators the opportunity to separate their organic waste for recovery at the curb. In order to ensure that the state can achieve the statutory organic waste reduction targets, these collections services are required to transport the containers that include organic waste to high diversion organic waste processing facilities that meet minimum organic content recovery rates (content recovery rates are specified in Subdivision (b) of this section)…" The commenter has stated in each comment period, that they believe the requirement to recover 75 percent of the organic content collected in these mixed waste collection services is unrealistic and infeasible. In turn CalRecycle staff repeatedly communicated to the commenter that the recovery targets cannot be lowered without compromising the integrity of the regulations. This was further documented for this commenter and the public in the ISOR: "These minimum recovery rates are necessary because when the opportunity to recover material through source separation is lost, the state must ensure that minimum recovery levels are met at processing facilities. While this section provides additional flexibility to jurisdictions, CalRecycle must consider its obligation to ensure that the regulations are designed to achieve the statutory

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			targets. If 100 percent of jurisdictions employed this collection option in 2022 the state could not meet the mandatory recovery target of 50 percent unless at least 50 percent of the organic waste collected from these services is recovered. Similarly, if 100 percent of jurisdictions employed this collection option in 2025 the state could not meet the mandatory recovery target of 75 percent unless 75 percent of the organic waste collected from these services is recovered. Therefore, in order to meet the recovery targets specified in statute and the state's ultimate climate goals the recovery standards included in this section are the minimum standards necessary. As generation of organic waste increases with population growth, these minimum recovery rates may need to be revisited. As stated previously the organic waste reduction targets are linked to a 2014 baseline of 23 million tons. This requires the state to dispose of no more than 5.7 million tons by 2025. If, as CalRecycle projects, generation increases to 26 million tons of organic waste by 2025, recovering 75 percent of 25 million tons will only reduce disposal to slightly more than 6 million tons, resulting in the state missing its organic waste recovery targets. The need for this rate increase could be mitigated if higher recovery rates are achieved through source separation, or if efforts to increase source reduction through food recovery and other methods are successful. However, the recovery rates established in this regulation should be considered an absolute minimum." CalRecycle has, prior to and during this rulemaking, communicated that the recovery efficiency requirements established in the regulation is the minimum level that the statute can tolerate. The commenter suggests existing infrastructure that cannot meet this standard should be "protected" or provided a "safe-harbor." The commenter requests changes in the proposed regulations that cannot be reconciled with the statutory targets because CalRecycle finds that it cannot propose a regulation consistent with a statutory 2025 target that permits an unknown portion of the state from implementing the requirements necessary to achieve that target. CalRecycle acknowledges the role of existing infrastructure and acknowledges that previous investments in infrastructure were consciously made to achieve targets that were established prior to the adoption of SB 1383. However, the legislative direction in SB 1383 is unmistakably clear. The Legislature required CalRecycle to adopt regulations to achieve mandatory organic waste reduction levels. Nothing in the regulations prevents facility operators or jurisdictions from investing in facility upgrades or adapting existing facilities to process waste in a manner that meets the minimum regulatory requirements. Comment noted. CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. The provisions of Section 40004 are general legislative findings and declarations applying to the AB 341 (2011) mandatory commercial recycling program and not specific, affirmative legal requirements CalRecycle is required to adhere to in the proposed regulations. SB 1383 contains specific mandates on organic waste diversion that CalRecycle is required to observe in this

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			rulemaking. The findings and declarations in Section 40004 recognize that adequate processing and composting capacity are essential for diversion and disposal reduction. CalRecycle does not dispute this necessity. But CalRecycle is also more specifically subject to the findings and declarations in SB 1383 (2016, PRC Section 42652) that state that the disposal reduction targets in SB 1383 are essential to achieving the statewide recycling goal of 75% in PRC Section 41780.01 and that significant investment is required to meet these goals and that state and local funding mechanisms are needed to support this expansion. The Legislature acknowledges in this section that infrastructure investment and capacity is a central issue to the success of SB 1383. Since the specific controls the general and the more recent statute controls under common rules of statutory construction, CalRecycle does not find a conflict with Section 40004.
5008	Lovison, S., Unknown	Other countries have successfully implemented effective scheme of waste separation at the source, that can successfully help an optimization of the activities of both the recycling and composting infrastructure, but this again requires a lot of funding not only to finance the new system's collection requirements, waste receptacles, garbage drivers and so on, but also to implement an extensive program of education and outreach for the public. In fact, I strongly believe that waste generators need to better understand how to source separate, and the more this is a standardized process among facilities and jurisdiction, the simpler and more efficient the outcome will be. If consumers understand the characterization of their own waste, how their waste get processed at the processing and recovery facilities and how that waste that is finally disposed impacts our environment, then maybe they will be more likely to engage in waste reduction behaviours and will help more in preventing contamination at the source, thus facilitating and speeding up the waste processing at our facilities, and helping achieving better results both in composting and recycling.	As noted in the SRIA, CalRecycle derived this information from a survey with a hauler currently performing contamination monitoring services. The costs for fuel and collection are included in the cost estimates that were provided in Table 3 in the SRIA, and updated in Tables 7 and 8 in Appendix A. The commenter points out that wages in their region (Santa Barbara) are much higher. CalRecycle acknowledges that wages in some regions may be higher, just as wages in other regions will be lower. CalRecycle notes that according to the Bureau of Labor Statistics (BLS) the median hourly wage for refuse and material collectors is $17.92 per hour. The 90th percentile wage is $31.74 per hour. BLS further identifies California's hourly mean wage as $25.83. CalRecycle's estimates are reasonable and more conservative than the BLS averages for the state.
5009	Lovison, S., Unknown	Another and final concern of mine, is the lack of staff and personnel working in waste management and in particular, in waste processing facilities and annexed jobs. Implementing these new goals and building and expanding current facilities, would indeed require not only a consistent investment in terms of funds, but also of human capitals. Work-shifts at waste processing facilities and MRFs are long and exhausting and demand those working there to be constantly subjected to strong pollution, odor and extenuating working conditions. Despite the opportunity for the creation of new jobs, not many people are willing to take on such a challenging job. This may create e huge deployment of capital to invest in new facilities, without the guarantee that there would be enough people willing to dedicate their life to make them run and work effectively. My concern of staff shortages also extends to all the phases of inspections, reviews, route-reviews, reporting, enforcement, waste composition studies and so on, demanded by this regulation.	Comment noted. The SRIA provides a thorough overview of the fiscal and economic impact the implementation of the regulations will have on a statewide level. CalRecycle took a closer look and revised its fiscal and economic projections to reflect the final regulatory text. The revised estimates are presented in the Appendix to the ISOR. Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA).

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2043	Macy, Jack, San Francisco Department of the Environment	Article 3. Organic Waste Collection Services Section 18984.1 Three-container Organic Waste Collection Services (a)(1)(A) We appreciate the addition of the standard for accepting compostable plastics include in organic collection service. For consistency, we recommend referencing the applicable requirements specified in sections 42370.2 (e)(2) of the Public Resources Code and requiring that all compostable plastic products be labeled "compostable. The Public Resources Code includes the reference to applicable standard specifications, including ASTM D6400 and D6868.	Thank you for the comment. Part of the comment is in support of the current language. Existing Public Resources Code already specifies that that all compostable plastic products be labeled "compostable," with reference to applicable standard specifications, including ASTM D6400 and D6868. Nothing precludes a jurisdiction from requiring compostable plastic to meet third party requirements in addition to those in Sections 18984.1(a)1)(A) and 18984.2(a)(1)(C). CalRecycle will clarify this in the FSOR. In regards to eliminating compostable plastics, CalRecycle determined that it would be acceptable if these materials are placed in green or blue containers if the materials meet appropriate standards and the receiving facility accepts the materials for purposes of recycling. Nothing in the regulations precludes a jurisdiction from limiting these materials and nothing precludes a facility from not accepting these materials. While it is not clear that rigid compostable plastics can be readily used in composting operations given the timeframes needed for the materials to decompose, there may be technology changes in the future that allow rigid compostable plastics to be recycled/composted more readily.
2044	Macy, Jack, San Francisco Department of the Environment	We highly recommend that you also require certification by the Biodegradable Product Institute (BPI) or other third party recognized by CalRecycle. The standard specification (ASTM D6400) results demonstrate the ability of a plastic product to be labeled as compostable in an industrial composting facility. BPI facilitates crucial technical review to ensure the tests were conducted consistently in an approved lab. The third-party entity also monitors whether the commercially marketed product is the same as the product tested and promotes a consist labeling standard to comply with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Green Guides).	Thank you for the comment. Part of the comment is in support of the current language. Existing Public Resources Code already specifies that that all compostable plastic products be labeled "compostable," with reference to applicable standard specifications, including ASTM D6400 and D6868. Nothing precludes a jurisdiction from requiring compostable plastic to meet third party requirements in addition to those in Sections 18984.1(a)1)(A) and 18984.2(a)(1)(C). CalRecycle will clarify this in the FSOR. In regards to eliminating compostable plastics, CalRecycle determined that it would be acceptable if these materials are placed in green or blue containers if the materials meet appropriate standards and the receiving facility accepts the materials for purposes of recycling. Nothing in the regulations precludes a jurisdiction from limiting these materials and nothing precludes a facility from not accepting these materials. While it is not clear that rigid compostable plastics can be readily used in composting operations given the timeframes needed for the materials to decompose, there may be technology changes in the future that allow rigid compostable plastics to be recycled/composted more readily.
2045	Macy, Jack, San Francisco Department of the Environment	Along with the third-party certification requirement and addition of the D6868 standard, facilities that submit annual verification should be able to further specify the type of compostable plastic resin or product and use their own labeling criteria for acceptability. Rather than a blanket statement of acceptance of "compostable plastics," facilities may have other criteria that allow them to process and recover organics including compostable plastic products. The intent of the regulation	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many

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		appears to try to allow facilities to accept if they can recover. We recommend adding additional language to empower facilities to specify the type of resin(s) (paper coated with compostable plastic resin, PLA, bagasse molded fiber, etc.) and product(s) (bag, clear cups, cutlery, etc.).	facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
2046	Macy, Jack, San Francisco Department of the Environment	(a)(1)(B) Annual verification of service levels for businesses granted waivers is not a good use of enforcement energy given that the business has already been identified to generate a small amount of organic material. We're grateful that the frequency has been updated to every five years.	CalRecycle has revised the verification period to five years in response to this comment. Thank you for the support comment. This comment is in support of the current language.
2047	Macy, Jack, San Francisco Department of the Environment	Section 18984.8 Organic Waste Generator Requirements (b)(1) The added detail that interior containers for customers should be either color-coded OR have labels is inconsistent with best practices and AB 827 requirements. AB 827 requires that affected business maintain containers "clearly marked with educational signage indicating what is appropriate to place in the organic waste recycling bin or container in accordance with state law and the local jurisdiction's solid waste ordinances and practices" by July 1, 2020. Whether color-coded or not, the interior containers should be required to be labeled. The best practice would be to require labels to be color-coded to match the material stream.	Thank you for the comment regarding the additional time, great cost savings, and easier compliance with the container color and label requirements. That comment is in support of current language. This section is necessary to ensure that containers are properly labeled which is necessary to ensure that collected organic waste is clean and recoverable. The section specifies that a jurisdiction may comply by placing a label (e.g., sticker or hot-print) with text or graphics indicating acceptable materials for that container on the body or lid of the container, or by imprinting text or graphics on the body or lid of the container that indicate which materials may be accepted in that container. The labeling requirements were refined through the informal public rulemaking process to accommodate the various types of labels jurisdictions currently use on their containers. Stakeholders indicated that these types of labels are effective and durable. Correctly-colored labels may be applied to existing bins or lids until the containers are replaced at the end of their useful life. Labeling requirements, commencing January 1, 2022, only apply to new containers or lids. Thus, imprinting of labels would be directly onto new containers, either at the end of old containers' useful life or by 2036. A jurisdiction's designee can place labels on the containers. The regulations already apply to all containers provided by a hauler, including temporary dumpsters. The regulations specify that all containers provided by a hauler must meet both the container color and container label requirements by 2036. However, the regulations do allow for either the lid or the body to meet the color requirement.

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			With respect to compactors owned by private businesses and not the hauler, the containers may conform with either the container color requirements or the container label requirements. In regards to the interior containers, this was the least costly and burdensome approach and still achieves the necessary organic disposal reduction. Those businesses subject to AB 827 will have to meet that statute's signage requirements. Nothing in these SB 1383 regulations precludes a jurisdiction from requiring businesses to have signage. In regards to the lid comment, a change was made to allow for the exposed portion of lid or body to be required color and to allow the required color to be on either the lid or the body, not just the lid. The change is necessary because this approach is the least costly and burdensome one that still achieves the organics disposal reductions. For the text and graphics, this section references that primary materials must be included. If there is a change in the primary materials, then the information would need to be updated as containers are replaced. The regulations are allowing flexibility on size of the label (text and graphics), the requirement is only for primary materials, and all containers need labels. However, this includes all containers and residential/non-residential. Also, for consistency purposes, CalRecycle revised Section 18984.8(c)(1) to mention primary items. In regards to the new technology, CalRecycle is unclear on how that will help educate the generators. Nothing prohibits jurisdiction from mailing labels for existing containers, in addition to ensuring that new containers are properly labeled. he current text reflects stakeholder input during the informal rulemaking period that it would be costly to place labels on all containers. CalRecycle determined that this change would provide jurisdictions with flexibility to implement less burdensome education methods (e.g., labels on new containers) that ensure organic waste is collected and recovered, to support the state's efforts to keep organic waste out of landfills and reduce greenhouse gas emissions. However, nothing in the regulations prohibits a jurisdiction from placing labels on all containers at an earlier time.
2048	Macy, Jack, San Francisco Department of the Environment	(d)(e) We appreciate the source reduction prioritized by allowing businesses to maintain their existing, functional containers. We'd recommend requiring commercial businesses comply with the labeling requirements if they choose not to purchase color-coded containers.	Thank you for the comment regarding the additional time, great cost savings, and easier compliance with the container color and label requirements. That comment is in support of current language. This section is necessary to ensure that containers are properly labeled which is necessary to ensure that collected organic waste is clean and recoverable. The section specifies that a jurisdiction may comply by placing a label (e.g., sticker or hot-print) with text or graphics indicating acceptable materials for that container on the body or lid of the container, or by imprinting text or graphics on the body or lid of the container that indicate which materials may be accepted in that container. The labeling requirements were refined through the informal public rulemaking process to accommodate the various types of labels jurisdictions currently use on their containers. Stakeholders indicated that these types of labels are effective and durable. Correctly-colored labels may be applied to existing bins or lids until the containers are replaced at the end of their useful life. Labeling requirements, commencing January 1, 2022, only apply to new containers or lids. Thus, imprinting of labels would be directly onto new containers, either at the end of old containers' useful life or by 2036.

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			A jurisdiction's designee can place labels on the containers. The regulations already apply to all containers provided by a hauler, including temporary dumpsters. The regulations specify that all containers provided by a hauler must meet both the container color and container label requirements by 2036. However, the regulations do allow for either the lid or the body to meet the color requirement. With respect to compactors owned by private businesses and not the hauler, the containers may conform with either the container color requirements or the container label requirements. In regards to the interior containers, this was the least costly and burdensome approach and still achieves the necessary organic disposal reduction. Those businesses subject to AB 827 will have to meet that statute's signage requirements. Nothing in these SB 1383 regulations precludes a jurisdiction from requiring businesses to have signage. In regards to the lid comment, a change was made to allow for the exposed portion of lid or body to be required color and to allow the required color to be on either the lid or the body, not just the lid. The change is necessary because this approach is the least costly and burdensome one that still achieves the organics disposal reductions. For the text and graphics, this section references that primary materials must be included. If there is a change in the primary materials, then the information would need to be updated as containers are replaced. The regulations are allowing flexibility on size of the label (text and graphics), the requirement is only for primary materials, and all containers need labels. However, this includes all containers and residential/non-residential. Also, for consistency purposes, CalRecycle revised Section 18984.8(c)(1) to mention primary items. In regards to the new technology, CalRecycle is unclear on how that will help educate the generators. Nothing prohibits jurisdiction from mailing labels for existing containers, in addition to ensuring that new containers are properly labeled. he current text reflects stakeholder input during the informal rulemaking period that it would be costly to place labels on all containers. CalRecycle determined that this change would provide jurisdictions with flexibility to implement less burdensome education methods (e.g., labels on new containers) that ensure organic waste is collected and recovered, to support the state's efforts to keep organic waste out of landfills and reduce greenhouse gas emissions. However, nothing in the regulations prohibits a jurisdiction from placing labels on all containers at an earlier time.
2049	Macy, Jack, San Francisco Department of the Environment	Section 18984.5 Container Contamination Minimization (b) We strive to have all route bins regularly visually inspected on the surface and tagged for contamination as needed by drivers during collection. To do a more thorough inspection for contamination even for randomly selected bins as this section requires could involve significant additional dedicated staff time. Annual inspections in combination with the reporting required for each incident stipulated in Section 18984.6 for all routes will still be very onerous and that level of reporting unnecessary.	It appears that the commenter's description would be in compliance with the random route review requirement, i.e., that all route bins are regularly visually inspected on the surface and tagged for contamination as needed by drivers during collection. Additionally, a change to the reporting requirement is not necessary because reporting is only a summary level of information, i.e., number of route reviews, number of times notices, violations, or targeted education materials were issued to generators for prohibited container contaminants.
2050	Macy, Jack, San Francisco	Section 18984.6 Recordkeeping Requirements for Container Contamination Minimization	Comment noted, CalRecycle revised and streamlined the recordkeeping requirements. The recordkeeping requirements for enforcement orders represent the minimum level of record

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	Department of the Environment	We note that the requirement to document direct contact other than written notices was removed, which is a small concession. The remaining documentation will still be much too onerous for drivers or other designees to consistently perform. We recommend record keeping on a summary level (notices issued per month, for example) rather than individual instances of tags and contacts.	keeping that any entity taking enforcement would need to keep, regardless of the requirements of this regulation.
2051	Macy, Jack, San Francisco Department of the Environment	Article 4. Education and Outreach Section 18985.3 Recordkeeping Requirements for a Jurisdiction's Compliance with Education and Outreach Requirements (a) (2)-(3) We appreciate the addition of the allowance to use electronic media, but still this level of record keeping is unnecessary. It is very onerous and costly and unnecessary to show reasonable compliance efforts. Jurisdictions should be able to summarize education and outreach efforts, showing copies of education materials with possibly some samples of social media, and not have to show a detailed record by date.	Comment is vague. A "summary" of education and outreach is not objective regulatory standard, it is unclear how this could be evenly verified or enforced. The specific records that are required are necessary to verify compliance with the active education and outreach requirements.
2052	Macy, Jack, San Francisco Department of the Environment	Article 12. Procurement of Recovered Organic Waste Products Section 18993.1 Recovered Organic Waste Product Procurement Target San Francisco does not have anywhere near the end use capacity to meet the procurement targets of compost, fuel or mulch products. Based on the City's 2018 reported population, we would be required to procure 710,717 equivalent tons of products made from recovered organics. San Francisco is one of the densest cities in California and is geographically restricted with limited land for compost or mulch application. Additionally, our municipal fleet is transitioning from renewable diesel to all-electric.	The commenter's procurement target calculation is inaccurate. According to the Department of Finance, the City of San Francisco had a 2018 population of 880,980. Multiplied by the per capita procurement target of 0.08 = 70,478 tons of organic waste, which is San Francisco's recovered organic waste procurement target, not 710,717. CalRecycle recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. If, as mentioned in the comment, the city has limited need for compost, mulch, or fuel, the city may procure electricity or heating applications derived from renewable gas.
2053	Macy, Jack, San Francisco Department of the Environment	Instead of requiring jurisdictions meet a specific goal and report on procurements annually, require that all public and private landscape construction use compost and recycled mulch. CalRecycle could support with template specifications for recovered organic waste products.	Section 18989.2 will require jurisdictions to adopt an ordinance or other enforceable requirement requiring compliance with the MWELO, Title 23, Division 2, Chapter 2.7 of the California Code of Regulations. However, compost and mulch used under MWELO does not automatically count towards procurement. CalRecycle's approach of a procurement target is necessary for jurisdictions to measure compliance with Article 12, which in turn is necessary to achieve the ambitious diversion targets required by SB 1383. Further, this approach recognizes the diverse number of jurisdictions across the state, and allows flexibility for jurisdictions to use any combination of recovered organic waste products, rather a one-size-fits-all mandate requiring public and private landscape construction to use compost and mulch, which is already addressed in MWELO provisions in the California Code of Regulations,. Regarding revising the procurement approach to rely solely on jurisdictions' voluntary purchases of recycled content products, CalRecycle disagrees. This approach would be insufficient to drive demand for recovered organic waste products on the scale necessary to help meet the ambitious targets required by SB 1383.
1006	Malik, Ajay, LA Sanitation Districts	Delete Article 12 Section 18993.l(h)(4) from the regulations, as follows: Article 12 Section 18993.J(h)(4): ~~(4j The amount of renewable gas a jurisdiction or jurisdictions procured from the POTW for fuel, electricity or heating applications is less than or equal to the POTW's production capacity of renewable gas generated from organic waste received at the~~	This subsection was added in the most recent regulatory draft to clarify that only renewable gas from organic waste received at a POTW from solid waste facilities may count towards a jurisdiction's procurement target. Other materials digested at a POTW, such as sewage sludge, are ineligible. Renewable gas derived solely from sewage sludge is ineligible for procurement because a POTW is not a solid waste facility and therefore not in the scope of the legislative intent of SB

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		~~POTW directly from solid waste facilities as determined using the relevant conversion factors in Subdivision (g).~~	1383. Sewage sludge is also not typically destined for a landfill, so its use does not help achieve SB 1383's landfill diversion goals. It is inconsistent with the requirements of SB 1383 to incentivize or mandate activities that do not contribute to landfill diversion of organic waste. However, POTWs that accept food waste can technically do so without a solid waste facility permit, they are explicitly authorized to do so per Title 14, making it functionally similar to incentivizing biomethane from a solid waste facility. Therefore it is justifiable to allow the portion of renewable gas resulting from the digestion of food waste that is recovered at POTWs that accept food waste from a facility or operation identified in Section 18993.1(h)(1)(A)-(C) to count toward the procurement targets.
1007	Malik, Ajay, LA Sanitation Districts	Article 12, Section 18993.l(h)(l): (h) Renewable gas procured from a POTW may only count toward a jurisdiction's recovered organic waste product procurement target provided the following conditions are met for the applicable procurement compliance year: (1) The POTW received organic waste **that would otherwise have been directed to landfill disposal or** directly from one or more of the following:	A change to the regulatory text is not necessary. It is the intent of Section 18993.(h)(1)(A)-(C) to make eligible for procurement targets organic waste that would otherwise have been landfilled. These sections specify in detail the solid waste facilities from which a POTW may receive organic waste from in order for their renewable gas to be eligible towards jurisdictions' procurement targets. It is necessary to clearly define the solid waste facilities in order to meet the statutory requirements of SB 1383, provide certainty to stakeholders and also to make enforcement feasible for the department. The proposed language provided in the comment is vague and not enforceable.
1008	Malik, Ajay, LA Sanitation Districts	Article 12, Section 1899 3.1 (i): (i) Electricity procured from a biomass conversion facility may only count toward a jurisdiction's recovered organic waste product procurement target if the biomass conversion facility receives feedstock **that would otherwise have been directed to landfill disposal or** directly from one or more of the following during the duration of the applicable compliance year:	CalRecycle disagrees with the request to delete the requirement that the biomass facility must receive feedstock directly from a solid waste facility specified in Section 18993.1(f)(4)(B). The purpose of the proposed regulatory language is to be consistent with SB 1383 statute requiring organic waste reduction from landfills. This requirement allows CalRecycle to verify that biomass conversion facilities are reducing the disposal of organic waste as opposed to processing material that was never destined for the landfill. Verification is essential to the integrity of the requirement. Absent verification the products that are not derived from organic waste recovery could be used to count toward the procurement targets, neutering the effectiveness of this provision. The proposed alternative is vague and does not contemplate any mechanism that would allow for verification. The alternative does not provide any clarity on which entity would be responsible for determining whether or not biomass recovered at the biomass conversion facility was diverted from a landfill, or what objective standards would be used to make such a determination.
1009	Malik, Ajay, LA Sanitation Districts	Section 18993 .1 The Sanitation Districts are concerned that these new provision in the regulations unreasonably limit the renewable gas and electricity eligible for meeting the procurement goals under the regulations to only that produced from diverted organic waste and eliminates gas and electricity produced from digestion of sewage sludge. Renewable gas and electricity produced from the digestion of sewage sludge are also valuable resources that should be eligible as procurement products. The production of renewable gas and electricity from diverted organic waste is facilitated by the successful co-digestion with sludge. By requiring that these gas and electricity sources be accounted for separately, CalRecycle is effectively disincentivizing: a) the investment in POTW digestion treatment infrastructure that might otherwise be developed; or b) use of excess anaerobic digester capacity at	CalRecycle disagrees with the commenter's argument to allow renewable gas derived solely from sewage sludge to be eligible for procurement because a Publicly Owned Treatment Works (POTW) is not a solid waste facility and therefore not in the scope of the legislative intent of SB 1383. Sewage sludge is also not typically destined for a landfill, so its use does not help achieve SB 1383's landfill diversion goals. It is inconsistent with the requirements of SB 1383 to incentivize or mandate activities that do not contribute to landfill diversion of organic waste. However, POTWs that accept food waste can technically do so without a solid waste facility permit, they are explicitly authorized to do so per Title 14, therefore making it functionally similar to incentivizing biomethane from a solid waste facility. Therefore it is justifiable to allow the portion of renewable gas resulting from the digestion of food waste that is recovered at POTWs that accept food waste from a facility or operation identified in Section 18993.1(h)(1)(A)-(C) to count toward the procurement targets.

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		POTWs for processing of organic waste. This is especially problematic considering CalRecycle's identified need for significant investment in new organic waste infrastructure to ensure the diversion goals of SB 1383 are met.	The comment appears to assume that the regulations require a separate accounting for the exact amount of renewable gas produced from organic waste received from solid waste facilities and the amount gas produced from sewage inflows. The regulations do not require this. The regulatory text is structured in a manner that uses the conversion factors developed with ARB to determine the maximum amount of renewable gas that constitutes a renewable organic waste product that could be produced at a facility. The regulations are agnostic as to the amount of gas produced by sewage inflows. Regarding codigestion, CalRecycle disagrees with the commenter's assumption that the draft regulations disincentivize codigestion of organic waste with sludge. The requirement that renewable gas be derived from diverted organic waste is necessary to ensure that when jurisdictions procure renewable gas from POTWS, CalRecycle can verify that gas is derived from landfill-diverted organic waste. For example, if a POTW receives 100 tons of diverted organic waste from solid waste facilities, digests it either through a standalone process or codigestion with sewage sludge, and produces renewable electricity, a maximum of 24,200 kWh (100 tons x 242 kWh) would be available as an eligible recycled organic waste product for the purposes of procurement (The same would apply to fuel or heating or a mix of products, just apply the appropriate conversion factor). If a jurisdiction(s) is claiming they procured 50,000 kWh of renewable electricity from that facility, that would exceed the maximum production capacity, and would trigger CalRecycle review. The manner of digestion (codigestion or standalone) is not a factor, conversion factors are the same regardless of the process. This is a paper transaction only, the draft regulations do not mandate that the actual gas molecules procured be from the diverted organic waste feedstock. Again, the intent is to ensure recovered organic waste products are derived from landfill-diverted organics in order to meet the legislative mandates of SB 1383.
1010	Malik, Ajay, LA Sanitation Districts	Moreover, this would disqualify diversion programs that encourage use of systems such as Grind2Energy or Insinkerator by food waste generators involving the on-site processing and subsequent direct delivery to POTW s without processing at a solid waste facility. Section 18993.1 should be amended to acknowledge that the benefits in the reduction in short lived climate pollutants are derived from diversion of any organic waste from landfill disposal, and not just limited to organic waste processed at a permitted solid waste facility. The Sanitation Districts' food waste program at the Joint Water Pollution Control Plant (JWPCP) currently receives food waste in this manner through deliveries from food waste generators that do not involve a solid waste processing facility. There is also the potential that some POTWs may wish to allow direct deliveries of diverted food waste into their sewer systems that would also produce renewable gas and electricity which would also not qualify toward the procurement goals under the proposed regulations.	The purpose of the proposed regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. This requirement allows the department to verify that these facilities are reducing the disposal of organic waste.
5012	Mariana, J.L., Rethink Waste	1. Article 12, Section 18993.1 Procurement of Recovered Organic Waste Products The revised regulations expanded the list of end uses that qualify for using recovered organic waste to include mulch, given that it meets a few requirements. We strongly support this change. Expanding the list of end uses provides proper flexibility to local jurisdictions to use organic waste in a manner consistent with their	Thank you for your comment.

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		needs. Because every city is different, some may be able to make better use of mulch as opposed to other potential end uses, and vice versa.	
5013	Mariana, J.L., Rethink Waste	2. Article 4, Section 18985.1 Organic Waste Recovery Education and Outreach The revised regulations simplified the linguistic education and outreach requirements related to align it with Government Code Section 7295. This code section requires "any materials explaining services available to the public shall be translated into any non-English language spoken by a substantial number of the public served by the agency," and that the local agency has the authority to determine when these materials are necessary. We strongly support this amendment to the regulations; this not only creates consistency between statute and state regulations, but preserves local entities' authority to determine what services and support is truly needed in their community.	Comment is on text that was removed from the final regulation and replaced with reference to the Government Code Section 7295 linguistic standards.
2054	Martinsen, Cara, California State Association of Counties	Specifically, we appreciate the changes included in this draft that responded to local government concerns, such as the rural exemption extension from January 1, 2025 to December 31, 2026. In addition, aligning the linguistic outreach requirements with existing requirements in Section 7295 of the Government Code will streamline this process and keep it consistent with other state requirements. Counties also appreciate the expansion of acceptable organic waste products for procurement compliance, and added flexibility of the new penalty structure. As stated, these changes and several others included in this draft improve upon the previous version. However, counties have ongoing concerns related to several measures within the draft, and are generally concerned that the mandate for local governments to implement, monitor and fund these new requirements will result in substantial staffing needs at the local level and ultimately significant cost impacts to our constituents. In addition to our general comments, counties remain concerned about the following issues, and we align our comments with those submitted by individual counties.	Comment noted. The commenter notes certain conditions that may affect the success of the implementation of the regulations but does not propose specific language changes.
2055	Martinsen, Cara, California State Association of Counties	In Section 18983.2, the definition of "renewable transportation gas" is limited to gas derived from in-vessel digestion of organic waste only. Counties believe the regulations should expand the definition of "renewable gas" to include gas derived from other technologies, including biomass conversion utilizing thermal conversion technologies.	Regarding including "all beneficial end uses of renewable gas generated from diverted organic waste", the current proposed definition of "renewable gas" is consistent with statutory language per SB 1383 Section 1(b) that mandates the adoption of policies for beneficial uses of biomethane from "solid waste facilities". In-vessel digestion facilities are solid waste facilities, which allows the department to verify that these facilities are reducing the disposal of organic waste. CalRecycle disagrees with the open-ended approach to renewable gas end uses described in the comment. The broad range of potential recovered organic waste products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors
2056	Martinsen, Cara, California State	In Section 18982 (56.5), "project baseline" in the context of greenhouse gas (GHG) emission reduction is defined as "…a conservative estimate of the business-as-usual	Comment noted, this definition is modified from the "project baseline" definition in CARB's Cap-and-Trade Regulation, contained in the California Code of Regulations, Title 17, section 95102,

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	Association of Counties	greenhouse gas emissions that would have occurred if the organic waste proposed for recovery was disposed of in activity that constitutes landfill disposal….” Counties note that the use of the term “conservative” in this definition and suggest that this is ambiguous and subjective. We also support the request by Los Angeles County that the definition in Section 18983.2 should be revised for consistency with the definition of “project baseline.”	and is necessary in calculating GHG emissions reductions pursuant to section 18983.2. The term “conservative” is used and understood in the existing definition.
2057	Martinsen, Cara, California State Association of Counties	We appreciate the increased flexibility related to containers colors as included in Section 18982. This will help to reduce the cost burden of replacing all containers. Changing the lid color is appropriate so viable container bodies are not discarded, adding to California’s overall waste stream. However, we do note that the container color requirements are not consistent for the different types of containers. The regulations specify that “blue containers” with a blue lid can have a body of any color, but does not specify the same requirement for brown, gray, and green containers. We recommend making this change consistent for all containers.	CalRecycle has revised the definitions of the containers to be consistent with each other. Also, thank you for the comment related to the increased flexibility regarding the color and hardware of the containers.
2058	Martinsen, Cara, California State Association of Counties	CSAC has consistent and ongoing concerns regarding the implementation of the proposed regulations and the heavy cost burden that will ultimately be borne by local rate payers. Local governments have the authority to raise fees at the local level to implement state laws and mandates. However, it must be known, that this regulatory package, when fully implemented, will have a significant impact on individual households. SB 1383 calls for targeted reductions to our methane emissions, and this regulatory package takes bold action to implement this law. Counties support the protection of our environment and the need to reduce our greenhouse gas emissions. We also support the balance of cost effective strategies that take into consideration the cumulative fiscal impact – balancing bold action with implementable rules and regulations that are economically feasible and not overly burdensome on individuals.	Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
2059	Martinsen, Cara, California State Association of Counties	In addition to the cost impact of staffing, our consistent message and main point throughout this process has been the need for sufficient infrastructure to manage this portion of the waste stream. To meet our targets, California will need to invest billions in capital investment. Cap and Trade funding has provided limited resources to make process towards the significant resources needed to site and permit facilities. We firmly believe that capacity is a statewide conversation that is tied to resources and requires the participation of all stakeholders. This requirement is beyond the ability of most local jurisdictions to achieve, and should be part of a	Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of

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		broader effort focused on the development of organics infrastructure and associated funding in California.	complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
15;0010	Michael, D., City of Rancho Cucamonga	The City of Rancho Cucamonga appreciates the opportunity to further comment on the proposed regulations released in October 2019, which seek to implement SB 1383 (Lara, 2016). The City of Rancho Cucamonga continues to support both a robust waste management system that complies with California's climate goals as well as reasonable and achievable goals in removing short-lived climate pollutants, including methane, from landfills. We appreciate the stakeholder process CalRecycle is undertaking and the ability to weigh in on the proposed regulations. We would like to thank CalRecycle for acknowledging in these regulations the critical need for infrastructure capacity statewide. As you know, the state does not have available infrastructure capacity to fully meet the goal set forth in SB 1383. The City of Rancho Cucamonga is seeking and advocating for solutions to address the need for substantial new infrastructure funding both in our community and across the state. Additionally, we remain concerned about critical points that hinder our ability to implement the proposed regulation. Our key concerns are as follows:	Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: "The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new mixed waste processing systems provided that the receiving facilities demonstrate they are capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements." The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: "With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of material. For example, metals, paper, and plastics are remanufactured through distinct processes (e.g. metal is smelted, paper is pulped and washed). Largely because of this, while material may be valuable as a homogenous commodity, it can become difficult or impossible to recycle when it is contaminated with other materials (e.g. many materials lose their value when they are commingled with other materials.) This principle holds true, and is perhaps more of a factor in the recovery of organic waste. Required source-separation of organic waste helps ensure that organics are kept clean, separate and recoverable.

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			However; throughout the informal regulatory engagement process stakeholders raised concerns about potential costs associated with providing commercial and residential generators with a third container to source separate organic waste. Stakeholders also noted that several cities and counties implement single container collection services and process all the collected material for recovery. Stakeholders argued that allowing the use of a single-container collection system is a viable and cost-effective alternative that can help the state meet that statutory organic waste recovery targets. To respond to stakeholder requests for additionally flexibility CalRecycle crafted this section and Section 18984.2. These sections allow alternatives to providing a three-container source-separated organic waste collection service. Under these section jurisdictions are allowed to require their generators to use a service that does not provide the generators the opportunity to separate their organic waste for recovery at the curb. In order to ensure that the state can achieve the statutory organic waste reduction targets, these collections services are required to transport the containers that include organic waste to high diversion organic waste processing facilities that meet minimum organic content recovery rates (content recovery rates are specified in Subdivision (b) of this section)…" The commenter has stated in each comment period, that they believe the requirement to recover 75 percent of the organic content collected in these mixed waste collection services is unrealistic and infeasible. In turn CalRecycle staff repeatedly communicated to the commenter that the recovery targets cannot be lowered without compromising the integrity of the regulations. This was further documented for this commenter and the public in the ISOR: "These minimum recovery rates are necessary because when the opportunity to recover material through source separation is lost, the state must ensure that minimum recovery levels are met at processing facilities. While this section provides additional flexibility to jurisdictions, CalRecycle must consider its obligation to ensure that the regulations are designed to achieve the statutory targets. If 100 percent of jurisdictions employed this collection option in 2022 the state could not meet the mandatory recovery target of 50 percent unless at least 50 percent of the organic waste collected from these services is recovered. Similarly, if 100 percent of jurisdictions employed this collection option in 2025 the state could not meet the mandatory recovery target of 75 percent unless 75 percent of the organic waste collected from these services is recovered. Therefore, in order to meet the recovery targets specified in statute and the state's ultimate climate goals the recovery standards included in this section are the minimum standards necessary. As generation of organic waste increases with population growth, these minimum recovery rates may need to be revisited. As stated previously the organic waste reduction targets are linked to a 2014 baseline of 23 million tons. This requires the state to dispose of no more than 5.7 million tons by 2025. If, as CalRecycle projects, generation increases to 26 million tons of organic waste by 2025, recovering 75 percent of 25 million tons will only reduce disposal to slightly more than 6 million tons, resulting in the state missing its organic waste recovery targets. The need for this rate increase could be mitigated if higher recovery rates are achieved through source separation, or if

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			efforts to increase source reduction through food recovery and other methods are successful. However, the recovery rates established in this regulation should be considered an absolute minimum." CalRecycle has, prior to and during this rulemaking, communicated that the recovery efficiency requirements established in the regulation is the minimum level that the statute can tolerate. The commenter suggests existing infrastructure that cannot meet this standard should be "protected" or provided a "safe-harbor." The commenter requests changes in the proposed regulations that cannot be reconciled with the statutory targets because CalRecycle finds that it cannot propose a regulation consistent with a statutory 2025 target that permits an unknown portion of the state from implementing the requirements necessary to achieve that target. CalRecycle acknowledges the role of existing infrastructure and acknowledges that previous investments in infrastructure were consciously made to achieve targets that were established prior to the adoption of SB 1383. However, the legislative direction in SB 1383 is unmistakably clear. The Legislature required CalRecycle to adopt regulations to achieve mandatory organic waste reduction levels. Nothing in the regulations prevents facility operators or jurisdictions from investing in facility upgrades or adapting existing facilities to process waste in a manner that meets the minimum regulatory requirements. Comment noted. CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying. The provisions of Section 40004 are general legislative findings and declarations applying to the AB 341 (2011) mandatory commercial recycling program and not specific, affirmative legal requirements CalRecycle is required to adhere to in the proposed regulations. SB 1383 contains specific mandates on organic waste diversion that CalRecycle is required to observe in this rulemaking. The findings and declarations in Section 40004 recognize that adequate processing and composting capacity are essential for diversion and disposal reduction. CalRecycle does not dispute this necessity. But CalRecycle is also more specifically subject to the findings and declarations in SB 1383 (2016, PRC Section 42652) that state that the disposal reduction targets in SB 1383 are essential to achieving the statewide recycling goal of 75% in PRC Section 41780.01 and that significant investment is required to meet these goals and that state and local funding mechanisms are needed to support this expansion. The Legislature acknowledges in this section that infrastructure investment and capacity is a central issue to the success of SB 1383. Since the specific controls the general and the more recent statute controls under common rules of statutory construction, CalRecycle does not find a conflict with Section 40004.

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			Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
15;0011	Michael, D., City of Rancho Cucamonga	Enforcement: These regulations allow for Corrective Action Plans and establishes extended timelines and milestones for achieving compliance. We appreciate the addition of a pathway to compliance. This is a step in the right direction, and we urge careful consideration of the differences among local jurisdictions, as well as the variety of community stakeholders, and infrastructure challenges a local jurisdiction may face.	Comment noted. Comment is expressing opinion and is not a recommendation for a regulatory text change.
15;0012	Michael, D., City of Rancho Cucamonga	Food Rescue: The City understands the issues related to food security and whole-heartedly supports rescue of food for human consumption. The City, however, is also concerned about the ability to comply with the edible food recovery requirements of this regulation. Regulations related to food rescue are managed by the County Public Health Department. The County Public Health Department is outside of the City's enforcement authority. Additionally, many of the organizations involved in food rescue are non-profit, volunteer run organizations that typically operate and provide services in more than one community, making the requirement on a single jurisdiction to increase food capacity almost impossible to achieve. The City is also concerned about the financial impact to the non-profits to expand existing capacity. We ask that CalRecycle re-consider this requirement and focus on building capacity and infrastructure across the state.	A change to the regulatory text was not necessary because section 18981.2 of the regulations specifies that a jurisdiction may designate a public or private entity, which includes environmental health departments, to fulfill its regulatory responsibilities. The exact regulatory text states, "(b) A jurisdiction may designate a public or private entity to fulfill its responsibilities under this chapter. A designation shall be made through any one or more of the following: (1) Contracts with haulers or other private entities; or, (2) Agreements such as MOUs with other jurisdictions, entities, regional agencies as defined in Public Resources Code Section 40181, or other government entities, including environmental health departments. (c) Notwithstanding subdivision (b) of this section, a jurisdiction shall remain ultimately responsible for compliance with the requirements of this chapter." Regarding the comment about lacking capacity and infrastructure, that is the precise reason why SB 1383's regulations include edible food recovery capacity planning requirements. Section 18992.2 of the regulations are entirely focused on edible food recovery capacity planning. In

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			addition, Section 18991.1 (a)(4) includes a requirement that jurisdictions must increase edible food recovery capacity if it is determined that sufficient capacity does not exist. CalRecycle would also like to mention that as a state agency we are heavily focused on increasing food recovery infrastructure and capacity in California. CalRecycle's Food Waste Prevention and Rescue Grant Program funds food waste prevention and food rescue projects across the state. To date, CalRecycle has awarded $20 million dollars to over 60 grantees.
15;0013	Michael, D., City of Rancho Cucamonga	Performance Based Source Separated Organics Collection Service: A jurisdiction that is currently in compliance with waste diversion requirements should be considered to have Performance Based Source Separated Organics Collection Service. However, the language and minimum performance requirements in this section seem to only apply to a small number of jurisdictions. For example, Section 18998.1.1 requires a jurisdiction to provide a three-container organic waste collection service to at least 90 percent of the commercial businesses and 90 percent of the residential sector. It is not clear if an exception would be made for businesses that are using third-party collection of organics or recycling. Additionally, the requirement to conduct quarterly waste characterizations of the gray container is not consistent with Section 18984.5 which only requires waste characterizations twice per year. We ask that CalRecycle review this section and adjust the language to ensure that the requirements are achievable to more than a small fraction of jurisdictions.	Comment noted. If a jurisdiction cannot provide service to 90 percent of commercial and 90 percent of residential generators, or a jurisdiction is entirely unaware of the number of businesses licensed to operate or residential properties located within their jurisdiction, they are not required to pursue this compliance option. Regarding third-party service, a jurisdiction is authorized to delegate the provision of service to a designee such as a hauler. However, if a generator is not provided service by the jurisdiction or the jurisdiction's designee, it cannot be counted toward the 90 percent of generators that participate in a service provided by the jurisdiction.
15;0014	Michael, D., City of Rancho Cucamonga; Creter, M., San Gabriel Valley Council of Governments	The City of Rancho Cucamonga further notes the additional costs that will result from complying with the procurement regulations represent an unfunded state mandate under Cal. Const. Art. XIII B, sec. 6(a) as the regulations would impose a new program on cities and neither the draft regulations nor the Initial Statement of Reasons identifies a state funding source. CalRecycle should not rely on the fee authority granted to local jurisdictions in SB 1383. Any fee that a city attempted to impose to fund the additional costs of these regulations would likely be treated as a tax under Cal. Const. Art. XIII C, sec. 1(e) (Prop. 26) as it would not meet any of the exceptions identified in that section. Further, even were a fee to survive scrutiny under Prop. 26, it is questionable whether a city would have the authority to impose the fee without first complying with the majority protest procedures of Cal. Const. Art. XIII D, sec. 6 (Prop. 218.) This latter concern is currently the subject of litigation in the Third District Court of Appeal (Paradise Irrigation District v. Commission on State Mandates, Case No. C081929). For these additional reasons, The City of Rancho Cucamonga requests that the procurement regulations be addressed in a separate regulatory proceeding.	CalRecycle disagrees with the characterization of procurement requirements as an unfunded mandate. First, the Legislature, in SB 1383, explicitly authorized local jurisdictions to charge and collect fees to recover its costs incurred in complying with the regulations (Pub. Res. Code § 42652.5(b)). In addition, Section 7 of the bill states that, "No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code." Such a fee authorization, and costs being recoverable from sources other than taxes, overcomes any requirement for state subvention of funds for reimbursement for a state mandate (see Gov. Code § 17556, County of Fresno v. State of California, 53 Cal.3d 482 (1991)). Second, local jurisdictions have discretion to design legitimate regulatory fees that charge, collect, and use funds in a manner that meets the exceptions to the definition of a "tax" under Cal. Const. Art. XIII C, Section 1 (e). There are no provisions in the SB 1383 regulations that limit that discretion. As such, it is overbroad and speculative to describe "any fees" that may in the future be imposed by the numerous local jurisdictions in California as "likely" to be treated as taxes. If a fee were to be challenged, the determination would be highly dependent on the particulars of how a local charge is purposed, collected and used. CalRecycle is not aware of any facts indicating that local jurisdictions are outright prevented from designing valid regulatory fees consistent with Prop. 26 and Prop. 218 to offset the costs of complying with SB 1383. According to the October 1, 2018 decision in Paradise Irrigation Dist. v. Commission on State Mandates, a statutory authorization to levy fees, such as that provided in SB 1383, is the relevant

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			and dispositive factor in overcoming claims of subvention for a state mandate. This is true whether or not a local fee is subject to, or defeated by, a majority protest procedure. The court found the protest procedure to be a practical consideration for a local government as opposed to a legal factor in determining a requirement for subvention for a state mandate. Finally, it should be recognized that the procurement requirements are designed to apply to existing needs for a jurisdiction, such as for paper products, compost and mulch, and fuel for transport, heating and electricity, and require jurisdictions to instead purchase that material in a form derived from recovered organic waste. Thus, it is not designed to mandate new purchases but instead to make existing needs purchased from an alternate source.
5010	Michaels, J., Sonoma Food Runners	(F) Edible Food Recovery Programs and Services a. Added provisions clarifying that commercial edible food generators must recover edible food unless specified "extraordinary circumstances" exist. (Is it possible to see the provisions at this time?	The regulations specifically state "extraordinary circumstances" are: (1) A failure by the jurisdiction to increase edible food recovery capacity as required by section 18992.2.; and (2) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters. The language "other emergencies" in this provision is intended to take into account other situations that are emergent in nature, and may not be commonly defined as "natural disasters," but that are nevertheless outside the control of the commercial edible food generator and cause compliance to be impracticable. Please note, "other emergencies" includes business closure due to disease pandemics, and power shutoffs that are carried out specifically to protect the public's safety (e.g. electric company schedules and carries out a preventative power safety shutoff to protect the public from wildfires). "Other emergencies" however, does not include equipment failure or power outages that are not a direct result of a natural disaster or carried out specifically to prevent a natural disaster (e.g. wildfire). Allowing any additional flexibility to the "extraordinary circumstances" provision in the regulations could result in a loophole for commercial edible food generators to avoid compliance with the commercial edible food generator requirements of SB 1383.
5011	Michaels, J., Sonoma Food Runners	b. Eliminated threshold for record keeping for food recovery services and organizations. (Am I understanding no record keeping is required in the beginning for food recovery? Are the food donors tracked?	To clarify, any food recovery organization or food recovery service that has established a contract or written agreement to collect or receive edible food directly from a commercial edible food generator pursuant to Section 18991.3(b) must comply with the recordkeeping requirements specified in Section 18991.5.
1000	Mitchell, Terrie, Sacramento Regional County Sanitation District Kester, Greg, CASA	1. On-site biosolids management should not constitute landfill disposal Regional San is one of roughly five Publicly Owned Treatment Works (POTWs) in California that have on-site biosolids management units located at a wastewater treatment plant. None of Regional San's biosolids sent to our on-site management units are transported off-site or landfilled. They are managed on-site under the purview of US EPA and the SWRCB and, thus, would seem beyond the purview of these regulations. Thus, we request the following clarifications: a. Article 2 Section 18983.1(a)(3) states that "Any other disposition not listed in subsection (b) of this section" constitutes "landfill disposal". As currently written, these regulations imply that landfill disposal includes biosolids that are incinerated, thermally oxidized, or deposited in surface management sites at a wastewater treatment plant. We fail to understand why biosolids not deposited in a landfill	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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		would be categorized as “landfill disposal”. We recommend the following language be deleted for the sake of accuracy and clarity: ~~(3) Any other disposition not listed in subsection (b) of this section.~~	
1001	Mitchell, Terrie, Sacramento Regional County Sanitation District Kester, Greg, CASA Lorance, Shauna, City of San Diego Public Utilities Department	Article 2 section 18983.1(c) includes “…or any other disposal of waste as defined by Section 40192(c) of the Public Resources Code.”, in the definition of “Landfill”. This is a very broad definition and seems to limit the disposition to organic waste deposited on land. We believe this is an overly restrictive definition and will create confusion because of the inclusion of technologies other than landfilling in the definition of landfill (by virtue of the cross-reference to PRC Section 40192(c)). We request that CalRecycle clarify the scope of this definition.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.
1002	Mitchell, Terrie, Sacramento Regional County Sanitation District Kester, Greg, CASA Lorance, Shauna, City of San Diego Public Utilities Department	It is critical that the entire state be open for land application when done as regulated under the federal and state regulations. Local jurisdictions cannot be allowed to adopt more restrictive ordinances relative to the land application of biosolids under the guise of addressing health and safety concerns. We therefore urge CalRecycle to maintain the language as currently set forth in Article 9 with the following clarifications: a. Article 9 Section 18990.1(b)(1). Regional San supports and appreciates the additional language in this section that makes clear that local ordinances cannot either prohibit or otherwise unreasonably limit or restrict recovery articles outlined in Article 2. b. Article 9 Section 18990.1(c)(3) seems inconsistent with the language in subsection 18990.1(a) and (b), which restricts local ordinances such that they may not impede organics recycling. Subsection (c)(3) seems to supersede that restriction. We request revision or deletion of this language to ensure an open market across California for organics recycling. We suggest that Section 18990.1(c)(3) be deleted as follows: (c) This section does not do any of the following:… ~~(3) Supersede or otherwise affect: the land use authority of a jurisdiction, including but not limited to, planning, zoning, and permitting; or an ordinance lawfully adopted pursuant to that land use authority consistent with this section.~~	The requested changes to the regulatory text are not necessary. However, CalRecycle is adding additional language to section 18990.1(b)(1) to further clarify its meaning in light of comments received. Article 9 sections 18990.1 (a) and (b) are not contradictory. Section 18990.1 (a) clarifies that it does not limit a jurisdiction in adopting more stringent standards than the ones outlined in this chapter. The purpose of the specific limitations set forth in paragraphs 1-5 of section 18990.1 (b) are to ensure that jurisdictions do not impose restrictions on the movement and handling of waste and waste-derived recyclables that would interfere with or prevent meeting the organic waste recovery targets established in SB 1383. Article 2 section 18983.1 (b)(6)(b) clarifies that land application of biosolids constitutes a reduction in landfill disposal provided that the application complies with minimum standards. This section specifies that to be considered a reduction in landfill disposal for the purposes of this regulation, land application of biosolids must comply with existing regulatory requirements and have undergone composting or anaerobic digestion. While this regulation defines land application as recovery, this regulation does not allow land application of biosolids to be done in a manner that conflicts with existing public health and safety regulations and requirements. Land application of composted or digested biosolids prevents the landfill disposal of this material and reduces greenhouse gas emissions. This supports the state’s efforts to keep organic waste out of landfills and reduce greenhouse gas emissions and is therefore considered a recovery activity for the purposes of this regulation. The additional language will ensure that such restrictions can be reviewed on a case by case basis to determine if they are necessary to protect the public health and safety, or if they are actually unnecessary restrictions.
1003	Mitchell, Terrie, Sacramento Regional County Sanitation District Kester, Greg, CASA Lorance, Shauna, City of San Diego Public Utilities Department	It is imperative that all treatment options in 40 CFR part 503 Appendix B (Class A and Class B) be allowed and viewed as “recovery” (not just anaerobic digestion and composting). Treatment technologies are themselves dynamic and emerging, resulting in alternative treatment and final use of biosolids. For example, thermal processes can produce energy and biochar. These technologies should be encouraged, not excluded, as the language in this section appears to do. We strongly urge CalRecycle to revise Section 18983.1(b)(6)(B)1. as follows: 1. Have undergone ~~anaerobic digestion or composting~~ **one of the processes**, as defined in Part 503, Title 40…	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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1004	Mitchell, Terrie, Sacramento Regional County Sanitation District Zaldivar, Enrique, City of LA Sanitation	Article 12 Section 18993.1(f) defines eligible recovered organic waste products that satisfy the procurement requirements of Subsection 18993.1(e). Subsection (f)(1) stipulates that compost is an eligible product. We assume this includes biosolids compost, but request explicit confirmation of that. Furthermore, there are many other biosolids products that should be considered as eligible recovered organic waste products. A jurisdiction should be given broad latitude in meeting this requirement and all biosolids products meeting the land application requirements of 40 CFR part 503 should be eligible. This includes use of biosolids for home use, on public parks and other property, golf courses, community gardens, etc. Additionally, Article 12 Section 18993.1(f)(2) deletes pipeline injection as an eligible use of renewable gas for satisfying the procurement requirements. It is unclear why and we strongly recommend reinserting it.	Regarding biosolids compost, the current draft regulatory text considers compost an eligible recovered organic waste product as long as the final product meets the definition of compost, per Section 17896.2(a)(4), and is produced either at a compost operation or facility or large volume in-vessel digestion facility that composts on-site (refer to section 18993.1(f)(1)(A) and (B). Biosolids and/or digestate that do not meet the compost definition will not count towards the procurement target. CalRecycle disagrees with adding "other biosolids products". The broad range of potential products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Regarding pipeline injection, CalRecycle deleted this as an eligible procurement option in the most recent regulatory draft in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, the previous regulatory language made it possible for a jurisdiction(s) to count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target.
1005	Mitchell, Terrie, Sacramento Regional County Sanitation District	If biosolids that do not go to landfills are indeed categorized as "landfill disposal", the accounting of those biosolids need to be remedied in the 2014 Waste Characterization by which organics diversion goals are set. Biosolids produced from these facilities have never entered a landfill and thus it is unclear whether they would have been included in the 2014 baseline. Please provide clarity as to where this table can be found and whether biosolids data is included in the baseline upon which compliance with the draft regulations is based.	The table has not been updated. For the purposes of these regulations, the biosolids data were gathered from US EPA and the California Association of Sanitation Agencies. For 2014, the reported number was 173,000 dry metric tons (ADC 113,000 and landfilled 60,000).
2074	Nava, Emmanuel, Castro Valley Sanitary District	Article 3 Section 18984.5(b) (b) A jurisdiction may meet its container contamination minimization requirements by conducting a route review for prohibited container contaminants on containers in a manner that results in all hauler routes being reviewed annually. Containers may be randomly selected along a hauler route. This section should not be construed to require that every container on a hauler route to be sampled annually. How many containers along the hauler route need to be physically inspected to meet requirement in 18984.5?	For clarity, the regulations allow the jurisdictions to determine random selection, which is the least costly and burdensome approach compared to requiring statistically significant sampling. In regard to if the program will meet compliance, this has been addressed in language changes to Sections 18984.5 and 18984.6. CalRecycle disagrees with making it a requirement that contamination monitoring is random as it would limit flexibility and increase costs.
2075	Nava, Emmanuel, Castro Valley Sanitary District	Article 1 Section 18982.(36) (36) "Jurisdiction" means a city, county, a city and county, or a special district that provides solid waste collection services. A city, county, a city and county, or a special district may utilize a Joint Powers Authority to comply with the requirements of this chapter, except that the individual city, county, city and county, or special district shall remain ultimately responsible for compliance. Under SB 1383, is CVSan a jurisdiction by itself or are we grouped with OLSD and UAC as we are for the CalRecycle Annual Report?	Special districts are defined as jurisdictions in the regulation and subject to the requirements that apply to jurisdictions throughout the regulation. However, certain articles intentionally only apply requirements to a subset of entities that are defined as jurisdiction (see article 12 procurement requirements.

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		CVSan, as a special district, should only focus on reaching compliance for CVSan, is that correct?	
15;0058	Oseguera, A., Waste Management	1.Section 17409.5.8 - Incompatible Materials Limit in Recovered Organic Waste; Section 17409.5.10.5 Solid Waste Handling at Co-located Facilities; Waste Management appreciates CalRecycle's attempt to create a phased in time period to meet performance requirements, however, we continue to be concerned regarding a facilities ability to meet residual requirements. We have explained in writing and during our conversations that Waste Management has received permits and is constructing an in-vessel composting facility in Oakland that will process both source separated organic and organic materials extracted from municipal solid waste ("MSW") at an attached facility. After years of research, and meeting with companies across the world, we have partnered with a well-experienced company to develop the most effective technology available to achieve the ambitious diversion goals established by the City of Oakland and required under our franchise agreement. The 20% and 10% organic residual requirement measured by weight threatens the deployment of this effective (previously permitted) technology for co-processing of source-separated organics with organics extracted from other solid waste. Based on our discussions with CalRecycle, however, the Department is apparently not opposed to this type of facility or processing, but wants to ensure separate measurement of contaminants in source-separated organics and contaminants in other processed materials. Please view the process flow example in our February letter that was previously explained and reviewed with CalRecycle. Recommendation: As stated previously, Waste Management appreciates CalRecycle's draft language that creates a phased approach, however, the 20% and 10% organics in the residual is not supported with any data that WM is aware of and should be further studied to determine a base case and then develop reasonable targets and ramp up periods supported by the industry. Furthermore, limiting the level of contamination in organic waste will restrict organic waste from being processed and recovered. Historically, many jurisdictions have more than 10 percent incompatible material which may require several levels of processing to remove and may not achieve a level of organics in the residuals of less than 10% at just one processing facility. The proposed draft language in section 17409.5.8 (a) should not be included in section 17409.5.8. Residual from a composting process contains a high-level of organics by weight as compared to other contaminants like plastic. It would not be uncommon for screened overs of a compost process to consist of 80% organics by weight. Not to mention, we expect to see even more inbound contamination as food waste collection programs get introduced to residential yard waste programs per these regulations. The industry best practice is to recycle oversized materials from screening operations back into the composting process as an amendment and an inoculant. However, our experience in the US and Canada shows that the screening overs from food waste or	CalRecycle has revised the composting facilities and in-vessel digestion requirements to replace the term "incompatible material" to "material that is not organic waste" and would apply to the material that is sent to disposal. The incompatible definition would only apply to material that is sent for further processing or recovery. This change is necessary to differentiate between organic and non-organic material since incompatible material can contain both. The purpose of these regulations is to meet the established goals of 50% recovery of organic waste by 2020 and 75% by 2025. The 20% limit of organic waste contained in materials sent for disposal on and after 2022 and 10% limit on and after 2024 are necessary in order to meet these established target goals.

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		food waste/green waste composting operations often contain high levels of plastic and other contaminants. Recycling these contaminated overs within the facility causes a buildup of contaminants in the material inventory at a facility, leads to litter issues, and can affect the ability of subsequent batches of finished product to meet sharps and foreign matter/ contaminant criteria. Operators routinely assess contaminant levels in screening overs and periodically "purge" materials to prevent this from happening. With this regulation, we expect to see more contamination at our facilities as food waste is introduced into residential yard waste programs, even when sound education programs are incorporated into collection programs. The organic thresholds proposed for residuals in the regulation will force operators to supplement existing primary treatment (e.g. screening) with secondary and tertiary treatment of screening overs into site operations. Based on results from equipment trials completed at our facilities, we estimate the added capital, operating and maintenance costs of the new equipment will add at a minimum between $15-$20 to feedstock processing fees. This is on top of the costs of obtaining air permits for, and the added emissions resulting from, adding new diesel-powered equipment to the site. Our experience also suggests that these secondary/tertiary systems may not reliably achieve the 20% and 10% thresholds in all sites in all situations as the technologies that remove contamination at the aforementioned levels do not currently exist for the commercial scale at which we operate our compost facilities. We believe the proposed thresholds will more likely create a situation where a compost operation will be even more stringent on inbound feedstock quality and contamination, therefore restricting organic waste from being processed and recovered -- not aligned with SB1383's overall goals. Compost facilities should not have a residual threshold while other processing facilities have a recovery threshold. Compost facilities should be measured by the same recovery thresholds as other processing facilities. The proposed draft language in section 17409.5.8 (c) should not be included in section 17409.5.8.	
15;0059	Oseguera, A., Waste Management	2. Section 17409.5.2 – Measuring Organic Waste Recovered from Mixed Waste Organic Collection Stream Waste Management reviewed the sampling protocol and the number of consecutive days that sampling must be conducted and believes that the number of days required is excessive, not needed and wasteful. We believe that five (5) consecutive days is sufficient to generate statistically significant data for analysis and review of recovered materials. Waste Management strongly recommends that the draft regulations should be modified to a requirement of only five (5) sampling days. The regulatory requirements of SB1383 are significant and it is important to minimize or eliminate any unnecessary additional cost and/or utilization of resources where possible.	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
15;0060	Oseguera, A., Waste Management	3. Section 21570(13) – CalRecycle – Filing Requirements and Section 21660.2 - Informational Meeting for New and Revised Full Solid Waste Facilities Permit Applications	CalRecycle staff has noted the comment and will not make any further text changes in response. This is not within the scope of this rulemaking.

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		During our meeting with CalRecycle on February 9, 2018 and in our follow-up, letter dated February 20, 2018, Waste Management expressed concerns regarding the protracted and bureaucratic permitting process required to permit CEQA approved facilities or activities. In addition, facilities may be subject to legal challenge even after the CEQA requirements are satisfied. Companies require more certainty before making these significant multi-million-dollar investments. As the state has acknowledged, these ambitious goals cannot be met without the timely development, construction and operation of processing facilities. We continue to strongly advocate for commitment of CalRecycle staff resources to facilitate alignment of state and local district agencies to support and streamline the permitting process for new and expanded facilities.	
15;0061	Oseguera, A., Waste Management	4. Section 18996.4 (a) – Access for Inspection by the Department Under this section, a credentialed an authorized Department employee or agent shall be allowed to enter the premises of any entity subject to inspections. We strongly recommend that due to safety, availability of personnel and complexity of facilities, that at least a twenty-four (24) hour notice should be given prior to an inspection. We suggest that the language should be changed to "a credentialed an authorized Department employee or agent shall be allowed to enter the premises of any entity subject to inspections **following a twenty-four (24) hour notice of an intent to complete an inspection**". We believe this is a reasonable modification that allows for a facility or operation to ensure a safe environment for the completion of an inspection.	The commenter appears to have misunderstood this requirement as applying to inspection access at solid waste facilities and operations. Solid waste facilities and operations are subject to different chapters in Division 7 of Title 14. This section does not apply to such access.
15;0062	Oseguera, A., Waste Management	5. Article 14, 15 and 16 Waste Management appreciates the modifications made by CalRecycle to Articles 14, 15 and 16. However, in Section 18997.3(c) the draft language sets out objective criteria of how to set the penalty amount within the range, but this criterion only seems to apply to Department-assessed penalties. Waste Management strongly recommends that a similar objective criterion should apply to the range of penalties assessed by a jurisdiction under 18997.2.	These regulations require local jurisdictions to adopt an ordinance or other enforceable mechanism that is equivalent to or more stringent that the proposed regulations. Provisions in Government Code Sections 53069.4, 25132, and 36900 control how local jurisdictions set penalties for violations of their ordinances and, as such, any criteria as to how to set penalties within the ranges set in Government Code will be subject to the discretion of the jurisdictions.
15;0063	Oseguera, A., Waste Management	Additionally, CalRecycle has clarified in Section 18995.4(a)(3) relating to Enforcement by a Jurisdiction that a second offense must be against the "same person or entity" for violation of "same subsection" or "local ordinance" and "within one year of imposing a penalty for a first offense." The determination of a subsequent offense should be clarified and limited as well in Section 18996.9.	The limitations for local penalties in the Government Code also control how subsequent offenses are dealt with. However, penalties subject to CalRecycle enforcement are not controlled by those provisions and are under no requirement to be consistent.
15;0050	Pardo, V., California Refuse Recycling Council Northern District	The California Refuse Recycling Council, Northern District, is pleased to comment on CalRecycle's third formal draft of proposed text for the short-lived climate pollutant regulations. We applaud the dedicated effort of CalRecycle staff in responding to stakeholder comments and offering a number of important changes and clarifications to the latest proposed text. We appreciate the phasing in of incompatible material limits, additional flexibility in measurement protocols, and the updated container color	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.

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		clarification. These changes will help save programmatic costs, while still achieving the goals of SB 1383. Though significant changes have occurred, additional amendments are necessary to reduce costs and ultimately achieve programmatic goals. We offer the following recommended changes as we work to finalize these regulations.	
15;0051	Pardo, V., California Refuse Recycling Council Northern District	Section 17409.5.7. Gray Container Waste Evaluations We strongly recommend the removal of Section 17409.5.7. Gray Container Waste Evaluations As proposed, the gray container waste evaluation does not provide enough value to the goals of SB 1383 to offset the duplicative reporting burden. For one, Section 18984.5. Container Contamination Minimization appropriately addresses the monitoring of "prohibited container contaminants" in all collection containers, including the gray container. This section also provides an actionable pathway to address poor sorting at the jurisdiction level, with education, outreach and enforcement components. The waste composition approach in Section 18984.5. includes a 25% limit on container contaminants, a metric to meet and outcomes if not met. The gray container waste evaluation section has no such metrics or actionable outcomes. Article 15 gives CalRecycle full authority to evaluate and engage in enforcement action if jurisdiction compliance with Section 18984.5. is not met. Additionally, the gray container waste evaluation is only for the gray container in a three-container system, whereas the container contamination minimization section addresses both two and three (or more) container collection systems. Section 18984.5. is a comprehensive approach and a much better indicator of how well a jurisdiction is addressing their contamination challenges. Though only limited to one sample per quarter at the facility level, Section 17409.5.7. is an additional reporting burden on transfer facilities that provides no relevant data. Each transfer station is unique and may manage material from few to many jurisdictions, and variable source sectors. As a result, the extraneous sampling provides no measurement of how well a jurisdiction is doing, while placing additional and unnecessary costs directly on the transfer facility. A more reasonable approach is for CalRecycle to gather data through periodic waste characterization studies, which will more efficiently capture our statewide success in meeting the goals of SB 1383. Simply put, there is no relevant purpose to Section 17409.5.7 and we strongly recommend that it be struck entirely from the proposed regulatory text.	A change to the regulatory text is not necessary. The purpose of this section is measure how much organic waste is collected in the gray container, as part of a three-container organic waste collection system. This is necessary to determine how effective organic waste is being recovered and use the results to gauge the accuracy of the jurisdictions container contamination minimization results that send their waste to that specific facility. The result from the above measurements independently will help provide an overview of how the jurisdictions and facilities are doing and allow to cross-check the measurements, even though it is not per jurisdiction. In addition to providing information on the type and quantities of organic waste not being recovered for possible future regulations in order to help recover those materials.
15;0052	Pardo, V., California Refuse Recycling Council Northern District	Section 18984.13. Emergency Circumstances, Abatement, Quarantined Materials and Federally Regulated Waste. Section 18984.13. should be expanded to include "planned upgrades" at the facility level. Facility upgrades will be critical in meeting the state's diversion goals, however, they may prevent a facility from processing material during that period. We suggest the regulations include a provision that allows a facility operator and its	CalRecycle does not concur with changing the language to 'shall' as there may be instances where a jurisdiction wants the material to be taken to another facility for recycling rather than disposing of the material. It is unclear why CalRecycle would require the disposal of organic waste. If a processing issue extends beyond 90-days a jurisdiction could seek additional time under a corrective action plan for extenuating circumstances.

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		jurisdiction to develop a plan for how materials will be handled during the upgrade period. This plan may include temporarily landfilling organic material if there is no organics processing capacity available within a reasonable distance from the facility. This plan may be approved by the LEA. Accordingly, we recommend the following language addition. **(2) If the facility processing a jurisdiction's organic waste notifies the jurisdiction that a needed facility upgrade will temporarily prevent the facility from processing or recovering organic waste, the jurisdiction may allow the organic waste stream transported to that facility to be deposited in a landfill or landfills, if no organics processing capacity is available within a reasonable distance from the facility, subject to EA approval.**	CalRecycle does not concur with the addition of a new waiver because planned and routine maintenance should already be accounted for and the material should not be disposed.
15;0053	Pardo, V., California Refuse Recycling Council Northern District	Article 6.2, Organic Waste Recovery Efficiency Measurements We continue to recommend that CalRecycle reduce the sampling frequency from 10 to 5 days per quarter when performing organic waste recovery efficiency measurements. While Section 17409.5.9. has been expanded to include alternative sampling frequencies, it is our experience that the composition of the material streams does not fluctuate significantly enough at the facility level over a 10-day period to justify a 10-day sampling requirement. A 5-day sampling requirement would suffice. This recommended change would dramatically impact costs at the facility level, while still capturing relevant data. We support and are thankful for the ability to substitute sampling requirements with quality standards that meet or exceed the requirements of Section 17409.5.9. As you are aware, this is especially relevant to fiber materials that must meet stringent contamination limits when sold on the commodity market. Any opportunity to streamline concurrence by the department in these cases is a potential cost savings and will be critical moving forward. Nevertheless, we remain concerned that the use of organic waste type is too broad, and facilities may need to sample an excessive number of organic waste types. A recently released document of potential reporting categories for RDRS lists 26 organic and 20 paper categories. Unfortunately, the sampling requirement creates a disincentive to process material into more segregated categories, or to accept certain material types at the facility level. Some flexibility in combining alike organic waste types will offer a little relief to these facilities. We strongly recommend you clarify what constitutes an organic waste type and how facilities can reduce sampling requirements wherever possible.	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
15;0054	Pardo, V., California Refuse Recycling Council Northern District	Section 18984.5. Container Contamination Minimization We appreciate the ability to choose between two pathways to meet the requirements of Section 18984.5. However, the newly proposed language that jurisdictions implementing a performance-based source separated collection service conduct waste composition studies as described in Subdivision (c) is inconsistent with the requirements of Article 17. The requirements of Section 18998.1. are that a performance-based	Jurisdictions implementing a performance-based source separated organic waste collection system are not subject to the strict education and outreach requirements prescribed in Article 4. This exemption is premised on the jurisdiction's existing education programs being sufficient to meet or exceed the state's minimum standards. The requirement to sample green and blue containers is necessary to ensure that contamination is minimized and that jurisdictions can educate generators that continue deposit contaminants into their collection containers.

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		source separated collection service provide a three-container service to all generators, transport organic waste to a designated source separated organic waste facility and demonstrate no more than 25% organic waste in the gray container collection stream. Accordingly, we offer the following recommended language changes. (B) A jurisdiction that notifies the department that it intends to implement a performance-based source separated collection service pursuant to Section 18998.1 shall conduct **a** waste composition **study** ~~studies at least twice per year for the blue and green containers and~~ once per quarter for the gray container.	
15;0055	Pardo, V., California Refuse Recycling Council Northern District	Additionally, we seek clarification that a sample as described in Section 18984.5.(c)(1)(E) is not intended to be a 200 pounds sample as described in Section 18984.5.(c)(1)(F).	The commenter is correct. The samples taken from hauler routes as described in 18984.5.(c)(1)(E) do not need to be 200 pounds. Those samples must collectively add up to a total of 200 pounds collected from each container stream for the samples conducted per Section 18984.5(c)(F).
15;0056	Pardo, V., California Refuse Recycling Council Northern District	Section 18998.1. Requirement for Performance-Based Source Separated Collection Service We support the intent of Article 17 to provide streamlined requirements as a compliance incentive for jurisdictions implementing high-efficiency performance in recovery of organic waste. However, new language suggests that jurisdictions must demonstrate organic waste in the gray container collection stream does not exceed 25% through the methodology described pursuant to Section 18984.5(c). Contrary to the intent of Article 17, this limits jurisdictions in demonstrating compliance with 18998.1(a)(3). Jurisdictions should have greater flexibility in utilizing waste characterization studies to demonstrate compliance. Furthermore, it must be noted that this only applies to the gray container.	Comment noted. CalRecycle disagrees that the third requirement that jurisdictions demonstrate that less than 25 percent of waste in the gray container is not an appropriate threshold. This threshold is necessary to ensure that if jurisdictions elect to implement a performance-based source separated organic waste collection service, the state can comply with the organic waste reduction targets established in statute. The minimum performance standards that apply to material collected in the green containers in a performance-based source separated organic waste collection service, ensure that collected organic waste is recovered to the minimum degree necessary for the state to achieve the organic waste reduction targets established in statute. This section is necessary to ensure that addition to the requirements that organic waste that is collected in green containers is recovered, a substantial amount of organic waste is not incidentally or intentionally disposed of in the gray container. 25 percent was established as a threshold to mirror the intent and the 75% organic waste diversion threshold established in statute. Absent this section, a jurisdiction would only be implementing a performance-based source separated organic waste collection system and generating 100 tons of organic waste would only need to send the material collected in the green container to a facility that can recover 75 percent of the material in the green container. If the jurisdiction only collects 50 tons of organic waste in the green container and sends it to a facility that recovers 75 percent of that material, up to 50 tons could be sent directly to disposal in the gray container. Removing this section would compromise the state's ability to achieve the organic waste reduction targets. Further, jurisdictions implementing a performance-based source separated organic waste collection system, are not subject to the strict education and outreach requirements prescribed in Article 4. This exemption is premised on the jurisdiction's existing education programs being sufficient to meet or exceed the state's minimum standards. The organic waste threshold measured in the gray container is a key indicator of the efficacy of the program.
15;0057	Pardo, V., California Refuse Recycling Council Northern District	As addressed in Section 18984.5., Article 17 does not include waste composition study requirements for the blue and green container. This is logical, as jurisdictions demonstrating compliance with Section 18998.1. must send organic waste to a	Comment noted. The comment does not recommend or request a specific change to the regulatory text.

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		designated source separated organic waste facility and achieve a high recovery rate of 75% by 2025.	
5075	Pestrella, M., County of Los Angeles; Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	1. See comment letter. Comment(s): The container color requirements are not consistent for the different types of containers. The regulations specify that "blue containers" with a blue lid can have a body of any color, but does not specify the same requirement for brown, gray, and green containers. • Proposed Regulatory Text and Recommended Changes/Revisions: (5.5) "Brown container" means a container where either: (A) The lid of the container is brown in color**, and the body of the container is any color.** (28) "Gray container" means a container where either: (A) The lid of the container is gray or black in color**, and the body of the container is any color.** (29) "Green container" means a container where either: (A) The lid of the container is green in color**, and the body of the container is any color.**	CalRecycle has revised the definitions of the containers to be consistent with each other. Also, thank you for the comment related to the increased flexibility regarding the color and hardware of the containers.
5076	Pestrella, M., County of Los Angeles	2. See comment letter. Comment(s): The definition of "renewable transportation gas" is limited to gas derived from in-vessel digestion of organic waste only. The regulations should expand the definition of "renewable gas" to include gas derived from other technologies, including biomass conversion utilizing thermal conversion technologies, such as gasification and pyrolysis and any other technologies that are determined to constitute a reduction in landfill disposal pursuant to Section 18983.2. • Proposed Regulatory Text and Recommended Changes/Revisions (62) "Renewable Gas" means gas derived from organic waste that has been diverted from a landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by Title 14 to recover organic waste**, a biomass conversion facility that is permitted or otherwise authorized by Division 30 of the Public Resources Code to recover organic waste, or any other process or technology that is subsequently approved under Section 18983.2 to constitute a reduction in landfill disposal.**	Regarding including "all beneficial end uses of renewable gas generated from diverted organic waste", the current proposed definition of "renewable gas" is consistent with statutory language per SB 1383 Section 1(b) that mandates the adoption of policies for beneficial uses of biomethane from "solid waste facilities". In-vessel digestion facilities are solid waste facilities, which allows the department to verify that these facilities are reducing the disposal of organic waste. CalRecycle disagrees with the open-ended approach to renewable gas end uses described in the comment. The broad range of potential recovered organic waste products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors
5077	Pestrella, M., County of Los Angeles; Clark, M., Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force	3. See comment letter. Comment(s): In Section 18982 (56.5), "project baseline" in the context of greenhouse gas (GHG) emission reduction is defined as the amount of GHGs that would result from landfill disposal of organic waste. Section 18983.2.(a)(3) requires technologies applying for consideration as a reduction in landfill disposal to demonstrate permanent lifecycle GHG emissions reduction compared to composting, not landfill disposal. Section 18983.2 should be revised for consistency with the definition of "project baseline." • Proposed Regulatory Text and Recommended Changes/Revisions: (3) To determine if the proposed operation counts as a permanent reduction in landfill disposal, the Department in consultation with CARB's Executive Office shall	Comment noted, this comment is not directed at changes made in the third draft of regulatory text.

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		compare the permanent lifecycle GHG emissions reduction of metric tons of carbon dioxide equivalent (MTCO2e) per short ton organic waste reduced by the process or technology, with the emissions reduction from composting organic waste (0.30 MTCO2e/short ton organic waste). The Department shall only deem a proposed operation to constitute a reduction in landfill disposal if the process or technology results in a permanent reduction in lifecycle greenhouse gas emissions **compared to the project baseline.** ~~equal to or greater than the 0.30 MTCO2e/short ton of organic waste~~.	
5078	Pestrella, M., County of Los Angeles	4. See comment letter. Comment(s): Facilities should only be required to notify jurisdictions once if they can process and recover compostable plastics. Subsequently, facilities should be required to notify jurisdictions within 30 days only if their ability to process and recover compostable plastics changes. The same changes should be applied to Section 18984.2. Two-container Organic Waste Collection Services. • Proposed Regulatory Text and Recommended Changes/Revisions: (A) Compostable plastics may be placed in the green container if the material meets the ASTM D6400 standard for compostability and the contents of the green containers are transported to compostable material handling operations or facilities or in-vessel digestion operations or facilities that have provided written notification ~~annually~~ to the jurisdiction stating that the facility can process and recover that material. **Facilities that are no longer able to process and recover compostable plastics shall provide written notice to the jurisdiction within 30 days.**	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
5079	Pestrella, M., County of Los Angeles	5. See comment letter. Comment(s): Facilities should only be required to notify jurisdictions once whether they can process and remove plastic bags when recovering source-separated organic waste. Subsequently, facilities should be required to notify jurisdictions within 30 days only if their ability to process and remove plastic bags changes. The same changes should be applied to Section 18984.2. Two-container Organic Waste Collection Services. • Proposed Regulatory Text and Recommended Changes/Revisions: (d) A jurisdiction may allow organic waste to be collected in plastic bags and placed in the green container provided that the allowing the use of bags does not inhibit the ability of the jurisdiction to comply with the requirements of Section 18984.5, and the facilities that recover source separated organic waste for the jurisdiction	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags.

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		~~annually~~ provide written notice to the jurisdiction indicating that the facility can process and remove plastic bags when it recovers source separated organic waste. **Facilities that are no longer able to process and remove plastic bags when it recovers source separated organic waste shall provide written notice to the jurisdiction within 30 days.**	The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
5080	Pestrella, M., County of Los Angeles	6. See comment letter. Comment(s): Public Works recommends that the regulations should not require jurisdictions to separate or recover organic waste discarded in publicly accessible waste bins, such as at parks, beaches, sidewalk bus shelters, subway stations, train stations, etc. Although CalRecycle staff has verbally indicated to Public Works staff that facilities, such as parks and beaches with publicly accessible waste bins will not be required to provide organic waste collection bins, it would be helpful if the regulations explicitly exempted such facilities from this requirement. Preventing the public from placing any prohibited materials in public organic waste collection bins may be a significant challenge due to public bins not being continuously or regularly monitored by employees. Los Angeles County received over 50 million visitors in 2018, including many people from other states and countries that are not familiar with organic waste recycling practices. Many of these visitors use public beaches and parks in the County and may not be aware of how to sort organic waste. Furthermore, public organic waste collection bins may attract vermin, posing significant public health and safety issues in urban jurisdictions such as Los Angeles County. • Proposed Regulatory Text and Recommended Changes/Revisions: **(f) Any organic waste generator that provides publicly accessible waste bins at parks, beaches, sidewalk bus shelters, subway stations, train stations, or other similar locations, shall not be required to provide publicly accessible bins for the source-separated collection of organic waste and shall not be required to separate and divert organic waste disposed in any other publicly accessible bin.**	The regulations do not require that organics recycling containers be placed next to trash containers in public areas, such as public parks, beaches, etc.
5081	Pestrella, M., County of Los Angeles	7. See comment letter. Comment(s): Solid waste facility operators are in direct contact with self-haulers, and jurisdictions currently have no way of identifying a generator who is a self-hauler, although jurisdictions will be working to develop enforcement mechanisms to regulate self-haulers. Therefore, Public Works recommends giving solid waste facility operators the defined role of providing information regarding the requirements of Section	CalRecycle deleted requirements that jurisdictions specifically identify and educate self-haulers in response to this comment. Jurisdictions can meet the requirement to educate self-haulers by including information on self-hauling in their general education and outreach material provided to all generators. CalRecycle deleted language requiring solid waste facility operators to educate self-haulers as it would be overly burdensome and is outside the scope of what EAs monitor at

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		18988.3 of this chapter to the self-haulers due to the practicality of ensuring that the requirements are distributed to all self-haulers while jurisdictions are in the process of developing enforcement mechanisms, since solid waste facility operators are guaranteed to come into contact with all self-haulers. • Proposed Regulatory Text and Recommended Changes/Revisions: (7) If a jurisdiction allows generators subject to its authority to self-haul organic waste pursuant to Section 18988.1, **the jurisdiction shall require solid waste facility operators accepting organic material from the jurisdiction to provide** information regarding self-hauling requirements ~~shall be included in education and outreach material~~. **The jurisdiction shall be responsible for preparing education and outreach materials containing the information regarding self-hauling requirements and providing the education and outreach materials to the solid waste facility operators.**	solid waste facilities. This change was made to provide the least burdensome approach and still achieve the required disposal reduction.
5082	Pestrella, M., County of Los Angeles	Section 18992.1 Organic Waste Recycling Capacity Planning 8. See comment letter. Comment(s): Several landfills in Los Angeles County perform quarterly waste characterization studies as required in their Conditional Use Permit. These studies characterize the waste that is received at the landfills and provides a comprehensive representation of the breakdown of waste in the County. Public Works recommends that CalRecycle allow a third means of estimating organic waste, such as reports generated by solid waste management entities (such as landfills) that quantify the tonnage (or percentage) of organics that are sent to landfill disposal. • Proposed Regulatory Text and Recommended Changes/Revisions: (a) Counties, in coordination with jurisdictions and regional agencies located within the County, shall: (1) Estimate the amount of all organic waste in tons that will be disposed by the County and jurisdictions within the County by: (A) Multiplying the percentage of organic waste reported as disposed in the Department's most recent waste characterization study by the total amount of landfill disposal attributed to the County and each jurisdiction located within the County by the Recycling and Disposal Reporting System; or, (B) Using a waste characterization study or studies performed by jurisdictions located within the County and applying the results of those studies to the total amount of landfill disposal attributed to the County and each jurisdiction located within the County by the Recycling and Disposal Reporting System. Local studies may be used if the studies: 1. Were performed within the last five years, 2. Include at least the same categories of organic waste as the Department's most recent waste characterization study that was available at the time the local study or studies were performed, 3. Include a statistically significant sampling of solid waste disposed of by the jurisdiction conducting the study**, or**	Section 18992.1(a) allows for waste characterization study generated by jurisdiction in the county to be used. A waste characterization study performed by an appropriate solid waste management entity within the county can be used. A waste characterization study can be conducted by jurisdictions within a county and it does not have to be performed by an individual jurisdiction.

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		(C) Using a waste characterization study generated by an appropriate solid waste management entity within the County that provides organic waste disposal tonnages or percentages for one, or all, of the organic waste material types that must be analyzed for capacity planning purposes. (2) A county may incorporate the findings of a published report generated by the appropriate solid waste management entities within the county that provides organic waste disposal tonnages or percentages for specific organic waste material types that are not covered in the Department's most recent waste characterization study. This may include, but is not limited to, reports on tons of biosolids or digestate disposed in the county.	
5083	Pestrella, M., County of Los Angeles	9. See comment letter. Comment(s): The regulations state that the County shall conduct community outreach regarding locations being considered for new or expanded facilities. Public Works is concerned that this will require us to conduct community outreach within areas that are not under our jurisdictional authority. Public Works is aware that California Environmental Quality Act requires community outreach for these types of projects and recommends that this responsibility of community outreach be the role of the jurisdiction (city if located within a city or County if located in a County unincorporated area) in which the new or expanded facility is being proposed, and not solely the role of the County regardless of the location of the new or expanded facility. • Proposed Regulatory Text and Recommended Changes/Revisions: **(d) In complying with this Section, the County, city, and/or applicable jurisdiction in which the proposed facility or activity will be located shall:** ~~(3)~~**(1)** Conduct community outreach regarding locations being considered for new or expanded facilities, operations, or activities to seek feedback on the benefits and impacts that may be associated with new or expanded facilities, operations, or activities. The community outreach shall: (A) Include at least one of the following forms of communication: public workshops or meetings, print noticing, and electronic noticing. (B) If applicable, be conducted in coordination with potential solid waste facility operators that may use the location identified by the County and the jurisdictions and regional agencies located within the County. (C) Include communication to disadvantaged communities that may be impacted by the development of new facilities at the locations identified by the County and the jurisdictions and regional agencies located within the County. (D) Communication required by this Section must be provided in non-English languages spoken by a substantial number of the public in the applicable jurisdiction in a manner that conforms with the requirements of Section 18985.1(e). **(2) The County shall provide outreach assistance to a city or another jurisdiction located within the County in which the proposed facility or activity will be located**	The community outreach required in Section 18992.1(c)(3) is intended for the facilities or activities located within the county. Counties can work in coordination with cities to provide this outreach. Nothing precludes cities from providing outreach.

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		with the activities listed in Section 18992.1(d)(1)(A-D) upon request by the city or jurisdiction. **(3) The County shall provide outreach assistance to a city or another jurisdiction in which a proposed facility or activity will be located that will accept organic waste from the County with the activities listed in Section 18992.1(d)(1)(A-D) upon request by the city or jurisdiction.**	
5084	Pestrella, M., County of Los Angeles	See comment letter. Article 12. Procurement of Recovered Organic Waste Products Section 18993.1. Recovered Organic Waste Product Procurement Target 10. Comment(s): As a follow-up to comment No. 2 in this letter under Section 18982. Definitions, the definition of "renewable gas" should be expanded to include gas produced from biomass conversion and other activities, processes, technologies, etc. determined to constitute a reduction in landfill disposal in addition to gas produced from anaerobic digestion. The recovered organic waste products that a jurisdiction may procure to satisfy its procurement requirements should be expanded to include any renewable gas from anaerobic digestion, biomass conversion, and all other activities, processes, technologies, etc. determined to constitute a reduction in organic waste disposal. Public Works recommends that the procurement of all organic waste products, such as transportation fuel and heating in addition to electricity, produced from the renewable gas resulting from biomass conversion, should also be eligible to satisfy a jurisdiction's procurement target. In addition, the products that a jurisdiction can procure to satisfy its procurement target should be expanded to include additional end uses of renewable gas generated from diverted organic waste, including industrial and commercial end uses, residential cooking, energy storage, and production of renewable hydrogen. Many studies have found that industrial, commercial, and manufacturing processes may be difficult to electrify, but can be decarbonized by converting to renewable gas generated from organic waste. The current draft regulations may not include all industrial, commercial, and manufacturing end uses as currently written. In addition, the draft regulations do not include cooking, either residential or commercial. Finally, the current draft does not include use of renewable gas for energy storage or for renewable hydrogen, both of which will be important to meet the requirements of SB 100 (de León, 2018) for 100 percent clean energy by 2045. • Proposed Regulatory Text and Recommended Changes/Revisions: (f) For the purposes of this article, the recovered organic waste products that a jurisdiction may procure to comply with this article are: (1) Compost, subject to any applicable limitations of Public Contract Code Section 22150, that is produced at: (A) A compostable material handling operation or facility permitted or authorized under Chapter 3.1 of this division ; or	In response to expanding the definition of "renewable gas" include biomass conversion utilizing thermal conversion technologies, or any other technologies that are determined to constitute a reduction in landfill disposal, CalRecycle disagrees with the comment's proposed language amendments. The purpose of the current regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. In-vessel digestion facilities are solid waste facilities, which allows the department to verify that these facilities are reducing the disposal of organic waste. Regarding broadening the "renewable gas" definition, CalRecycle disagrees. The proposed SB 1383 regulatory definition of "renewable gas" necessarily limits the feedstock to landfill-diverted organic waste processed at an in-vessel digestion facility. This definition is consistent with statutory language per SB 1383 Section 1(b) that mandates the adoption of policies for beneficial uses of biomethane from "solid waste facilities". The definition is specific to the purpose of the statute and these regulations and does not impact or alter other definitions of renewable gas that are specific to the purpose of other statutes and regulations. In-vessel digestion facilities are solid waste facilities, which allows CalRecycle to verify that these facilities are reducing the disposal of organic waste. Pipeline injection was removed as an eligible procurement option in order to eliminate the potential for double-counting the same gas for different procurement targets. For example, by including pipeline injection, a jurisdiction(s) could count pipeline injected gas as well as the end use of that gas. The draft regulations do not preclude renewable gas facilities from injecting gas into the pipeline, but the language has been streamlined to clarify that only the end use of that gas (transportation fuel, electricity, heating applications) will be counted towards a jurisdiction's procurement target.

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		(B) A large volume in-vessel digestion facility as defined and permitted under Chapter 3.2 of this division that compost on-site. [NOTE: Digestate, as defined in Section 18982(a)(16.5), is a distinct material from compost and is thus not a recovered organic waste product eligible for use in complying with this Article.] (2) Renewable gas **from anaerobic digestion, biomass conversion, or any other process or technology that is subsequently approved under Section 18983.2 to constitute a reduction in landfill disposal** used for fuel for transportation, electricity, ~~or~~ heating applications, **or pipeline injection for use offsite for residential, industrial or commercial applications other than electricity, transportation or heating.** ~~(3) Electricity from biomass conversion~~ (4) Mulch, provided that the following conditions are met for the duration of the applicable procurement compliance year: (A) The jurisdiction has an enforceable ordinance, or similarly enforceable mechanism, that requires the mulch procured by the jurisdiction to comply with this article to meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in Section 17852(a)(24.5)(A)(1) through (3) of this division; and (B) The mulch is produced at one or more of the following: 1. A compostable material handling operation or facility as defined in Section 17852(a)(12), other than a chipping and grinding operation or facility as defined in Section 17852(a)(10), that is permitted or authorized under this division; or 2. A transfer/processing facility or transfer/processing operation as defined in Section 17402(a)(30) and (31), respectively, that is permitted or authorized under this division; or 3. A solid waste landfill as defined in Public Resources Code Section 40195.1 that is permitted under Division 2 of Title 27 of the California Code of Regulations. (g) The following conversion factors shall be used to convert tonnage in the annual recovered organic waste product procurement target for each jurisdiction to equivalent amounts of recovered organic waste products: (1) One ton of organic waste in a recovered organic waste product procurement target shall constitute: (A) 21 diesel gallon equivalents, or “DGE,” of renewable gas in the form of transportation fuel. (B) 242 kilowatt-hours of electricity derived from renewable gas (C) 22 therms for heating derived from renewable gas **(D) 27 therms for pipeline injection of renewable gas** ~~(D) 650 kilowatt-hours of electricity derived from biomass conversion~~ (E) 0.58 tons of compost, or 1.45 cubic yards of compost. (F) One ton of mulch.	

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5085	Pestrella, M., County of Los Angeles	11. See comment letter. Comment(s): Public Works recommends that the regulations not require biomass to be received directly from a compostable material handling operation or facility, transfer/processing operation or facility, or solid waste landfill. This would force generators or haulers to transport biomass feedstock to one of these operations or facilities and then to a biomass conversion facility that may not be co-located, potentially adding significant additional expense and transportation impacts to biomass conversion. Public Works believes that this requirement can be modified as shown below to ensure that procurement of products from biomass conversion will reduce methane emissions by only counting towards a jurisdiction's procurement target if these products are created from biomass that otherwise would have been disposed in a landfill. In addition, Public Works believes that this requirement should be modified to reflect comment No. 2 in this letter under Section 18982. Definitions and comment No. 9 in this letter under Section 18993.1. Recovered Organic Waste Product Procurement Target to expand the definition of "renewable gas" to include renewable gas created from biomass conversion and to allow any products, such as transportation fuel, electricity, and heating created from biomass conversion to count towards a jurisdiction's procurement target. • Proposed Regulatory Text and Recommended Changes/Revisions: (i) ~~Electricity~~ Renewable gas procured from a biomass conversion facility may only count toward a jurisdiction's recovered organic waste product procurement target if the biomass conversion facility receives feedstock directly from one or more of the following during the duration of the applicable procurement compliance year **or the biomass would otherwise have been disposed of in a solid waste landfill**: (1) A compostable material handling operation or facility as defined in Section 17852(a)(12), other than a chipping and grinding operation or facility as defined in Section 17852(a)(10), that is permitted or authorized under this division; or (2) A transfer/processing facility or transfer/processing operation as defined in Section 17402(a)(30) and (31), respectively, that is permitted or authorized under this division; or (3) A solid waste landfill as defined in Public Resources Code Section 40195.1 that is permitted under Division 2 of Title 27 of the California Code of Regulations.	Regarding the request to delete the requirement that biomass must be received directly from a solid waste facility specified in Section 18993.1(f)(4)(B), CalRecycle disagrees. The purpose of the proposed regulatory language is to be consistent with SB 1383 statute requiring organic waste reduction from landfills. This requirement allows the department to verify that biomass conversion facilities are reducing the disposal of organic waste as opposed to processing material that was never destined for the landfill. Regarding expanding "renewable gas" from biomass conversion facilities to other uses beyond electricity, CalRecycle disagrees with this approach. These technologies are not yet in practice on a commercial scale in California and lack the necessary conversion factors to include in Article 12. For the current regulatory proposal, CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products using publicly available pathways and conversion factors.
5086	Pestrella, M., County of Los Angeles	12. see comment letter. Comment(s): The regulations have been modified to remove the provision stating that jurisdictions are not required to seek penalties for a violation of the container contamination requirements. Section 18997.2(a) states that a jurisdiction shall impose monetary penalties for violations of the requirements of this chapter. Section 18984.9(a)(1) requires organic waste generators, including residents and commercial businesses, to comply with the requirements of the organic waste collection service provided by their jurisdiction. Section 18984.9(b)(2) requires commercial businesses to prohibit employees from placing organic waste in a container not designed to receive organic waste. Therefore, it can be concluded that	The comment is not directed at changes in the third draft of the regulations. The comment states that the regulations removed provisions from the regulations stating that jurisdictions are not required to seek penalties for violations of container contamination requirements. That is incorrect as Section 18984.5(b)(3) requirements remain unchanged and still states that a jurisdiction may impose additional contamination processing fees on the generator and may impose penalties. It is implicit in "may" that a jurisdiction is allowed but not required to pursue the action.

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		the regulations will require local jurisdictions to impose monetary penalties on residents, commercial businesses, and other organic waste generators for container contamination. Inspecting containers for contamination and imposing penalties will not effectively reduce contamination because it is not feasible to inspect all containers on a regular basis, nor will the penalties reimburse local jurisdictions for the resources needed to inspect containers, impose penalties, and maintain a record of enforcement actions. Jurisdictions should focus their resources on educating all generators on the requirements of organic waste collection services provided by their jurisdiction instead of imposing penalties for container contamination. Furthermore, state law Senate Bill (SB) 1383 does not grant CalRecycle the statutory authority to require local jurisdictions to impose monetary penalties on residential or commercial organic waste generators for non-compliance. While SB 1383 grants CalRecycle the authority to "require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction," this authority does not extend to the imposition of penalties. SB 1383 only states that CalRecycle "may authorize local jurisdictions to impose penalties on generators for non-compliance." Therefore, Public Works recommends that the regulations be revised to authorize local jurisdictions to impose penalties on generators for non-compliance, but not require jurisdictions to impose mandatory monetary penalties for container contamination. • Proposed Regulatory Text and Recommended Changes/Revisions: **(d) A jurisdiction may, but is not required to, seek penalties pursuant to this section for a violation of the container contamination requirements authorized by Section 2 18984.5(b)(3).**	
5087	Pestrella, M., County of Los Angeles	13. see comment letter. Comment(s): The regulations should allow jurisdictions to provide hardship waivers to certain generators, residents, or commercial businesses to reduce the financial burden of the penalties. The hardship waivers would not in any way exempt a regulated generator, resident, or commercial business from subscribing to organic waste collection services and would only provide a partial or whole exemption from paying a financial penalty. The criteria for granting hardship waivers would be developed by local jurisdictions and approved by CalRecycle. (b) A jurisdiction shall impose penalties for violations of the requirements of this chapter consistent with the applicable requirements prescribed in Government Code Sections 53069.4, 25132 and 36900. The penalty levels shall be as follows: (1) For a first violation, the amount of the base penalty shall be $50-$100 per offense. (2) For a second violation, the amount of the base penalty shall be $100-$200 per offense. (3) For a third violation, the amount of the base penalty shall be $250-$500 per offense.	These regulations require local jurisdictions to adopt an ordinance or other enforceable mechanism that is equivalent to or more stringent that the proposed regulations. Provisions in Government Code Sections 53069.4, 25132, and 36900 control how local jurisdictions set penalties for violations of their ordinances and, as such, any criteria as to how to set penalties within the ranges set in Government Code will be subject to the discretion of the jurisdictions.

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		(4) For any first, second, or third violation, a generator, resident, or commercial business may request a financial hardship waiver from the jurisdiction imposing the penalty to be granted at the discretion of the local jurisdiction and the Department.	
5088	Pestrella, M., County of Los Angeles	14. See comment letter. Comment(s): Los Angeles County is home to over 1 million residents and 20,000 businesses and is comprised of 120 separate unincorporated areas covering 2,653 square miles throughout the County. Waste collection in the unincorporated areas is currently administered through exclusive residential franchise areas, garbage disposal districts, a non-exclusive commercial franchise system, and open-market in a select area. Implementing a performance-based source separated collection service to all residents and businesses throughout all unincorporated areas may be challenging since the areas are not geographically adjacent. However, implementing a performance-based source separated collection service to all residents and/or businesses in specific unincorporated areas may be more feasible. Therefore, the regulations should be revised to allow jurisdictions to implement the performance-based source separated collection service in portions of the jurisdiction or to provide the performance-based source separated collection service to only certain types of generators within the jurisdiction, while still being eligible for the compliance exemptions listed in Section 18998.2 for requirements pertaining to the generators receiving the performance-based source separated collection service only. • Proposed Regulatory Text and Recommended Changes/Revisions: Section 18998.1. Requirements for Performance-Based Source-Separated Collection Service (a) If a jurisdiction implements a performance-based source-separated organic waste collection service it shall: (1) Provide a three-container organic waste collection service consistent with Section 18984.1 Subdivisions (a),(b) and (d)-(f) of this chapter to at least 90 percent of the commercial businesses and 90 percent of the residential sector subject to the jurisdiction's authority, **or to 90 percent of the organic waste generators within a specified portion of the jurisdiction subject to the jurisdiction's authority, or to 90 percent of a specific type of generator (residential, commercial, multi-family, etc.) within all or a specified portion of the jurisdiction subject to the jurisdiction's authority.** Section 18998.2 – Compliance Exceptions (a) If a jurisdiction implements a performance-based source-separated collection service that meets the requirements of Section 18998.1(a), the jurisdiction, **the portion of the jurisdiction in which the performance-based source-separated collection service has been implemented, or the generators receiving the performance-based source-separated collection service** shall not be subject to the following:	Facilities must meet the recovery efficiencies by the dates established in the regulation.

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		Section 18998.3 - Notification to Department (a) A jurisdiction that will implement a performance-based source-separated collection service beginning in 2022 shall notify the Department on or before January 1, 2022. A jurisdiction that will implement a performance-based source-separated collection system in any subsequent year shall notify the Department on or before January 1 of that year. (b) The notification shall include the following information: (1) The name of the jurisdiction. **(2) The portion of the jurisdiction in which the performance-based source-separated collection service will be implemented and/or the types of generators that will be receiving the performance-based source-separated collection service.**	
4026	Price, K. Kochergen Farms Composting, Inc.	As written, the October 2nd changes will weaken the state's ability to meet the Legislature's stated goals and will unnecessarily muddy the permitting scheme under which compostable material handling operations, including chipping and grinding facilities, operate. These dire circumstances will result because the October 2nd changes are unclear regarding whether or not a jurisdiction may include in its annual organic waste disposal reduction targets the amounts of organic wastes received from businesses such as Green Valley. The October 2nd changes place unnecessarily restrictive conditions on which entities may contribute organic waste to a jurisdiction's total pollution reduction metrics. The October 2nd changes also—for no identified or discernable reason—expressly single out "chipping and grinding operators," like Green Valley, for prejudicial treatment. As a result, Green Valley and others like it are in danger of losing their ability to continue to provide their environmentally beneficial services, which will endanger the state's ability to meet the legislatively mandated goals outlined in SB 1383. To avoid these consequences, Green Valley respectfully requests that the regulations be revised to clarify that jurisdictions may include in their recovered organic waste product procurement targets the amounts of organic waste provided by chipping and grinding operators, such as Green Valley, to biomass conversion facilities.	A change to the regulatory text is not necessary. Electricity from biomass conversion is eligible for a jurisdiction's procurement target provided the feedstock used to produce the electricity is derived from specified solid waste facilities. The purpose of the proposed regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. This requirement allows the department to verify that these facilities are reducing the disposal of organic waste. The intent is to ensure these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383. Regarding excluding chipping and grinding operations, again, the intent is to ensure organic materials are diverted from a landfill. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling "green material". "Green material" is defined in 17852(21) as "any plant material except food material and vegetative food material that is separated at the point of generation…", which in turn is defined in 17852(35) as "material separated from the solid waste stream by the generator of that material." Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.
4027	Price, K. Kochergen Farms Composting, Inc.	The Permit establishes Green Valley as a properly permitted compostable material handler engaged in chipping and grinding and establishes that Green Valley's permitted activities are consistent with the very Public Resource Code sections cited for authority in the October 2nd changes. (See, for example, citations to Public Resources Code sections 44001-44017 for alleged support of the proposed regulatory language of Section 18993.1, pp. 56:44-45, 57:1-3, of the October 2nd changes). However, as discussed below, the proposed October 2nd changes deviate sharply from the law, imposing conditions not found in state statute; conditions that serve no discernable purpose, do not further the state's new Short-Lived Climate	CalRecycle disagrees with the comment. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling "green material". "Green material" is defined in 17852(21) as "any plant material except food material and vegetative food material that is separated at the point of generation…", which in turn is defined in 17852(35) as "material separated from the solid waste stream by the generator of that material." Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while

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		Pollutants (“SLCP”) legislation, and that are incompatible with CalRecycle’s own permitting regime.	still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.
4028	Price, K. Kochergen Farms Composting, Inc.	Green Valley primarily receives compostable material that is chipped and ground onsite, then shipped offsite to either a composting or a biomass conversion facility for use in producing electricity. Under earlier versions of the draft regulations, it appeared clear that Green Valley, and other chippers and grinders, would be able to continue to provide this type of service in compliance with the state’s SLCP legislation. As discussed below, however, certain changes to the draft regulations have called this conclusion into question. B. The October 2nd Changes As written, the October 2nd changes require, among other things, that a biomass conversion facility receive “feedstock directly from … [a] compostable material handling operation or facility …, other than a chipping and grinding operation or facility” before its product (electricity) may be counted towards a jurisdiction’s recovered organic waste reduction targets. (p. 56 of 179.) (Section 18993.1, subsection (i), p. 56:13-25 of the October 2nd changes.)1 (1 Subsection (h) of the same regulation applies almost identical conditions to Publicly Owned Treatment Works (POTW) receiving organic waste to produce renewable gasoline. Although subsection (h) may not directly impact Green Valley’s operations, Green Valley’s comments regarding subsection (i) also apply to subsection (h).) As seen above, Section 18993.1, subsection (i), requires that a biomass conversion facility must receive feedstock directly from one or more of the following: (1) a compostable material handler other than a chipper or grinder; (2) a transfer/processing facility or operation; or (3) a solid waste landfill. Only once this condition precedent is met can a biomass conversion facility’s renewable fuel be counted towards a jurisdiction’s reduction targets. Importantly, the regulation is drafted in such a way that biomass conversion facilities are not prohibited from receiving feedstock from an entity that is not one of these three types of sources. That is to say, the regulations do not prohibit a biomass conversion facility from receiving feedstock from sources other than the three types listed; however, the October 2nd changes could be misinterpreted to prohibit a biomass conversion facility from receiving feedstock from an entity other than the three types expressly stated in the regulation, or it could be misinterpreted to exclude the amounts of feedstock received from such an entity from inclusion in the jurisdiction’s total calculations. The potential confusion created by this subsection is particularly damaging to chipping and grinding operations and facilities because those groups are expressly excluded from the three types of sources conditionally required under this subsection. The statement that the feedstock must be received from a “compostable material handling operation or facility as defined in Section 17852(a)(12), other than a chipping and grinding operation or facility as defined in Section 17852(a)(10),” creates confusion about whether a biomass conversion	A change to the regulatory text is not necessary. Electricity from biomass conversion is eligible for a jurisdiction’s procurement target provided the feedstock used to produce the electricity is derived from specified solid waste facilities. The purpose of the proposed regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. This requirement allows the department to verify that these facilities are reducing the disposal of organic waste. The intent is to ensure these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383. Regarding excluding chipping and grinding operations, again, the intent is to ensure organic materials are diverted from a landfill. CalRecycle disagrees with the comment. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling “green material”. “Green material” is defined in 17852(21) as “any plant material except food material and vegetative food material that is separated at the point of generation…”, which in turn is defined in 17852(35) as “material separated from the solid waste stream by the generator of that material.” Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.

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		facility may continue to receive feedstock from chippers and grinders, and, to the extent they can, whether or not the feedstock so received can be included in a jurisdiction's target reduction goals. (Section 18993.1, subsection (i), of the October 2nd changes; emphasis added.)	
4029	Price, K. Kochergen Farms Composting, Inc.	By the October 2nd changes, CalRecycle risks departing from state law in a way that will be detrimental to chippers and grinders throughout the state, like Green Valley. In doing so, the October 2nd changes also harm the state's chances of reaching the pollution reduction goals established by the state's recent SLCP legislation. CalRecycle has not explained why it is proposing the October 2nd changes discussed herein. The October 2nd changes must be revised to clearly allow properly permitted compostable material handlers engaged in chipping and grinding, such as Green Valley, to contribute to a jurisdiction's annual organic waste disposal reduction target amounts. Green Valley employs a significant number of people in the Central Valley in order to perform its compostable material handling operations. If the October 2nd changes are not revised as discussed herein, Green Valley's ability to continue providing these important services will be put at risk.	CalRecycle disagrees with the comment. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling "green material". "Green material" is defined in 17852(21) as "any plant material except food material and vegetative food material that is separated at the point of generation…", which in turn is defined in 17852(35) as "material separated from the solid waste stream by the generator of that material." Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.
2210	Reynolds, Dale, Blythe	We are requesting the Cal Recycle review and amend Section 18984.12 Waivers and Exemptions Granted by the Department. We believe that the current waiver threshold of 75 people per square mile should be increased to a minimum of 1,000 people per square mile in order to include cities like Blythe under the waiver program. The waiver allowance should also be amended to include incorporated cities and not just unincorporated county areas. As you may know, the City of Blythe is in a remote and arid location which produces very little organic waste. Most residential lots do not have grass lawns or moderate to heavy vegetation that produce traditional "green waste". We are also not in the proximity of any local processing facilities. The closest processor is over 100 miles away. It will be very costly and impractical for our residents and businesses to recycle what little organic waste they produce; not to mention the fact that transporting the small amounts of organics will generate additional GHG's while minimally impacting the State's organics recycling goals. The City of Blythe once again thanks you for the opportunity to submit written comments on the proposed regulations. The City will continue to participate in the collaborative process with CalRecycle to develop reasonable and effective guidelines on this important regulation, especially its impact on small low-income disadvantaged communities like ours. While the City supports the goals and objectives of SB 1383, it is hoped Cal Recycle will allow local governments the flexibility to determine the best approach to achieve them.	CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than 5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the following to be eligible would impact organic waste disposal: 1) cities with disposal of less than 5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA's definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile but which are located within a census tract with greater than 50 people per square mile; and 7)

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			rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383. Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection. Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals.
2026	Romanow, Kerrie, San Jose	San Jose's high performing residential and commercial programs utilize a two-pronged approach to organics diversion: source-separation and solid waste processing. The residential program collects source-separated yard trimmings, either in loose-in-the-street piles or with a yard trimmings cart, which become a certified organic compost (97% diversion). In addition, more than 70% of garbage is dive1ied from the landfill through mixed waste processing to recover organics which	Comment noted. CalRecycle acknowledges that some sectors may be more difficult to meet the service requirements than others. The standards were established to ensure that the state can achieve the organic waste reduction targets. Requirements related to providing organic waste collection services are not a new requirement. Jurisdictions are already required by law to offer organic waste collection services to the commercial sector. Additionally, the Article 17 service requirements are specifically designed to apply to an entire jurisdiction. Piecemealing where

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		become a landscape compost. The commercial program collects ' wet' materials (i.e., food scraps, plant trimmings and food-soiled paper), which are anaerobically digested to produce energy, and the bi-product is turned into compost. The commercial system diversion rate is 76%. These approaches achieve SB 1383's state goal of75% organics diversion by 2025. The attached diagram illustrates both programs in more detail. Article 17: Performance-Based Source-Separated Organic Waste Collection Services We are pleased that CalRecycle included a performance-based option for compliance with these regulations, however, as currently written, the requirements do not allow San Jose to continue to implement and build on our current residential and commercial programs in which significant financial investment has been made by ratepayers and haulers beginning in 2008 1. (1 More than $92 million ratepayer dollars have been invested in processing residential garbage over the last ten years.) Our residential program is a three-container system (garbage, recycling, source-separated yard trimmings) that also processes the garbage to recover more organics, while our commercial program is a two¬ container system (wet/dry). We recommend that CalRecycle make the following changes: 7. Recommendation: Modify Section 18998.1 Requirements for Performance-Based Source Separated Collection Service to include a provision for jurisdictions implementing high-performance systems. If a jurisdiction can demonstrate implementation of a system with minimum 75 percent organic waste recovery rate, that jurisdiction shall be considered compliant with the requirements under the performance-based source separated collection service of Article 17.	Article 17 services are provided would unnecessarily complicate enforcement and oversight for the department as well as jurisdictions. Comment noted. This comment assumes that the recovery efficiency standards established in Article 17 are equivalent to an overall jurisdiction diversion target. They are not, as such a requirement is precluded by statute. See response to General Comment 62, also see Specific Purpose and Necessity as presented in the ISOR and FSOR for Article 2 and Article 3.
2027	Romanow, Kerrie, San Jose	Regional Wastewater Facility The San Jose-Santa Clara Regional Wastewater Facility (RWF) is the largest tertiary treatment publicly owned treatment works (POTW) in the Western United States. The RWF is managed by the City of San Jose's Environmental Services Department and has an annual operating budget of approximately $84 million. The RWF treats sewage and industrial waste from the cities of San Jose, Santa Clara, Milpitas, and Cupertino in addition to several smaller cities, towns, and unincorporated areas in Santa Clara County. Altogether, the RWF treats wastewater from over 1.5 million people and 17,000 commercial businesses and industries in the southern end of the San Francisco Bay Area. The wastewater discharged after treatment is the highest standard of purity against which all other POTWs are measured. Using an advanced biological nutrient removal process, solid organic material fed to the RWF's anaerobic digesters is stripped of nitrogen and a greater amount of carbonaceous material than typically goes into digesters at other POTWs. Solids undergo anaerobic digestion to further reduce the volume of organic material and generate methane gas. The methane gas is captured and used for on-site energy. Currently, the digested material is then pumped to open-air lagoons for approximately three and a half years before it is dried in open-air beds for	Comment noted. Comment is not commenting on the regulatory language.

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		approximately six months. The dried biosolids are then hauled to the adjacent Newby Island Sanitary Landfill and used as alternative daily cover. The RWF is transitioning away from the open-air lagoons and drying beds to a new enclosed mechanical dewatering facility. It is anticipated that starting in 2023 the RWF's dewatered biosolids will be transported off-site and beneficially reused.	
2028	Romanow, Kerrie, San Jose	Article 1: Definitions 1. Recommendation: Maintain consistency with California Code of Regulation Title 22 Section 67386.4 terminology for treated wood waste. (30.5) "~~Hazardous~~ **Treated** wood waste" **and "Treated wood"** means wood that is subject to the regulations under Division 20, Chapter 6.5 of the Health and Safety Code and associated regulations, ~~including and "Treated Wood Waste"~~ as defined in Section 67386.4 of Title 22 of the California Code of Regulations.	CalRecycle has revised this section to align with the California Code of Regulation Title 22 Section 67386.4 terminology in response to comments.
2029	Romanow, Kerrie, San Jose	Article 1: Landfill Disposal and Reductions in Landfill Disposal 2. Recommendation: Revise Section 18983.1(b)(6) to capture land application of all material that meets the requirements of Appendix B of Part 503 of Title 40 of the Code of Federal Regulations, not solely anaerobically digested or composted biosolids. We agree with past comments by the California Association of Sanitation Agencies that greenhouse gas reductions achieved via land application is the same regardless of the technology employed to meet the pathogen reduction and vector attraction reduction requirements. The methane reduction is realized in the avoidance of landfilling, not by the process utilized to treat the biosolids. While it is true that most biosolids in California undergo either anaerobic digestion and/or composting, other compliant technologies are also utilized and jurisdictions should not be penalized for using them. Furthermore, there may be an emerging compliant technology that may result in a new product well suited for land application. These types of technologies should be encouraged, not excluded as the text in this section currently does.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.
2030	Romanow, Kerrie, San Jose	Article 3: Organic Waste Collection Services 3. Recommendation: Clarify how to dispose of hazardous wood waste. Section 18984.1 Three-container Organic Waste Collection Services states hazardous wood waste shall not be collected in green, blue and gray containers. The City of San Jose requests clarification on the proper disposal of hazardous wood waste. As stated in the provision below, hazardous wood waste may not be disposed in green, blue or gray containers in the three-container organic waste collection service. (a) (5) Materials specified in this paragraph shall be subject to the following restrictions: The following shall not be collected in the green container: (A) Carpets, non-compostable paper, and hazardous wood waste shall not be collected in the green container. (B) Hazardous wood waste shall not be collected in the blue container or gray container.	Pursuant to Section 18981.2, any designation of a public or private entity to carry out a jurisdiction's responsibilities under Chapter 12 would need to be pursuant to a contract or MOU. As such, a designation would be subject to a negotiated agreement and a potential designee cannot be forced into accepting a designation.

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2031	Romanow, Kerrie, San Jose	4. Recommendation: Clarify how to dispose of hazardous wood waste. Section 18984.2 (c) Two-container Organic Waste Collection Services states hazardous wood waste shall not be collected in green and gray containers or blue and gray containers. (1) Carpets, non-compostable paper, and hazardous wood waste shall not be collected in the green container. (2) Hazardous wood waste shall not be collected in blue or gray container.	This type of waste must be handled separately and cannot be placed in any of the gray, green, or blue containers. DTSC has a guidance document on its webpage on the proper handling, storage, and disposal of TWW generated by businesses and residents: https://dtsc.ca.gov/wp-content/uploads/sites/31/2017/05/Treated-Wood-Waste-Generators-Fact-Sheet.pdf CalRecycle will clarify will provide jurisdictions the guidance from DTSC. For the comment about pre-1924 organic lumber, the 'organic lumber' is organic waste and will be subject to the recycling requirements in Article 3.
2032	Romanow, Kerrie, San Jose	Article 12: Procurement of Recovered Organic Waste Products 5. Recommendation: Revise Section 18993.1 to further clarify what constitutes procurement. We appreciate the addition of "for use or giveaway" to Section 18993.1(e)(1) in the third formal draft of the proposed regulation text; however, it remains unclear what direct procurement means. Must a recovered waste product be acquired from a third-party for it to count toward a jurisdiction' s procurement target? For example, a jurisdiction may self-produce a recovered organic waste product, such as compost, that the same jurisdiction applies at properties it manages. In this scenario, does the production and use of the compost by the jurisdiction count toward its procurement target?	The draft regulations do not intend procure to solely mean purchase. A jurisdiction may produce and use or donate products in addition to or in place of purchasing. In the commenter's example, a jurisdiction may produce compost and use it on the jurisdiction's properties and that would count towards its procurement target.
2033	Romanow, Kerrie, San Jose	6. Recommendation: Revise Section 18993.1(f) to further expand the list of recovered organic waste products that count toward a jurisdiction's procurement target. We appreciate the addition of mulch to Section 18993.1(f) in the third formal draft of the proposed regulation text; however, the section should be further expanded to allow other products resulting from the processing of recovered organic materials to count toward a jurisdiction's procurement target. As commented in previous letters, the proposed procurement targets will be difficult to achieve, particularly for populous jurisdictions like San Jose. Diversity in the types of recovered organic waste products that count toward a jurisdiction's procurement target will make it less onerous for jurisdictions to comply. Furthermore, and as indicated previously, treatment processes and technologies and their resulting products are dynamic. For example, in recent years, the production of biochar and biofertilizers from biosolids has become increasingly popular in the San Francisco Bay Area. Both products are sustainable alternatives to chemical fertilizers and, thereby, aid in the reduction of greenhouse gas emissions. However, neither product is listed in Section 18993.1(f). A catchall provision should be added to allow jurisdictions to request that CalRecycle determine if other/new recovered organic waste products may be procured to comply with the requirements in Article 12.	CalRecycle disagrees with adding "other biosolids products". The broad range of potential products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. Regarding a "catchall provision" for determination of other products, CalRecycle disagrees with this approach for procurement. The broad range of potential recovered organic waste products raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
2034	Romanow, Kerrie, San Jose	8. Recommendation: Modify Section 18998.1 Requirements for Performance-Based Source Separated Collection Service (a)(1) for three container organic waste collection service. Clarify the meaning of the word "Provide" in the statement: Provide a three-container organic waste collection service consistent with Section 18984.1	Comment noted. Jurisdictions are not required to pursue compliance with the collection requirements through Article 17 if the jurisdiction is not able to ensure that 90 percent of generators have service. It is important to clarify that jurisdictions are required to provide collection services to generators. Offering an organic waste collection subscription is not equivalent to requiring participation in service. A jurisdiction may comply through providing a

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		Subdivisions (a), (b) and (d)-(f) of this chapter to at least 90 percent of the commercial businesses and 90 percent of the residential sector, subject to the jurisdiction's authority. The terminology "Provide" could yield two interpretations: • The jurisdiction must offer the three-container organic waste collection service to 90% of all commercial businesses and residents to comply with the requirements under this section • Ninety-percent of the jurisdiction's commercial businesses and 90 percent of the residential sector use the three-container collection service, in practice.	collection service that complies with the requirements of Article 3 which allows jurisdictions to provide waivers on a case-by-case basis.
2035	Romanow, Kerrie, San Jose	9. Recommendation: Modify Section 18998.1 Requirements for Performance-Based Source Separated Collection Services (a)(3) for jurisdictions who process gray cart contents. ~~Ensure that the presence of organic waste in the gray container collection stream does not exceed an aggregate of 25 percent by weight of total solid waste collected in that stream on an annual basis.~~ **Demonstrate that less than 25 percent of the contents of all waste directed to landfill by the jurisdiction is organic waste.**	Comment noted. This comment assumes that the recovery efficiency standards established in Article 17 are equivalent to an overall jurisdiction diversion target. They are not, as such a requirement is precluded by statute. See response to General Comment 62, also see Specific Purpose and Necessity as presented in the ISOR and FSOR for Article 2 and Article 3. Comment noted. The gray container waste evaluations are not only indicative of the amount of organic waste that continues to be disposed in jurisdictions that are implementing a performance-based source separated organic waste collection service, which is an important metric for ensuring the state achieves the statewide targets. The requirements also reflect that jurisdictions implementing these services are not required to comply with enforcement and education and outreach requirements included in other portions of the chapter. The gray container waste evaluations are a way of demonstrating performance that is equivalent to or greater than the minimum requirements jurisdictions would otherwise be subject to. Further, after material is recovered from a gray container waste stream, it cannot be accurately associated with the jurisdiction of origin, and even if it could, such a measurement would be used to quantify a jurisdiction-specific diversion target. As noted in several comments, jurisdiction-specific diversion requirements are precluded by statute.
2036	Romanow, Kerrie, San Jose	See Diagram: Romanow 2036-2037	Comment noted. CalRecycle acknowledges that some sectors may be more difficult to meet the service requirements than others. The standards were established to ensure that the state can achieve the organic waste reduction targets. Requirements related to providing organic waste collection services are not a new requirement. Jurisdictions are already required by law to offer organic waste collection services to the commercial sector. Additionally, the Article 17 service requirements are specifically designed to apply to an entire jurisdiction. Piecemealing where Article 17 services are provided would unnecessarily complicate enforcement and oversight for the department as well as jurisdictions.
2037	Romanow, Kerrie, San Jose	Residue Description 1. Material remaining after sorting out recyclables & compostables; typically non-recyclable plastics and other inert materials. Four audits conducted annually to assess overall diversion of material. 2. Material remaining after compost screening; typically non-recyclable plastics and other inert materials. Four audits conducted annually to assess overall diversion of material. 3. Material remaining after sorting out recyclables & organics; less than 10% organics (Annual third-party audits evaluates % organics).	Comment noted. CalRecycle acknowledges that some sectors may be more difficult to meet the service requirements than others. The standards were established to ensure that the state can achieve the organic waste reduction targets. Requirements related to providing organic waste collection services are not a new requirement. Jurisdictions are already required by law to offer organic waste collection services to the commercial sector. Additionally, the Article 17 service requirements are specifically designed to apply to an entire jurisdiction. Piecemealing where Article 17 services are provided would unnecessarily complicate enforcement and oversight for the department as well as jurisdictions.

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		4. Material remaining after anaerobic digestion; negligible organics, typically non-recyclable plastics and other inert material.	
1018	Schectel, Lori, Central Contra Costa Sanitary District	Central San would like to seek clarification from CalRecycle that ash, grit, and screenings generated from Central San's wastewater treatment process are NOT subject to the requirements exempted for POTWs in Section 18987.1(a). Central San is concerned that the potential diversion requirements (50 percent by 2022 and 75 percent by 2025) on ash, grit, and screenings could pose significant economic challenges to Central San and its ratepayers, and would not result in any additional environmental benefits or SLCP reductions, as these particular waste streams are not anticipated to contain significant quantities of organics.	Ash, grit, and screening which are remaining after the treatment and destined for disposal are not exempt from the generator requirements, organic waste recovery and measurement requirements, recordkeeping and reporting requirements.
15;0064	Sommer, W., StopWaste	We have attached a table with all of our comments on the changes in the final formal draft, as well as key previously recommended changes that have not yet been addressed. Because CalRecycle is not required to respond to comments until the final rules are released, it has been impossible for us to know the state's rationale behind not accepting our previous recommendations, making it difficult to provide justification and documentation that addresses the state's concerns. Below is a summary of our primary concerns: • Realistic enforcement timelines: Given the large number of accounts to be inspected in a jurisdiction, it is not possible to return to non-compliant generators within the timeframes proposed in the draft rules. For example, in our MRO enforcement, we have capacity to conduct about 6,000 inspections a year (probably more than other jurisdictions) and there are about 20,000 commercial accounts that are covered by our MRO. Currently our inspections have been resulting in violations about 50% of the time, and after we send a Notice of Violation (warning letter), we may not be able to get back to that account for more than a year. If we had to re-inspect within 90 days until compliance is achieved, we would not be able to conduct new inspections at other generators.	The comment is not germane to changes made in the third draft of the regulatory text. The timelines were established in the first draft of the regulatory text released in January of 2019. CalRecycle disagrees with the comment that the enforcement timelines are unrealistic. The timelines established in the regulation reflect the ambitious organic waste reduction targets and the essential role compliance with the regulation plays in achieving those targets. The timelines proposed by the comment would frustrate the purpose of the statute, and would establish minimum fines for violations that are orders of magnitude lower than cost of compliance. The department notes that as structured this section requires a jurisdiction to take action to commence a penalty 150 days after issuing the NOV, the NOV can be issued up to 60 days after a violation was discovered. This allows the commencement of an enforcement action to occur 210 days after an entity was found out of violation. This provides a jurisdiction up to 7 months to educate a violator and bring them into compliance before a penalty action must commence. This is in accordance with the requirements established in Section 53069.4 which require a local agency to provide a reasonable period of time to remedy a violation prior to the imposition of administrative fines. The actual issuance of the penalty may require additional time as well, further extending the time to correct a violation, and the time between the occurrence of the violation and the issuance of a penalty for that violation. Extending the timelines as proposed would confound the timelines conceivably preventing the issuance of a penalty for a second or subsequent violation or offense as provided in the relevant sections of the Government Code. As noted above Section 53069.4 of the Government Code establishes procedures for issuing penalties, which these regulations conform to. Sections 25132 and 36900 of the Government Code additionally establish maximum penalty amounts, and timelines for issuing penalties for a second offense and subsequent offense. Under Sections 25132 and 36900 of the Government Code, a jurisdiction can only issue a fine for a second or third violation if the violation occurs within one year of the first violation. In practice, if a jurisdiction delays the levying of a penalty to the maximum amount of time permitted in the regulation to commence a penalty (7 months), the issuance of a second penalty for that violation is nearly precluded. Extending the timelines as proposed by the commenter would effectively make the minimum timelines for issuance of a first penalty preclude the issuance of a penalty for a second violation in all circumstances. This would artificially limit the maximum fine amount to no more than $100 per year for a violation as fundamental as the requirement that businesses participate in organic waste recycling service provided by the jurisdiction. The department

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			estimates the cost of compliance with obtaining organic waste recycling service will average $80 per month. Under the text proposed by the commenter, the minimum fine amount for failure to have organic waste recycling service would be orders of magnitude less than the cost of compliance. Therefor the language proposed in the comment is incongruent with achieving the statutory targets.
15;0065	Sommer, W., StopWaste	• Food waste prevention and edible food recovery: We have made this comment on previous drafts, and reiterate it here because the biggest climate benefit is achieved through the prevention of surplus edible food. We strongly recommend incorporating incentives for preventing food waste upstream, including waivers for commercial edible food generators who generate de minimis quantities of edible food or no surplus food.	SB 1383's statutory requirement is to recover 20% of currently disposed edible food for human consumption by 2025. The statute does not include any requirement for California to achieve a food waste prevention target. As a result, CalRecycle will not require commercial edible food generators or jurisdictions to prevent or source reduce the amount of edible food generated. CalRecycle does however recognize that some commercial edible food generators could have types of edible food available for food recovery that are not desired by food recovery organizations or services. One example would be a generator having significant quantities of food that does not meet the nutrition standards of food recovery organizations or food recovery services. To help address this issue, CalRecycle added language to the edible food recovery education and outreach section to require jurisdictions to annually provide commercial edible food generators with information about the actions that commercial edible food generators can take to prevent the creation of food waste. To clarify, this is not a requirement for commercial edible food generators or jurisdictions to source reduce the amount of surplus edible food they generate. Rather, this is an education requirement intended to help generators learn how they can prevent the creation of food waste. While this education is important for all commercial edible food generators, this education will be critical for commercial edible food generators that dispose of edible food types that might not typically be desired by food recovery organizations and food recovery services because these generators are still required to comply. Adding a section for commercial edible food generator exemptions and de-minimis waivers to the regulatory text was not necessary. Adding a section for exemptions and de-minimis waivers was not necessary because the regulations are already structured so that many food facilities and food service establishments are exempt from compliance due to the smaller amounts of edible food they typically dispose and have available for food recovery. Only the entities identified as tier one and tier two commercial edible food generators are required to comply. Every other food facility or food service establishment that is not a tier one or tier two commercial edible food generator is exempt from SB 1383's regulations. CalRecycle recognizes however, that some commercial edible food generators could experience extraordinary circumstances that could make compliance impracticable. To address this issue, CalRecycle revised Section 18991.3. Specifically, language was added to specify that a commercial edible food generator shall comply with the requirements of Section 18991.3 unless the commercial edible food generator can demonstrate extraordinary circumstances beyond its control that make such compliance impracticable. For the purposes of Section 18991.3 extraordinary circumstances are specified as (1) a failure by the jurisdiction to increase edible food recovery capacity as required by Section 18992.2, Edible Food Recovery Capacity. And (2) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters.

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15;0066	Sommer, W., StopWaste	• Procurement: We would like to reiterate that we strongly opposed the attempt to strengthen a market by mandating cities to buy a minimum amount of compost and mulch, especially using the proposed methodology, which penalizes cities with robust organics collection programs. We have included comments to create a more practical implementation strategy, as the State has indicated that they will not remove the minimum procurement requirement.	CalRecycle disagrees with the comment's interpretation that the draft regulations mandate the use of compost and mulch. The draft regulations provide flexibility for jurisdictions to choose the recovered organic waste product(s) that best fit local needs. A jurisdiction has the option to procure other products instead of, or in addition to, compost and mulch. Moreover, the comment is unclear about how the proposed methodology "penalizes cities with robust organics collection programs". The proposed procurement requirements do not mandate a jurisdiction to prove "additionality" to any other mandatory or voluntary programs.
15;0067	Sommer, W., StopWaste	• Penalties: As written, this section leaves the determination of the violation level and the amount of the penalty to the discretion of Local Assistance Staff. We acknowledge that the changes may provide some flexibility, but this will likely result in inconsistent and potentially unfair enforcement. Based on our experience with AB 341 and AB 1826, there has been unclear and inconsistent application of compliance requirements across local jurisdictions by different Local Assistance Staff, who often shared the same supervisor. The new structure also has implications for procurement violations, with the maximum violation of $10,000/day being potentially the same as major violations, such the lack of an enforceable mechanism to for organic waste disposal reduction.	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires.
15;0068	Sommer, W., StopWaste	Article 1 Section 18982 Current Language: (18) "Edible Food" means food intended for human consumption. Proposed Language: "Edible Food" means **surplus** food **that was** intended for human consumption. Rationale: Definition of "Edible Food" should include language that implies there's a problem with too much food being generated "surplus."	Commercial edible food generators are required to arrange to recover the maximum amount of edible food that would otherwise be disposed. Edible food that would otherwise be disposed is not always caused by over purchasing, over ordering, or having a surplus. For this reason, the term "surplus" was not be added to the definition of "edible food." For additional clarification on the final definition of edible food please see the explanation below. In an early draft of the proposed regulations edible food was defined as: "Edible food" means unsold or unserved food that is fit for human consumption, even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions. For the purposes of these regulations, "edible food" is not solid waste if it is recovered and not discarded." Several commenters made the argument that this definition was too restrictive, because it described "recoverable food" not "edible food." Commenters also raised concerns that keeping this definition would make the edible food baseline much smaller than it would be with a broader definition, and would potentially discourage donations of foods that were still safe for human consumption. To address commenters' concerns about the definition of "edible food" being too restrictive, CalRecycle revised the definition. In the final regulations, edible food is defined as the following: "Edible food" means food intended for human consumption. (A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded. (B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. Although the final definition of "edible food" is broader than the previous draft definitions, the final definition includes language to clarify that all edible food that is recovered under SB 1383

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			must still meet the food safety requirements of the California Retail Food Code. This provision provides an objective standard familiar to regulated entities.
15;0069	Sommer, W., StopWaste	Article 1 Section 18982 Current Language: ()B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. Proposed Language: Nothing in this chapter requires or authorizes the recovery of **inedible food** that does not meet the food safety requirements. Rationale: Current language contradicts edibility. Add "inedible food" definition and term to further clarify and address donation dumping of inedible food by generators.	This comment is regarding the provision in the definition of “edible food” that specifies that nothing in SB 1383’s regulations requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. This provision clarifies that only edible food that meets all of the California Retail Food Code food safety requirements can be recovered for human consumption. The commenter did not provide a definition for "inedible food" to support the proposed change and also did not explain how the current definition contradicts edibility. The proposed term "inedible food" is unclear. CalRecycle is however familiar with the term "inedible parts" which typically means parts of food that are not intended for human consumption. Therefore, if "inedible food" or "inedible parts" would not be intended for human consumption, this food would not be relevant to the edible food recovery regulations since SB 1383's statute specifies that edible food must be recovered specifically for human consumption.
15;0070	Sommer, W., StopWaste	Article 1 Section 18982 The reference to “Food Facility” in the definitions and terms is confusing unless it only applys to LEA's (schools). The definition in the Health and Safety code includes entities listed in T1 & T2 and some facilities not covered T1/T2. Is it only applicable to LEA’s with on-site “food facilities” or is it used with other types of generators? Will schools with vending machines be required to donate food from vending machines?	CalRecycle would like to clarify that a reference to the term ‘on-site food facility’ is only used in the thresholds for the following tier two commercial edible food generators: local education agencies, hotels, and health facilities. The regulations specify that ‘food facility’ has the same meaning as in Section 113789 of the California Health and Safety Code. CalRecycle provided additional clarification of the term "on-site food facility" in the FSOR. Regarding the question, “will schools with vending machines be required to donate food from vending machines?” Some vending machines, such as vending machines with temperature control units, are required to have a food facility permit be and inspected as a food facility. If a vending machine at a local education agency does meet the California Health and Safety Code definition of “food facility,” or the local education agency has any other food facility on-site, then the local education agency will be required to comply with the commercial edible food generator requirements of SB 1383. To clarify further, the local education agency will be required to arrange to recover the maximum amount of edible food that would otherwise be disposed. This extends beyond donating surplus food from vending machines.
15;0071	Sommer, W., StopWaste	Article 1 Section 18982 Current Language: 73) "Tier One commercial edible food generator" means a commercial edible food generator that is one of the following: A) Supermarket. B) Grocery store with a total facility size equal to or greater than 10,000 square feet. C) Food service provider. D) Food service distributor. E) Wholesale food vendor. Proposed Language: 73) "Tier One commercial edible food generator" means a commercial edible food generator that is one of the following: A) Supermarket. B) Grocery store with a total facility size equal to or greater than 10,000 square feet. C) Food service provider **operating in a facility greater than 10,000 square feet**, D) Food service distributor. E) Wholesale food vendor. Rationale: Food service provider is a changed definition. Some food service providers could be pretty low volume to a commercial entity, so there should be	In a previous draft of the regulations, food service providers and food service distributors were included under one definition. The term used to identify these entities was “food service distributor.” Due to this definition lacking clarity, a commenter asked CalRecycle to provide examples of "food service distributors." Another commenter recommended that the term food service distributors should be removed from the regulations and that separate definitions for "food distributor" and "food service provider" be used instead. CalRecycle revised the regulatory text in response to these comments since food distributors and food service providers have different functions in the food supply chain and often perform very different roles. As a result, the term "food service distributor" was removed and replaced with two separate definitions; one definition for "food distributor," and one definition for "food service provider." The final definitions are below:

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		some kind of size qualifier in the Tier One definition or if it's a food service provider operating a cafe/restaurant in a commercial cafeteria-like setting it should be considered to be only for 250 seats or more in Tier Two similar to the restaurants. There is inequity here with places that hire a food service provider versus hiring their own staff.	"Food distributor means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores." "Food service provider means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations." With regard to the comment requesting that a threshold be added for "food service provider," no data was provided to support or justify the proposed change. Additional data is required before a threshold for this generator could be considered. Specifically, food waste disposal rates and food donation data from food service providers based on the different thresholds recommended would have needed to be presented and reviewed by CalRecycle prior to making the proposed change.
15;0072	Sommer, W., StopWaste	Article 1 Section 18982 IN REGARDS TO "FOOD SERVICE PROVIDER" Include size of service, annual operating budget, # of seats or food spend so that small operations are not included in Tier One unnecessarily.	The commenter did not provide any data to support or justify a change to the regulatory text. Additional data is required before a threshold for this generator could be considered. Specifically, food waste disposal rates and food donation data from food service providers based on the different thresholds recommended would have needed to be presented to CalRecycle and reviewed by CalRecycle prior to making the proposed change. It is also unclear how CalRecycle should have decided on an annual operating budget cutoff. Additionally, jurisdictions would have a very difficult time identifying these generators if "annual operating budget" was used as the threshold metric. How will the jurisdiction know what the annual operating budget of a generator is? Regarding the other thresholds recommended, we would like to reiterate that the commenter did not provide any data to support their ideas.
15;0073	Sommer, W., StopWaste	Article 1 Section 18982 Also worth noting, some school cafeterias now have contracted food service providers so does that move them up into T1 generators when schools are currently in T2?	To clarify, a local education agency with an on-site food facility is a tier two commercial edible food generator. As a tier two commercial edible food generator the local education agency will not be responsible for compliance until January 1, 2024. Food service providers are tier one commercial edible food generators which requires them to comply beginning January 1, 2022. If a food service provider operates at a local education agency, then beginning January 1, 2022 the food service provider is responsible for compliance. The local education agency is not responsible for compliance until January 1, 2024.
15;0074	Sommer, W., StopWaste	Article 3 Section 18984.1 Current Language: A) Compostable plastics may be placed in the green container if the material meets the ASTM D6400 standard for compostability and the contents of the green containers are transported to compostable Material Handling Operations or Facilities or In-vessel Digestion Operations or Facilities that have been provided written notification annually to the jurisdiction that the facility can process and recover that material. Proposed Language: A) Compostable plastics may be placed in the green container if the material meets the ASTM D6400 standard for compostability and the contents of the green containers are transported to Compostable Material Handling Operations or Facilities or In-vessel Digestion Operations or Facilities that have been provided written notification annually to the jurisdiction that the facility can process and recover **or remove** that material.	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility.

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		Rationale: If regular plastic bags are able to be removed, then compostable plastic liners should be able to be removed as an option. If a facility is making CDFA organic registered product, they will have to pre-process material to remove compostable plastic and may find that this effort is worth it to collect more food. Other facilities may want to not accept compostable plastic because they cannot remove it during pre-processing. Either way, adding the flexibility to remove this material allows facilities to make the decsion.	It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
15;0075	Sommer, W., StopWaste	Article 3 Section 18984.1 IN REGARDS TO COMPOSTABLE PLASTICS Sometimes the jurisdiction has no direct relationship with the composting facility where their organics are being processed because their franchised hauler has that relationship. Is it okay if the letter is to the hauler? Also, the facility may not want to put it in writing that they accept "synthetic materials" as it may violate the NOP standards.	The facility would notify the jurisdiction that it no longer accepts compostable plastics. A facility accepting these materials would typically notify the jurisdiction as part of the facility's normal operating procedures. CalRecycle already revised Sections 18984.1, 18984.2, and 18984.3(e) to provide clarity about when a jurisdiction may allow plastic bags to be placed in containers. The issue of whether to allow bags hinges primarily on whether or not the receiving facility will accept them. Many facilities are not accepting bags because of operational problems and product quality issues. In order to document jurisdiction decisions about the use of bags, CalRecycle also revised Section 18984.4(a) to require that jurisdictions keep information in their records about the facilities to which they send bags. The regulatory language already allows plastic bags to be removed. For any plastic bags, including compostable plastic bags, a facility receiving such material will have to notify the appropriate jurisdiction that compostable plastics will not be recovered at the facility. It would be acceptable for the facility to provide the letter to the hauler and the hauler would provide the letter to the City. Nothing precludes a facility from specifying the type of resins and products the facility will accept. The written notification from the facility is given to the jurisdiction every 12 months after the regulation takes effect. As many stakeholders have noted markets and technology is are dynamic. A solid waste facility needs the ability to determine that accepting plastic bags or compostable plastics is no longer feasible and have the ability to notify a jurisdiction. This may trigger and require behavior change for the collection program in order to improve overall recovery. The notification requirement is intended to foster this. The requirement to annually check with the facility that bags are still allowed is not onerous or burdensome.
15;0076	Sommer, W., StopWaste	Article 3 Section 18984.6 Current Language: (4) Copies of all notices, and enforcement orders issued or taken against generators with prohibited container contaminants. Proposed Language: (4) Copies of **or documentation of** all notices, and enforcement orders issued or taken against generators with prohibited container contaminants. Rationale: If a jurisdiction has a designee, then allow them to provide reports/data to jurisdiction about what was done, but not necessarily copies of all notices, to reduce burden on transferring copies of everything. Other items in the section were changed from "copies" to "documentation", but not this line. Also, an electronic	Comment noted, CalRecycle revised and streamlined the recordkeeping requirements. The recordkeeping requirements for enforcement orders represent the minimum level of record keeping that any entity taking enforcement would need to keep, regardless of the requirements of this regulation.

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		version of our enforcement letters is saved automatically in our CRM before it is printed on our letterhead, so it's not the actual copy of what was sent. If we have to keep the actual copies, we'd have to spend significant staff time scanning letters before we send out.	
15;0077	Sommer, W., StopWaste	Article 3 Section 18984.7 Current Language: (b) Notwithstanding subdivision (a), a jurisdiction is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the color requirements of this article prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first. Proposed Language: (b) Notwithstanding subdivision (a), a jurisdiction is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the color requirements of this article prior to the end of the useful life of those containers, or prior to January 1, 2036~~, whichever comes first~~. **Prior to January 1, 2036, a jurisdiction may choose to hold off on replacing individual containers at the end of their useful life in order to have consistent container colors within the jurisdiction or neighborhood to facilitate consistent messaging about what materials go in which color carts.** Rationale: Would not want a mix-match of containers in old colors and containers in new correct colors because it would be confusing. Allow for waiting for the majority of containers in a jurisdiction to be at the end of useful life and switch out all at once OR AT LEAST IN SECTIONS OF THE JURISDICTION. ESPECIALLY GIVEN ALL THE REQUIREMENTS FOR EDUCATION/OUTREAH IN DIFFERENT LANGUAGES, IT WOULD BE A MESSAGING NIGHTMARE TO HAVE DIFFERENT NEIGHBORS ON THE SAME STREET BE USING DIFFERENT COLOR BINS JUST BECAUSE SOME BROKE AND HAD TO BE REPLACED WITH THE NEW COLORS.	Container Color Requirements need to be in place by the end of useful life of the containers or prior to January 1, 2036, whichever comes first. The regulations do not specify how containers are phased in. The regulations allow for phasing in at the discretion of the jurisdiction and their designees provided that the correct colors are phased in by 2036.
15;0078	Sommer, W., StopWaste	Article 3 Section 18984.11 Current Language: 1) De Minimus Waivers: A) A jurisdiction may waive a commercial business's obligation to comply with some or all of the organic waste requirements of this article if the generator is a commercial business that provides documentation or the jurisdiction has evidence demonstrating that: 1) The commercial business's total solid waste collection service is two cubic yards or more per week and organic waste comprises less than 20 gallons per week of the businesses' total waste. 2) The commercial business's total solid waste collection service is less than two cubic yards per week and organic waste comprises less than 10 gallons per week of the businesses' total waste. Proposed Language: 1) De Minimus Waivers: A) A jurisdiction may waive a commercial business's obligation to comply with some or all of the organic waste requirements of this article if the generator is a commercial business that provides documentation or the jurisdiction has evidence demonstrating that: 1) The commercial business's total solid waste collection service is two cubic yards or more per week and organic waste comprises less than 20 gallons per week of the	There is nothing that prohibits the jurisdiction from having more restrictive criteria. The language does not limit de minimis waivers to three-container systems. Regarding part time residential waivers. CalRecycle is not able to quantify how much material would be exempt, and many of these residents would be captured under the low population waivers in Section 18984.12. Such a waiver could compromise the state's ability to meet the organic waste reduction targets. CalRecycle does not concur with waiving to "part-time" residents as the term is undefined and could encompass a significant amount of waste generation when the property owner is in residence.

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		businesses' ~~total~~ **solid** waste **in the grey container**. 2) The commercial business's total solid waste collection service is less than two cubic yards per week and organic waste comprises less than 10 gallons per week of the businesses' ~~total~~ **solid** waste **in the grey container**. Rationale: If total solid waste collection service is definied as all three streams of collection service (garbage, recycling and organics), then the threshold of what qualifies as de minimus should be based on what's in the garbage, not what they may be already diverting in the blue or green container. Our MRO approves de minimus waivers if "documentation satisfactory to the Enforcement Official is provided that Covered Materials comprise, on an on-going and typical basis, less than 10% by weights of Solid Waste taken to Landfill(s) from that collection location."	
15;0079	Sommer, W., StopWaste	Article 4 Section 18985.2 Current Language: (D) Information about actions that commercial edible food generators can take to prevent the creative of food waste. Proposed Language: Provide information, tools or resources to commercial edible surplus food generators to help prevent or reduce surplus food from being generated. Rationale: Language around food waste prevention outreach varies by type of generator in the regs. Change for consistency here and on pg. 39 13.	The commenter requested that Section 18985.2 Edible Food Recovery Education and Outreach (b)(1)(D) be revised. Section 18985.2 (b)(1)(D) requires a jurisdiction to, at least annually, provide commercial edible food generators with information about actions that commercial edible food generators can take to prevent the creative of food waste. The commenter recommended that the language be revised to require jurisdictions to provide information, tools, or resources to commercial edible food generators to help prevent or reduce surplus food from being generated. The proposed revision would require jurisdictions to do a significant amount of additional work to comply. Rather than requiring this of jurisdictions, CalRecycle provided information in the FSOR to clarify that jurisdictions can potentially comply with Section 18985.2 (b)(1)(D) by providing tools or other resources to commercial edible food generators which includes information about the actions that can be taken to prevent the creation of food waste.
15;0080	Sommer, W., StopWaste	Article 8 Section 18989.2 Current Language: (a) A jurisdiction shall adopt an ordinance or other enforceable requirement that requires compliance with Sections 492.6(a)(1(C), (D), and (G) of the Model Water Efficient Landscape Ordinance, Title 23, Division 2, Chapter 2.7 of the California Code of Regulations. Proposed Language: ~~(a) A jurisdiction shall adopt an ordinance or other enforceable requirement that requires compliance with Sections 492.6(a)(3)(1)(B),(C), (D), and (G) of the Model Water Efficient Landscape Ordinance, Title 23, Division 2, Chapter 2.7 of the California Code of Regulations.~~ Rationale: If compost and mulch used in WELO-compliant projects does not contribute to the jurisdiction's procurement target, we recommend deleting this requirement. StopWaste made the suggestion to include WELO enforcement in an earlier draft with the goal of having any compost (and now mulch) used on all WELO compliant projects contribute to the procurement target. If this measure doesn't help cities meet the procurement target, it is just more work for them without any benefit.	CalRecycle's approach of a procurement target recognizes the diverse number of jurisdictions across the state and allows flexibility for jurisdictions to use any combination of recovered organic waste products, rather a one-size-fits-all mandate to use compost and mulch, which many jurisdictions do not need. CalRecycle disagrees with the approach of counting all MWELO-compliant compost and mulch towards a jurisdiction's procurement target. This would allow products procured for new or expanded developments, which jurisdictions should already require to use compost or mulch, to count towards a jurisdiction's procurement target, regardless of whether that entity is a direct service provider to the jurisdiction, or has any relation to the jurisdiction at all. As noted above entities subject to MWELO should already use compost or mulch under MWELO. A jurisdiction must work with non-jurisdictional entities to develop a direct service provider contract or agreement in order to count procurement towards the target.
15;0081	Sommer, W., StopWaste	Article 9 Section 18991.3 Current Language: For the purpose of this section extrordinary circumstances are: Proposed Language: add "**equipment failure** and **power outages**	The regulations specifically state "extraordinary circumstances" are: (1) A failure by the jurisdiction to increase edible food recovery capacity as required by section 18992.2.; and (2) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters. The

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		Rationale: After the recent power outages in the SF Bay Area in October, we heard from one merchandizer that they lost $92k of perishable food products. This was a situation that was out of their control. Would this be condidered an emergency or act of god? Another example is a local school district that lost food due to school closures as a result of bad air quality from the Paradise fires. These scenarios seem to be more common with our changing climate.	language “other emergencies” in this provision is intended to take into account other situations that are emergent in nature, and may not be commonly defined as “natural disasters,” but that are nevertheless outside the control of the commercial edible food generator and cause compliance to be impracticable. Please note, “other emergencies” includes business closure due to disease pandemics, and power shutoffs that are carried out specifically to protect the public’s safety (e.g. electric company schedules and carries out a preventative power safety shutoff to protect the public from wildfires). “Other emergencies” however, does not include equipment failure or power outages that are not a direct result of a natural disaster or carried out specifically to prevent a natural disaster (e.g. wildfire). Allowing any additional flexibility to the "extraordinary circumstances" provision in the regulations could result in a loophole for commercial edible food generators to avoid compliance with the commercial edible food generator requirements of SB 1383.
15;0082	Sommer, W., StopWaste	Article 10 Section 18991.3 Include a de minimus waiver for commercial food generators that can demonstrate through pre-consumer food waste tracking or other inventory databases, etc. that they do not generate surplus food to meet T1/T2 thresholds. Include new min. threshold for food donation. In 2017, StopWaste conducted a waste characterization study that included edible food and found that some restaurants (who would be considered Tier 2 generators) did not generate any quantifiable surplus edible food. Would these generators still be required to have an agreement with a FRO, and fulfill all the record-keeping requirements for EFR? If they can demonstrate that they have prevented the generation of surplus edible food, that should be acceptable.	Adding a section for commercial edible food generator exemptions and de-minimis waivers to the regulatory text was not necessary. Adding a section for exemptions and de-minimis waivers was not necessary because the regulations are already structured so that many food facilities and food service establishments are exempt from compliance due to the smaller amounts of edible food they typically dispose and have available for food recovery. Only the entities identified as tier one and tier two commercial edible food generators are required to comply. Every other food facility or food service establishment that is not a tier one or tier two commercial edible food generator is exempt from SB 1383’s commercial edible food generator regulations. CalRecycle recognizes however, that some commercial edible food generators could experience extraordinary circumstances that could make compliance impracticable. To address this issue, CalRecycle revised Section 18991.3. Specifically, language was added to specify that a commercial edible food generator shall comply with the requirements of Section 18991.3 unless the commercial edible food generator can demonstrate extraordinary circumstances beyond its control that make such compliance impracticable. For the purposes of Section 18991.3 extraordinary circumstances are specified as (1) a failure by the jurisdiction to increase edible food recovery capacity as required by Section 18992.2, Edible Food Recovery Capacity. And (2) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters. To clarify the commenter's question about whether a restaurant would still be required to comply, any entity that meets SB 1383's definition of "restaurant" and the associated threshold for restaurants specified in the regulations will be required to comply with SB 1383's commercial edible food generator requirements.
15;0083	Sommer, W., StopWaste	Article 9 Section 18991.4 There will be double counting if Food Recovery Orgs and Food Recovery Services are both reporting recovery numbers. Example- Replate would report food picked up, then Food Recovery Org (church) receiving food would report the same food (lbs.)	The regulations are structured to ensure that double counting of pounds recovered will not occur. Double counting should not occur because the requirement is for food recovery organizations and food recovery services to only report the pounds they collect or receive directly from commercial edible food generators. For example, if a food recovery service collects food directly from a commercial edible food generator, then the food recovery service is responsible for maintaining a record of those pounds collected and also responsible for reporting those pounds to one jurisdiction (the jurisdiction the food recovery service’s primary address is physically located). If a food recovery organization receives food from a food recovery service, that food recovery

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			organization is not responsible for reporting those pounds of food to the jurisdiction because the food was not collected or received directly from a commercial edible food generator. For additional clarification please refer to the FSOR.
15;0084	Sommer, W., StopWaste	Article 12 SAection 18993.1 Can CalRecycle point to any precedent for the state requiring local procurement of a minimum absolute quantity of a good or service? Most incentives are percent based, including the recycled content paper requirements in the 1383 draft regs. There is some general language in the code about the department developing regulations to meet the goals, but it doesn't speak specifically to this issue. If the department does not have other examples of this type of procurement target, we recommend changing this approach to one that is more aligned to other procurement requirements and based on the opportunity for use of the product. Is there a similar state procurement requirement, for UC, CalState, CalTrans, etc? I know that there are BMP's for CalTrans and statutes to require compost to be used post-fire for CalTrans and CalFire, but those are both based on demand, not amount of organics to disposal like the jurisdiction level target. If the state is going to require a target for cities, the same should be done at the state level. This would be fair and reduce the burden on cities.	The procurement requirements are designed to build markets for recovered organic waste products, which is an essential component of achieving the highly ambitious organic waste diversion targets mandated by SB 1383, which are unprecedented in their own right. CalRecycle developed an open and transparent method to calculate the procurement target that is necessary to help meet the highly ambitious diversion targets set forth by the Legislature. CalRecycle also recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. Regarding state procurement, there are existing procurement requirements on state agencies and this rulemaking will not be adding to those. CalRecycle currently works with sister agencies to implement existing procurement-related legislation. For example, CalRecycle coordinates with the Department of General Services (DGS) to implement the State Agency Buy Recycled Campaign (SABRC), Public Contract Code 12200 to 12217, which requires state agencies to purchase products, including compost and paper, containing recycled content. Additionally, AB 2411 (McCarty, Statutes of 2018), requires CalRecycle to develop a plan for compost use in wildfire debris removal efforts, and to coordinate with the Department of Transportation to identify best practices for compost use along roadways. These are examples of how CalRecycle works with sister agencies, but CalRecycle cannot impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks.
15;0085	Sommer, W., StopWaste	Article 12 Section 18993.1 Current Language: (c) Each jurisdiction's recovered organic waste product procurement target shall be calculated by multiplying the per capita procurement target by the jurisdiction population where: (1) Per capita procurement target = 0.08 tons of organic waste per California per year... Proposed Language: (c) Each jurisdiction's recovered organic waste product procurement target shall be calculated by ~~multiplying the per capita procurement target by the jurisdiction population where:~~ **one of the following methods**: (1) Per capita procurement target = 0.08 tons of organic waste per California per year. **(2) Jurisdictions may adjust this per capita target using information from their own waste studies to determine the per capita tons organic waste that need to be diverted or using the local government share of GDP according to the Bureau of Economic Analysis.** Rationale: Jurisdictions should be able to adjust their procurement targets based on local conditions, including tons organics per capita and that local government share	Regarding the commenter's proposal to allow for local waste studies to determine the per capita procurement target, CalRecycle disagrees with this approach. Legislative language in SB 1383 does not allow CalRecycle to impose the statewide 50% and 75% organic waste reduction targets on individual jurisdictions. Therefore, the per capita procurement target also cannot be individually imposed on each jurisdiction, it must be on a statewide basis. The purpose is to create a transparent method to establish the requirement for jurisdictions to create markets for recovered organic waste products. Regarding the estimates of government gross domestic product (GDP), the 13% is based on an average of 2007-2017 government GDP from the Bureau of Economic Analysis' (BEA) "Regional Economic Accounts: Download" webpage. The data for "Annual GDP by State" was downloaded and analyzed by CalRecycle staff in May 2018. The data was filtered by "California" and "Gross Domestic Product". The industry description was further filtered by "All industry total" and "Government and government enterprises". The GDP percentage for "Government and government enterprises" was calculated by dividing it by "All industry total" to obtain the 2007-2017 average of 13%. The commenter is correct that local and state government are a single category and this will be clarified and corrected in the Final Statement of Reasons (FSOR).

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		of GDP in that jurisdiction. The ISOR overestimates the local government GDP percent. The ISOR says 13% based on averages from the last 10 years from the Bureau of Economic Analysis. How is this calculated? We reviewed the same data, and local government and state government are a single category. Even combined, this number is 9%, which is significantly less than 13%. Do the categories used from the BEA data correctly align with the definition of jurisdiction in the regs? Is there overlap with state agencies, such as school districts? If so, the GDP needs to be adjusted to reflect the sources over which cities and counties have jurisdiction. The ISOR also uses statewide disposal numbers and averages to estimate tons organics per capita and GDP, penalizing cities with existing organics programs and large cities, respectively. According to the ISOR, "Approximately 21,300,000 tons of organics must be diverted in order to meet the 2025 organic waste diversion target mandated by SB 1383. In order to create markets for products generated by organic waste recycling facilities, local governments will be required to purchase a percentage of this diverted organic waste in the form of recovered organic waste products. The department determined this percentage based on local government's share of statewide gross domestic product (GDP), which has averaged 13 percent over the most recent 10 years of data from the United States Bureau of Economic Analysis (BEA)." Estimating tons organics per capita based on statewide disposal numbers lumps cities without organics programs in with cities that do have successful organics diversion programs. If the tons per capita is based on tons to be diverted, then cities without organics programs will have higher per capita tons organics compared to cities with existing organics diversion. If cities know how much organics are disposed, then they should be able to use those factors to determine volume of compost to procure. It also provides additional incentive to recover and divert organics, and track it. Regarding the average percent of GDP, 13% is larger than local government share of GDP in large cities, where it is closer to 9%. This results in large cities taking on more than their share of procurement for the state.	Please refer to the Final Statement of Reasons for Section 18993.1 which includes text explaining the purpose and necessity of the provisions of the final regulation including the per capita procurement target. The per capita procurement target increase from 0.07 to 0.08 is based on higher than estimated disposal data recently obtained from CalRecycle's Disposal Reporting System (DRS). The corresponding increase in diversion impacted the per capita procurement target. For reference, the initial per capita procurement target was based on an estimated 21,000,000 tons of organics diversion by 2025. The new DRS data increased the organics diversion estimate to 25,043,272 tons. That number is multiplied by 13% (government GDP), and divided by CA population estimated in 2025 (42,066,880); result is 0.08.
15;0086	Sommer, W., StopWaste	Article 12 Section 18993.1 Current Language: (a) Except as otherwise provided, commencing January 1, 2022, a jurisdiction shall… Proposed Language: Add: **(c) (1) From January 1, 2022 through December 31, 2025, the per captia procurement target = 0.05 tons of organic waste per California resident per year.** **(2) Commencing January 1, 2026, the per capita procurement target = 0.08 tons of organic waste per California resident per year.** Rationale: Procurement requirements should take effect after the collection and composting portions of the rules take effect. Given the time needed to convert organics into compost, along with the time to get new organics infrastructure developed, and the time to grow participation in local collection programs, there won't be enough compost to meet the demand. The procurement target is based on	CalRecycle disagrees with the suggestion to phase-in procurement. If the state is to achieve the ambitious landfill diversion targets required by SB 1383, it would be detrimental to delay the much-needed organics diversion that these procurement regulations are designed to encourage. However, CalRecycle recognizes the significant effort and resources needed for program implementation, which is why the rulemaking process has been ongoing since 2017. Although the regulations will not take effect until 2022, adopting them in early 2020 allows regulated entities approximately two years to plan and implement necessary budgetary, contractual, and other programmatic changes. Jurisdictions should consider taking actions to implement programs to be in compliance with the regulations on January 1, 2022.

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		the 2025 goal for SB 1383, which is estimated to require up to 100 new composting facilities. It's pretty unlikely that we'll see 100 new facilities in operation in 2021 to provide the compost for municipal procurement by 2022. Procurement should align with the rest of the timeline, with a lag to allow for the material to be produced. The proposed language adjusts the per capita target for a 50% diversion rate instead of 75% and allows a year for the organics to be composted, cured, marketed, and applied.	
15;0087	Sommer, W., StopWaste	Article 12 Section 18993.1 Current Language: (e) A jurisdiction shall comply with subdivision (a) by one or both of the following: 1) Directly procuring recovered organic waste products. 2) Requiring, through a written contract, that a direct service provider to the jurisdiction procure recovered organic waste products and provide written documentation of such procurement to the jurisdiction. Proposed Language: ~~(e) A jurisdiction shall comply with subdivision (a) by one or more of the following:...(2) Requiring, through a wrtten contract or agreement, that a direct service provider to the jurisdiction procure recovered organic waste products and provide documentation of such procurement to the jurisdiction.~~ Rationale: This measure is going to have the opposite of its intent. Currently, quality compost and mulch sell out and command a good price for the producers. Forcing cities to procure an arbitrarily set amount of compost and mulch only builds a market for poor quality compost. As currently written, there is no provision for cities to reject low quality compost, and cities will have to buy a set amount of compost no matter if it meets their specifications, especially with regard to inerts and maturity. Most specs are now written more tightly than the state contamination standard because that standard is insufficient to control contamination, allowing unlimited particles under 4mm and a significant amound of plastic and glass over 4 mm. If cities are not allowed to hold composting facilities accountable through their own spec, forced to procure compost under threat of financial penalty, it bolsters the market for bad compost only. We are already seeing the effects of contamination and maturity issues in our county, where the City of Hayward and WM require residents to sign a waiver before accepting free compost from WM. The waive states that the compost is not intended for use as top-dressing and must be incorporated because of the glass content. https://www.wm.com/location/california/bay_area/hayward/index.jsp	CalRecycle disagrees with the interpretation that the regulations mandate cities to buy low quality compost. Nothing in the draft regulations forces a jurisdiction to accept material that does not meet their quality standards. If a city chooses not to procure compost, they can procure other recovered organic waste products such as mulch or renewable gas energy products. To clarify this point, CalRecycle has added language requiring that procured compost must be from a permitted or authorized compostable material handling operation or facility or a a permitted large volume in-vessel digestion facility which will mean that the compost will be required to meet environmental health standards in Title 14, including for pathogens, metals, and physical contaminants. The definition of renewable gas specifies that it must be processed at a facility that is "permitted or otherwise authorized by Title 14 to recover organic waste."
15;0088	Sommer, W., StopWaste	Article 12 Section 18993.1 Current Language: (e) A jurisdiction shall comply with subdivision (a) by one or both of the following: 1) Directly procuring recovered organic waste products. 2) Requiring, through a written contract, that a direct service provider to the jurisdiction procure recovered organic waste products and provide written documentation of such procurement to the jurisdiction. Proposed Language: (e) A jurisdiction shall comply with subdivision (a) by one or more ~~both~~ of the following:...	CalRecycle disagrees with the approach of counting all WELO-compliant compost and mulch towards a jurisdiction's procurement target. This would allow any new or expanded development to count towards a jurisdiction's procurement target, regardless of whether that entity is a direct service provider to the jurisdiction. A jurisdiction must work with non-jurisdictional entities to develop a direct service provider contract or agreement in order to count procurement towards the target.

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		(2) Requiring, through a wrtten contract or agreement, that a direct service provider to the jurisdiction procure recovered organic waste products and provide documentation of such procurement to the jurisdiction. **(3) Providing documentation of all compost and mulch used in WELO-compliant projects completed in the jurisdiction.** Rationale: This would allow for WELO enforcement, special districts, schools and other state agencies to contribute toward procurement target. School districts and park districts provide services to jurisdictions and their residents. WELO is currently enforced by only 27% of jurisdictions in the state. DWR does not have the ability to penalize jurisdictions for lack of WELO enforcement, so implementation is likely to stagnate at a low level. Allowing compost and mulch purchased to satisfy WELO meets the intent of the procurement requirements, which is to build a robust market for organic waste materials. Statewide effective WELO enforcement would affect many more end users to build a more robust and resilient market than putting the onus strictly on local jurisdictions. If compost and mulch used in all WELO-compliant projects in a jurisdiction does not contribute to the procurement target, there is no reason to require jurisdictions to enforce WELO in these rules. See comments on Section 18989.2.	Regarding schools and special districts, the definition of "direct service provider" clarifies that a contract or other written agreement, for example a Memorandum of Understanding (MOU), could be used to prove the direct service provider relationship. The entities listed in the comment (school districts, special districts) could be considered a direct service provider if there was a contract or agreement in place with the jurisdiction. Without said contract or agreement, any entities that are not part of the jurisdiction's departments, divisions, etc. would not by default be considered part of the jurisdiction nor would their procurement count towards the jurisdiction's procurement target. Regarding state procurement, there are existing procurement requirements on state agencies and this rulemaking will not be adding to those. CalRecycle currently works with sister agencies to implement existing procurement-related legislation. For example, CalRecycle coordinates with the Department of General Services (DGS) to implement the State Agency Buy Recycled Campaign (SABRC), Public Contract Code 12200 to 12217, which requires state agencies to purchase products, including compost and paper, containing recycled content. Additionally, AB 2411 (McCarty, Statutes of 2018), requires CalRecycle to develop a plan for compost use in wildfire debris removal efforts, and to coordinate with the Department of Transportation to identify best practices for compost use along roadways. These are examples of how CalRecycle works with sister agencies, but CalRecycle cannot impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks.
15;0089	Sommer, W., StopWaste	Article 12 Section 18993.1 Question: Can a jurisdiction hire a broker to sell compost on their behalf? If so, wouldn't that broker be paid twice for the same work--once by the city and once by the jurisdiction?	Section 18993.1(e)(1) limits procurement to "use or giveaway," not for sale. The intent is to encourage the demand and use of recovered organic waste products, as this is where most of the environmental benefits are realized. Procuring compost and then selling it via a 3rd party does not meet the intent of these regulations, which is to build markets for the use of recovered organic waste products. While a direct service provider cannot sell products on the jurisdiction's behalf for procurement credit, the draft regulations do not prohibit a jurisdiction from hiring a broker to procure and use products on the jurisdiction's behalf.
15;0090	Sommer, W., StopWaste	Article 12 Section 18993.1 Question: In Diamond Bar, CalRecycle mentioned that compost used by school districts could be applied to the target if it were done at the behest of the city. This would apply to other entities as well, correct? For example, we could count the 3000 CY we're applying on the WMA property for our carbon farming project toward our cities? Although this would cover 100 acres, it won't make much of a dent toward meeting cities' procurement targets. So, we would also want to have all the compost used on carbon farming projects in the county to count toward jurisdictions' targets. Many have written carbon farming into their climate action plans already; would this be enough to be considered that work done at the behest of the city? Also, because our Board, composed of elected officials, votes on our budget annually and sets our agency's priorities (including carbon farming), that would be considered "at the behest" of a jurisdiction.	The definition of "direct service provider" clarifies that a contract or other written agreement, for example a Memorandum of Understanding (MOU), could be used to prove the direct service provider relationship. School districts and other entities (i.e. special districts, parks districts) could be considered a direct service provider if there was a contract or agreement in place with the jurisdiction. Without said contract or agreement, any entities that are not part of the jurisdiction's departments, divisions, etc. would not by default be considered part of the jurisdiction nor would their procurement count towards the jurisdiction's procurement target. In the case of carbon farming, the jurisdiction could establish a direct service provider contract or agreement with an entity who would procure and use compost on their land.

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15;0091	Sommer, W., StopWaste	Article 12 Section 18993.1(f) Current Language: (4) Mulch, provided that the following conditions are met for the duration of applicable procurement compliance year:… (B) The mulch is produced at one or more of the following:… 3. A solid waste landfill as defined … Proposed Language: Add: **4. Within the jurisdiction from tree trimmings, provided that the mulch is used within the jurisdiction, pathogen control best practices are followed, and the jurisdiction can comply with record keeping requirements.** Rationale: StopWaste suggested that CalRecycle could enforce this requirement by requiring the use of mulch from compoastable handling, transfer/processing facilities or a landfill (gross). We have since learned from our member agencies that many of them already use a lot of mulch generated from their own tree trimmings, and they can track the quantity (see comment on Section 18993.2 (a). GHG-wise, this is the best case scenario, as it avoids emissions associated with transport and returns carbon to the soil from where it came. If a city can satisfactorily demonstrate that the mulch was generated and used in the jurisdiction, we recommend that CalRecycle allow that mulch to count toward procurement requirements. CalRecycle might be concerned about pathogen spread, and even though this has not been a problem to date because cities are not motivated to spread diseased mulch in their landscapes, the state could require that cities demonstrate that they follow best management practices for controlling pathogens by submitting a protocol, training curriculum, or other documentation. Another concern might be abuse, and over applying mulch. This is highly unlikely to occur if a city is applying to their own landscapes; in addition, existing land app requirements would prevent abuse in the form of overapplication and contamination.	CalRecycle added mulch to the list of recovered organic waste products that can count toward the procurement targets provided it is derived from certain solid waste facilities and the jurisdiction requires such material to meet land application environmental health standards. The intent is to ensure these materials are diverted from a landfill. The mulch example provided by the commenter notes, “many of [our member agencies] already use a lot of mulch generated from their own tree trimmings”. This type of mulch would be ineligible as it is not considered landfill diversion. The SB 1383 mandate is to recover organic waste that would be disposed. As noted by the commenter, the organic waste identified is not currently disposed, “Cities are already doing this.” While these are good practices, it is inconsistent with the direction of SB 1383 to incentivize or mandate activities that do not reduce landfill disposal, therefore mulch is only to count as a recovered organic waste product when it is procured from certain solid waste facilities.
15;0092	Sommer, W., StopWaste	Article 12 Section 18993.2(a) Commenter wants to add language for mulch generated in jurisidction. Proposed Language: **(5) If a jurisdiction will include procurement of mulch generated and used within the jurisdiction, provide documentation demonstrating the generation and use, including: date, quantity, and location of generation, and date, quantity, and location of use.** Rationale: Cities are already doing this. Tracking has been limited to the unit of the truckload, but according to our cities, the proposed method would be implementable. This could continue to be streamlined in the future through applications such as Green Halo, which cities already use for tracking C&D diversion rates.	CalRecycle added mulch to the list of recovered organic waste products that can count toward the procurement targets provided it is derived from certain solid waste facilities and the jurisdiction requires such material to meet land application environmental health standards. The intent is to ensure these materials are diverted from a landfill. If cities are already generating mulch from these solid waste facilities, that would count towards their procurement target, but mulch generated from materials not destined for a landfill would not be eligible. The SB 1383 mandate is to recover organic waste that would be disposed. As noted by the commenter, the organic waste identified is not currently disposed, “Cities are already doing this.” While these are good practices, it is inconsistent with the direction of SB 1383 to incentivize or mandate activities that do not reduce landfill disposal, therefore mulch is only to count as a recovered organic waste product when it is procured from certain solid waste facilities.
15;0093	Sommer, W., StopWaste	Article 14 Section 18995.4 Current Language: 2) The jurisdiction shall conduct follow-up inspections to determine if compliance is achieved at least every 90 days following the issue date of an initial Notice of Violation and continue to issue Notices of Violation until compliance is achieved or a penalty has been issued.	This comment is not directed at changes in the third regulatory draft. CalRecycle acknowledges that achieving the requirements of the statute may require additional local resources in order for jurisdictions to conduct the minimum number of compliance inspections, and to reinspect violations to ensure a minimum level of organic waste collection service is achieved.

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		Proposed Language: 2) The jurisdiction shall conduct follow-up inspections to determine if compliance is achieved at least every ~~90~~ **240** days following the issue date of an initial Notice of Violation and continue to issue Notices of Violation until compliance is achieved or a penalty has been issued. Rationale: 90 days is too short a timeframe for re-inspection. In our MRO enforcement, we have capacity to conduct about 6,000 inspections a year (probably more than other jurisdictions) and there are about 20,000 commercial accounts that are covered by our MRO. Currently our inspections have been resulting in violations about 50% of the time and after we send a Notice of Violation (warning letter), we may not be able to get back to that account for more than a year. If we had to move to re-inspect within 90 days until compliance is acheived, we would not be able to inspect at new accounts that we are not sure if they are compliant or not.	CalRecycle disagrees with the comment that the enforcement timelines are unrealistic. The timelines established in the regulation reflect the ambitious organic waste reduction targets and the essential role compliance with the regulation plays in achieving those targets. The timelines proposed by the comment would frustrate the purpose of the statute, and would establish minimum fines for violations that are orders of magnitude lower than cost of compliance. The department notes that as structured this section requires a jurisdiction to take action to commence a penalty 150 days after issuing the NOV, the NOV can be issued up to 60 days after a violation was discovered. This allows the commencement of an enforcement action to occur 210 days after an entity was found out of violation. This provides a jurisdiction up to 7 months to educate a violator and bring them into compliance before a penalty action must commence. This is in accordance with the requirements established in Section 53069.4 which require a local agency to provide a reasonable period of time to remedy a violation prior to the imposition of administrative fines. The actual issuance of the penalty may require additional time as well, further extending the time to correct a violation, and the time between the occurrence of the violation and the issuance of a penalty for that violation. Extending the timelines as proposed would confound the timelines conceivably preventing the issuance of a penalty for a second or subsequent violation or offense as provided in the relevant sections of the Government Code. As noted above Section 53069.4 of the Government Code establishes procedures for issuing penalties, which these regulations conform to. Sections 25132 and 36900 of the Government Code additionally establish maximum penalty amounts, and timelines for issuing penalties for a second offense and subsequent offense. Under Sections 25132 and 36900 of the Government Code, a jurisdiction can only issue a fine for a second or third violation if the violation occurs within one year of the first violation. In practice, if a jurisdiction delays the levying of a penalty to the maximum amount of time permitted in the regulation to commence a penalty (7 months), the issuance of a second penalty for that violation is nearly precluded. Extending the timelines as proposed by the commenter would effectively make the minimum timelines for issuance of a first penalty preclude the issuance of a penalty for a second violation in all circumstances. This would artificially limit the maximum fine amount to no more than $100 per year for a violation as fundamental as the requirement that businesses participate in organic waste recycling service provided by the jurisdiction. The department estimates the cost of compliance with obtaining organic waste recycling service will average $80 per month. Under the text proposed by the commenter, the minimum fine amount for failure to have organic waste recycling service would be orders of magnitude less than the cost of compliance. Therefor the language proposed in the comment is incongruent with achieving the statutory targets.
15;0094	Sommer, W., StopWaste	Article 14 Section 18995.4 Current Language: 3) Except as otherwise provided in Section 18984.5, the jurisdiction shall commence an action to impose penalties pursuant to Article 16 of this chapter within the following time frames: (A) For a first offense, no later than 150 days after the issuance of the initial Notice of Violation. (B) For a second, third and all subsequent offenses, no later than 90 days after the issuance of the initial	The comment is not germane to changes made in the third draft of the regulatory text. The timelines were established in the first draft of the regulatory text released in January of 2019. CalRecycle disagrees with the comment that the enforcement timelines are unrealistic. The timelines established in the regulation reflect the ambitious organic waste reduction targets and the essential role compliance with the regulation plays in achieving those targets. The timelines

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		Notice of Violation. 1) The commencement of each action to impose a penalty pursuant to Article 16 or local ordinance adopted pursuant to the mandates of this chapter shall constitute an offense for purposes of the penalty calculations in Section 18997.2. 2) The commencement of an action against the same person or entity for a violation of the same subsection of this chapter or local ordinance adopted pursuant to the mandates of this chapter within one year of imposing a penalty for a first offense pursuant to Article 16 shall constitute a second or subsequent offense for purposes of the penalty calculations in Section 18997.2. Proposed Language: 3) Except as otherwise provided in Section 18984.5, the jurisdiction shall commence an action to impose penalties pursuant to Article 16 of this chapter within the following time frames: (A) For a first offense, no later than ~~150~~ **365** days after the issuance of the initial Notice of Violation. (B) For a second, third and all subsequent offenses, no later than ~~90~~ **240** days after the issuance of the ~~initial~~ **previous** Notice of Violation **or penalty**. 1) The commencement of each action to impose a penalty pursuant to Article 16 or local ordinance adopted pursuant to the mandates of this chapter shall constitute an offense for purposes of the penalty calculations in Section 18997.2. 2) The commencement of an action against the same person or entity for a violation of the same subsection of this chapter or local ordinance adopted pursuant to the mandates of this chapter within one year of imposing a penalty for a first offense pursuant to Article 16 shall constitute a second or subsequent offense for purposes of the penalty calculations in Section 18997.2. Rationale: Need longer timeframes. It's confusing how you would impose multiple penalties for subsequent offenses all with 90 days of one original Notice of Violation that is a set point in time. The timeframe should be set against the prior NOV or prior penalty issued.	proposed by the comment would frustrate the purpose of the statute, and would establish minimum fines for violations that are orders of magnitude lower than cost of compliance. The department notes that as structured this section requires a jurisdiction to take action to commence a penalty 150 days after issuing the NOV, the NOV can be issued up to 60 days after a violation was discovered. This allows the commencement of an enforcement action to occur 210 days after an entity was found out of violation. This provides a jurisdiction up to 7 months to educate a violator and bring them into compliance before a penalty action must commence. This is in accordance with the requirements established in Section 53069.4 which require a local agency to provide a reasonable period of time to remedy a violation prior to the imposition of administrative fines. The actual issuance of the penalty may require additional time as well, further extending the time to correct a violation, and the time between the occurrence of the violation and the issuance of a penalty for that violation. Extending the timelines as proposed would confound the timelines conceivably preventing the issuance of a penalty for a second or subsequent violation or offense as provided in the relevant sections of the Government Code. As noted above Section 53069.4 of the Government Code establishes procedures for issuing penalties, which these regulations conform to. Sections 25132 and 36900 of the Government Code additionally establish maximum penalty amounts, and timelines for issuing penalties for a second offense and subsequent offense. Under Sections 25132 and 36900 of the Government Code, a jurisdiction can only issue a fine for a second or third violation if the violation occurs within one year of the first violation. In practice, if a jurisdiction delays the levying of a penalty to the maximum amount of time permitted in the regulation to commence a penalty (7 months), the issuance of a second penalty for that violation is nearly precluded. Extending the timelines as proposed by the commenter would effectively make the minimum timelines for issuance of a first penalty preclude the issuance of a penalty for a second violation in all circumstances. This would artificially limit the maximum fine amount to no more than $100 per year for a violation as fundamental as the requirement that businesses participate in organic waste recycling service provided by the jurisdiction. The department estimates the cost of compliance with obtaining organic waste recycling service will average $80 per month. Under the text proposed by the commenter, the minimum fine amount for failure to have organic waste recycling service would be orders of magnitude less than the cost of compliance. Therefor the language proposed in the comment is incongruent with achieving the statutory targets.
15;0095	Sommer, W., StopWaste	Article 16 Section 18997.3 Current Language: (b) Penalties, except for violations specified in subdivision (d), shall be assessed as follows: (1) A “Minor” violation means a violation involving minimal deviation from the standards in this chapter, where the entity failed to implement some aspects of a requirement but has otherwise not deviated from the requirement. The penalties	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires.

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		for this type of violation shall be no less than five hundred dollars ($500) per violation and no more than four thousand dollars ($4,000) per violation per day. (2) A “Moderate” violation means a violation involving moderate deviation from the standards in this chapter where the entity failed to comply with critical aspects of the requirement. A violation which is not a minor violation or a major violation shall be a moderate violation. The penalties for this type of violation shall be no less than four thousand dollars ($4,000) per violation and shall be no more than seven thousand five hundred dollars ($7,500) per violation per day. (3) A “Major” violation means a violation that is a substantial deviation from the standards in this chapter that may also be knowing, willful or intentional or a chronic violation by a recalcitrant violator as evidenced by a pattern or practice of noncompliance. The penalties for this type of violation shall be no less than seven thousand five hundred dollars ($7,500) per violation per day and no more than ten thousand dollars ($10,000) per violation per day. For purposes of this subsection, a major violation shall always be deemed to include the following types of violations: (A) A jurisdiction fails to have any ordinance or similarly enforceable mechanism for organic waste disposal reduction and edible food recovery. (B) A jurisdiction fails to have a provision in a contract, agreement, or other authorization that requires a hauler to comply with the requirements of this chapter. (C) A jurisdiction fails have an edible food recovery program. (D) A jurisdiction fails to have any Implementation Record. (E) A jurisdiction implements or enforces an ordinance, policy, procedure, condition, or initiative that is prohibited under Sections 18990.1 or 18990.2. (F) A jurisdiction fails to report any information to the Department as required in Sections 18994.1 and 18994.2. Proposed Language: Add: **(4) Prior to January 1, 2022, the Department will clarify what will clarify what violations constitute minor and moderate violations.** Rationale: As written, this section leaves not only the determination of the violation level to the judgement of Local Assistance Staff but also the penalty amount. We acknowledge that the changes may provide some flexibility, but given that Local assistance staff enforcement varies dramatically across the state, based on our experience, this will likely result in wildly inconsistent and potentially unfair enforcement. Historically, with AB 341 and AB 1826, there has been unclear and inconsistent application of compliance requirements across different local jurisdictions with different local assistance staff (although they are under the same supervisor). For example, with AB 1826 enforcement, different interpretations of unclear sections of the regulations have led local assistance staff to ask cities with similar non-compliance issues to respond with different levels of information to resolve the perceived non-compliance issue.	Clarifying exactly what violations fall into each category of violation would cancel out the flexibility of the case-by-case determinations according to justice that are inherent in the minor/moderate/major enforcement model. Regarding procurement enforcement, the comment is not directed at changes in the third regulatory draft. In addition the commenter appears to have misunderstood the application of the procurement penalties and is not taking into account the discretionary restrictions in that section.

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		To provide consistent enforcement, the Department needs to provide direction as to what constitutes all levels of violations, and provide better structure to the penalty amounts to avoid leaving that to the discretion of local assistance staff. More detailed guidelines to determine the penalty. For procurement, the penalty range is especially large, from $500 to $10,000. At the max violation and penalty level of $10,000/day, it will still be cheaper for big cities, like Oakland, to pay the fines than to procure recovered organics product, given their current use, so it is possible that local assistance staff could issue the highest penalty per day for Oakland encourage compliance. However, they may decide to issue a lower per day penalty for a small city like Emeryville, where the minimum penalty of $500/day would exceed the cost of procurement. As written, the procurement requirements are difficult to enforce. Procurement would be more effectively enforced by requiring cities to require compost/mulch use on all new landscape projects and maintenance of city landscapes and by providing education to residents.	
15;0096	Sommer, W., StopWaste	Article 16 Section 18997.3 Although this text was not changed in this draft, it has been affected by the new proposed penalty structure. This penalty limit now equates procurement violations with a major violation, such as not having a franchise agreement in place. This is unreasonable and leaves too much up to the discretion of local assistance staff. Maybe the state could set the penalty at materials costs for procurement shortage. This money the state could use to procure and distribute compost.	The comment is not directed at the changes to the third regulatory draft. Moreover, it misunderstands that under the clear language of the regulations, procurement violations are under a completely separate penalty structure and are not subject to minor/moderate/major penalties.
2020	Tseng, Eugene, N/A	1. Section 17409.5.7. Gray Container Waste Evaluations. a) Commencing July 1, 2022, the operator of an attended operation or facility that receives a gray container collection stream, and more than 500 tons of solid waste from at least one jurisdiction annually, shall conduct waste evaluations on the gray container collection stream consistent with this section. (b) The operator shall perform one gray container waste evaluation per quarter. (c) The operator shall use the following measurement protocol to comply with this section: (1) Take one sample of at least 200 pounds from the incoming gray container collection stream received by the facility. Each sample shall be: (A) Representative of a typical operating day; and (B) A random, composite sample taken from various times during the operating day. (2) Record the weight of the sample. (3) For that sample, remove any remnant organic material and determine the weight of that remnant organic material. (4) Then determine the ratio of remnant organic material in the sample by dividing the total weight from Subdivision (a)(3) by the total weight recorded in Subdivision (a)(2). (d) Upon written notification to the applicable EA, the operator may conduct offsite gray container waste evaluations at an alternative, permitted or authorized solid	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations. However, remnant organic material is defined in Section 17402(a)(23.5).

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		waste facility or operation provided that the operator subject to this section does not process the material prior to its transfer offsite for the waste evaluation. (1) The results of an offsite gray container waste evaluation performed under Subdivision (d) shall be reported by the transfer/processing operation or facility subject to this section as required in Section 18815.5 and shall not be reported by the alternative solid waste facility or operation. (e) The operator shall conduct a measurement in the presence of the EA when requested. (f) If it is determined by the EA that the measurements do not accurately reflect the records, the EA may require the operator to increase the frequency of measurements, revise the measurement protocol, or both to improve accuracy. Comment: Please define "remnant organic material". Is this the SB 1383 targeted materials listed in the legislation? Is there any qualifiers to this classification of material, e.g., does it matter that the materials is marketable or not marketable, processible or not processible, etc.? …. Edible food vs non-edible food, etc.	
2021	Tseng, Eugene, N/A	2. Section 17409.5.8. Incompatible Materials Limit in Recovered Organic Waste. a) A transfer/processing facility or operation shall only send offsite that organic waste recovered after processing from the source separated organic waste stream and from the mixed waste organic collection stream that meets the following requirements: (1) On and after January 1, 2022 with no more than 20 percent of incompatible material by weight; and (2) On and after January 1, 2024 with no more than 10 percent of incompatible material by weight Comment: What is meant by "incompatible"? Is this determined by the compatibility or ability to process or to market the materials delivered? The same output materials (e.g., non-compostable paper) will be "incompatible" to be used for compost, but is "compatible" for use in a biomass plant. How is "incompatibility" defined and tested by the EA? Is this a "weight-based" analysis? If weight based analysis, compatibility with end destination or product will determine how the "incompatible percentage" is calculated (consistent with other CalRecycle regs),… e.g., is incompatible materials determined on a dry basis or a wet basis (note that contamination for end product for land application is based on a dry basis) For a EMSW conversion facility, … is compatibility determined on a wet or dry basis for contamination. Other questions, before or after thermal processing,… what if "inorganic materials" which would be incompatible as part of the feedstock is finally utilized as construction material that can be manufactured.	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations. However, incompatible material is defined in Section 17402(a)(7.5). CalRecycle staff will develop tools to assist in the implementation of the regulations.
2022	Tseng, Eugene, N/A	3. Section 17409.5.8. Incompatible Materials Limit in Recovered Organic Waste.	CalRecycle has revised the term in response to comments. The term "residual organic waste" was revised to "organic material sent to disposal." This is necessary to clarify which material would

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		(2) A compostable material handling facility or operation that, pursuant to Section 17867(a)(16), demonstrates that the percentage of no more than 10 percent of the residuals organic waste in the materials sent to disposal are organic waste is: (A) On and after January 1, 2022, less than 20 percent; (B) On and after January 1, 2024, less than 10 percent; (3) An in-vessel digestion facility or operation that, pursuant to Section 17896.44.1, demonstrates that the percentage of no more than 10 percent of the residuals organic waste in the materials sent to disposal are organic waste, is: (A) On and after January 1, 2022, less than 20 percent; (B) On and after January 1, 2024, less than 10 percent; Comment: What is meant by "residuals organic waste"? There is always going to be residual that is a material type one of the SB 1383 targeted materials. These will need to be in the residual because they need to be removed in order to make a product specification. What you are essentially doing is putting a limit of what "offspec" materials has to be the final product, and ignoring that a producer of products has to meet much higher quality specifications to be able to sell in a market. Example: Bamboo pieces (sharp shards) in compost, very hard to break down (lignin content), probably gets screened out in final sizing screen for product sizing control. Bamboo is a "yardwaste/greenwaste" or even "wood/lumber", … and be in the residue. If the specification requires the finish compost not to have these high carbon/lignin material (affects C/N ratio), the composer has to remove it. You should not develop regulations that can potentially punish a producer of a product in include more "off spec" materials in their final product. How is "residuals organic waste" defined and tested by the EA (given the above comments)?	have to be sampled and comply with the levels established in this section. Although the goal is to divert organic waste from the landfill, the goals established by SB 1383 are to recover 50% of the organic waste by 2020 and 75% by 2025, which cannot be determined without accurately measuring organic waste recovery and organic waste disposal. In order to achieve these targets, regulatory limitations for processing organic waste must be implemented.
2023	Tseng, Eugene, N/A	4. Section 17409.5.12. Transfer/Processing EA Verification Requirements. (a) The operator shall provide the EA all requested information and other assistance so that the EA can verify that the measurements conducted by the operator are consistent with the requirements of Sections 17409.5.2, 17409.5.3, 17409.5.4, 17409.5.5, 17409.5.7, and 17409.5.8. (b) The EA shall conduct such verification through: (1) The review of records required by section 17414.2; and (2) The periodic, direct observation of measurements at a frequency necessary to ensure that the operator is performing such measurements in a manner consistent with Sections 17409.5.2, 17409.5.3, 17409.5.4, 17409.5.5, 17409.5.7, and 17409.5.8. (c) If, at any time, the EA determines that the records under 17414.2(b) indicate that compostable material is sent offsite to any destination(s) other than an authorized permitted solid waste facility or operation, the EA shall directly observe any compostable material onsite designated for such offsite destination(s). If physical contaminants, based on visual observation, clearly exceed the limits in Section	A change to the regulatory text is not necessary. This section requires that if the EA determines, based on their record check, that compostable material will be sent off to a destination other than a permitted facility or operation, to perform a visual inspection of that material to ensure it meets the physical contaminants limits before it leaves the site. The EA would perform the visual inspection of the compostable material on-site regardless of how long the material is stored at the solid waste facility or operation. However, compostable material, such as chip and grind is required under existing regulations to be removed within 48 hours.

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		17852(a)(24.5)(A)(1), the EA may require the operator to further process such material. Comment: Physical contamination, by weight percent, can change over time. As compostable material is sent offsite and is in place over time, the decomposable portion of the compostable materials may decrease in relative weight percent over time when compared to inorganic materials that will remain over time (e.g., glass). If there is no time limit/threshold, it is possible for compostable materials that are meeting the requirements to become out of compliance. Please provide how this scenario is to be dealt with.	
2001	Vaughn, Dave, Athens Services	From this knowledge we have experienced the tough challenges of the past and can see the exciting potential rewards of the future in order to achieve the SB 1383 GHG targets. We appreciate the effort to make changes to the regulations made in the last draft. However, there remain significant issues of concern in the proposed regulations. Instead of going into those details we felt it more appropriate and productive to express our continuing trepidation about the overall policy that gives us pause and great concern for our customers and our approximate $150 million of existing infrastructure.	Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: “The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new mixed waste processing systems provided that the receiving facilities demonstrate they are capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements.” The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: “With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of material. For example, metals, paper, and plastics are remanufactured through distinct processes (e.g. metal is smelted, paper is pulped and washed). Largely because of this, while material may be valuable as a homogenous commodity, it can become difficult or impossible to recycle when it is contaminated with other materials (e.g. many materials lose their value when they are commingled with other materials.) This principle holds true, and is perhaps more of a factor in the recovery of organic waste. Required source-separation of organic waste helps ensure that organics are kept clean, separate and recoverable.

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			However; throughout the informal regulatory engagement process stakeholders raised concerns about potential costs associated with providing commercial and residential generators with a third container to source separate organic waste. Stakeholders also noted that several cities and counties implement single container collection services and process all the collected material for recovery. Stakeholders argued that allowing the use of a single-container collection system is a viable and cost-effective alternative that can help the state meet that statutory organic waste recovery targets. To respond to stakeholder requests for additionally flexibility CalRecycle crafted this section and Section 18984.2. These sections allow alternatives to providing a three-container source-separated organic waste collection service. Under these section jurisdictions are allowed to require their generators to use a service that does not provide the generators the opportunity to separate their organic waste for recovery at the curb. In order to ensure that the state can achieve the statutory organic waste reduction targets, these collections services are required to transport the containers that include organic waste to high diversion organic waste processing facilities that meet minimum organic content recovery rates (content recovery rates are specified in Subdivision (b) of this section)…" The commenter has stated in each comment period, that they believe the requirement to recover 75 percent of the organic content collected in these mixed waste collection services is unrealistic and infeasible. In turn CalRecycle staff repeatedly communicated to the commenter that the recovery targets cannot be lowered without compromising the integrity of the regulations. This was further documented for this commenter and the public in the ISOR: "These minimum recovery rates are necessary because when the opportunity to recover material through source separation is lost, the state must ensure that minimum recovery levels are met at processing facilities. While this section provides additional flexibility to jurisdictions, CalRecycle must consider its obligation to ensure that the regulations are designed to achieve the statutory targets. If 100 percent of jurisdictions employed this collection option in 2022 the state could not meet the mandatory recovery target of 50 percent unless at least 50 percent of the organic waste collected from these services is recovered. Similarly, if 100 percent of jurisdictions employed this collection option in 2025 the state could not meet the mandatory recovery target of 75 percent unless 75 percent of the organic waste collected from these services is recovered. Therefore, in order to meet the recovery targets specified in statute and the state's ultimate climate goals the recovery standards included in this section are the minimum standards necessary. As generation of organic waste increases with population growth, these minimum recovery rates may need to be revisited. As stated previously the organic waste reduction targets are linked to a 2014 baseline of 23 million tons. This requires the state to dispose of no more than 5.7 million tons by 2025. If, as CalRecycle projects, generation increases to 26 million tons of organic waste by 2025, recovering 75 percent of 25 million tons will only reduce disposal to slightly more than 6 million tons, resulting in the state missing its organic waste recovery targets. The need for this rate increase could be mitigated if higher recovery rates are achieved through source separation, or if efforts to increase source reduction through food recovery and other methods are successful.

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2002	Vaughn, Dave, Athens Services	Change away from Local and Market Based Policies. As we and other stakeholders have previously and frequently pointed out, these regulations move away from the successful policy of local control and flexibility for waste and recycling providers, to an extremely prescriptive set of rules and regulations. Our opposition to this approach is not philosophical but a firm belief that mandating minute details of compliance while limiting flexibility of waste haulers to comply in the myriad different and unique situations, will not only be very costly to rate payers but will make it difficult if not impossible to meet the 1383 targets. We also believe the regulations have not taken the significant economic impacts of the regulations into account--impacts on rate payers, local governments and waste haulers.	The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction
2003	Vaughn, Dave, Athens Services	Failure to Account for Lack of Infrastructure and Markets The regulations, particularly enforcement and compliance provisions, provide negligible recognition of the disappearance of recycling markets and the lack of current infrastructure, built for a totally different purpose, to be able to comply with the organics performance mandates. Absent reasonable good faith effort and /or safe harbor provisions, the likelihood that the market situation will not be solved in the near future and that the requisite infrastructure is far from being ready, creates a situation where the targets will not be met for reasons completely outside control	Comment noted. Enforcement provisions in the regulations allow for long-term Corrective Action Plans up to three years to account for delays in infrastructure capacity. With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text.

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		of local governments and waste companies like Athens, but with no countervailing provisions granting relief if targets are not attained.	Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of

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			the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets. With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction Finally, CalRecycle notes that the commenter recommends replacing all timelines with "for a reasonable period according to the actions required." The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and

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			warrants a CAP). The proposed language of “reasonable” is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how “reasonable” would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for “any extenuating circumstance” or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances
2004	Vaughn, Dave, Athens Services	Stranded Existing Investment, Discouraging Needed Future Investment Perhaps our greatest concern both for attainment of organics diversion goals and the risk to our (and others) massive investment in existing infrastructure, are the unattainable performance requirements for facilities that were built for entirely different purposes. We believe that our facilities can, if we are provided sufficient flexibility, play an essential role in meeting organics diversion goals. Yet as currently drafted our, and no doubt many other privately financed facilities, will not be able to be used to their fullest potential and others perhaps closed prior to the end of their useful lives, thereby unnecessarily, wastefully and in a sense punitively stranding many millions in investment that could and should be put to use in attaining 1383 goals.	"Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: “The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new mixed waste processing systems provided that the receiving facilities demonstrate they are capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements.” The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: “With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of material. For example, metals, paper, and plastics are remanufactured through distinct processes (e.g. metal is smelted, paper is pulped and washed). Largely because of this, while material may be valuable as a homogenous commodity, it can become difficult or impossible to recycle when it is contaminated with other materials (e.g. many materials lose their value when they are commingled with other materials.) This principle holds true, and is perhaps more of a factor in the recovery of organic waste. Required source-separation of organic waste helps ensure that organics are kept clean, separate and recoverable.

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2005	Vaughn, Dave, Athens Services	Stranded Existing Investment, Discouraging Needed Future Investment The likely negative impact on the financial viability of existing facilities and lack of clarity for organics processing facilities currently under construction will be a significant deterrent to the absolutely essential investment in the 100 or more new facilities CalRecycle estimates are needed to meet 1383 goals. Private investment needs certainty and the regulatory process for 1383, completely changing the approach from the existing regulatory model, is a disincentive to new investment.	"Comment noted. The commenter argues that the regulations must be structured in a way that protects the existing investments of their members. Specifically, the commenter is referring to collection services and material recovery facilities that were established to process mixed waste. CalRecycle has sought to address this concern in a manner that is also in compliance with the statutory targets and requirements. As noted in the Initial Statement of Reasons, which was released for public review in January of 2019: “The draft regulations originally prohibited jurisdictions from implementing new mixed waste processing systems after 2022, and required all new services to implement source-separated curbside collection as a means of ensuring that collected organic waste would be clean and recoverable. In response to stakeholder feedback, CalRecycle eliminated the prohibition on new mixed waste processing systems provided that the receiving facilities demonstrate they are capable of recovering 75 percent of the organic content received from the mixed waste stream on an annual basis. The performance standard addresses stakeholder concerns about limiting flexibility, without compromising the goal for the regulations to achieve the statutory requirements.” The ISOR goes on to note that CalRecycle crafted regulations to allow for mixed waste collection provided that these collection services transport collected material to a facility that recovers 50 percent of the organic content it received by 2022 and 75 percent by 2025: “With very few exceptions, unique materials can only be processed and recovered when they are kept separate from other materials. This is primarily due to the fact that distinct materials are recovered through separate processes that are specifically designed to handle only that type of

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			"Comment noted. The Legislature mandated ambitious organic waste diversion targets in SB 1383 on a short timeline and the Department acknowledges that infrastructure to handle the diversion of this material is key to achieving those legislative mandates. The Department has included provisions in the proposed regulations allowing for delayed enforcement in cases where extenuating circumstances beyond the control of a jurisdiction, such as deficiencies in organic waste recycling infrastructure or delays in obtaining discretionary permits or governmental approvals, make compliance with the regulations impracticable. The Legislature in SB 1383 furthermore authorizes local jurisdictions to charge and collect fees to offset the cost of complying with the proposed regulations. Regarding environmental issues regarding expected infrastructure expansion, those issues were addressed in the Environmental Impact Report that was prepared and certified by the Department for this rulemaking, and was subject to public comment, pursuant to the requirements of the California Environmental Quality Act (CEQA). CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
2006	Vaughn, Dave, Athens Services	Stranded Existing Investment, Discouraging Needed Future Investment Our operating experience, and that of our colleagues in the solid waste and recycling industries, far outstrips that of other stakeholders in the process. We hope that experience lends credence to the concerns expressed above. As said previously we support the goals of SB 1383 and look forward to working together through what will necessarily be an evolutionary process. If, we encounter, as we will, the need for changes to meet our collective goals, we hope we can agree on how those changes might be reflected through the regulatory or statutory process.	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.
2078	Wade, Sam, Coalition for Renewable Natural Gas	We Strongly Support All Renewable Gas Use Counting Toward Recovered Organic Waste Product Procurement Targets We were pleased to see that the changes made in the June 17th, 2019 version of the Proposed Rule expanded the definition of “renewable gas” and clarified that a variety of end uses of renewable gas can be used to demonstrate compliance with the jurisdictional procurement requirements for recovered organic waste products. We again thank staff for the changes to emphasize that it’s the use2 (2 And retirement of all associated environmental attributes.) of the RNG, rather than the pipeline injection, that should generate recognition for a jurisdiction under the procurement targets. However, we still feel the language could be improved to add clarity that the RNG can be used for all end applications where fossil gas is currently used. For example, the current catch-all term of “heating” in Section 18993.1(f)(2) could be misinterpreted to be limited to space heating of buildings. We suggest the term “heating” be replaced with “residential, commercial or industrial” applications3. (3	Regarding additional renewable gas end uses, the regulatory text does not limit “heating applications” to “space heating of buildings”, as referenced in the comment. Other industrial, commercial, or residential uses may fit into the existing framework, but it would be overly burdensome and unnecessary to identify and develop individual conversion factors for every potential end use. It is not the intent of the proposed regulatory text to exclude the end uses mentioned in the comment, such as residential cooking, energy storage, and renewable hydrogen production for electricity, since these uses serve the same end use function as those in the proposed language. In these cases, a jurisdiction may default to an existing conversion factor for purposes of meeting their procurement target. For example, cooking may default to “heating applications”, while energy storage and renewable hydrogen may default to “electricity” for the purposes of establishing a conversion factor. To specify and develop conversion factors for every potential end use of renewable gas would be overly burdensome, unnecessary, and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the

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		Ideally, the efficiency of equipment in these other applications should also be considered or one conversion factor established based on the heat content of the gas. See our prior comments on the Second Draft of the Proposed Rule submitted on July 5, 2019.) This will capture instances where a jurisdiction wishes to use the RNG for water heating, cooking, or other uses. Adding clarity here will cover all possible demands for RNG and help facilitate the maximum incentive for project development from anaerobic digestion (AD) of organic waste.	eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors.
2079	Wade, Sam, Coalition for Renewable Natural Gas	Pipeline-delivered Renewable Gas Should Be Treated Equivalently to Renewable Gas Generated and Used On-site We reiterate our request from prior comments that staff clarify, in the FSOR or in rule guidance, that the final rule is intended to maintain parity between pipeline-injected renewable gas procured from off-site sources and renewable gas produced on site, so as not to disincentivize additional pipeline-injection of renewable gas when efficiency improvements can be made to reduce on-site renewable gas demand at an AD project. The ways of measuring the amount of RNG used should also be clarified. We suggest utility invoices could be helpful in this regard, if gas utilities are allowed to offer RNG-specific tariffs.4 (4 As currently being debated in California Public Utilities Commission Application 19-02-015. See: https://apps.cpuc.ca.gov/apex/f?p=401:57:0::NO)	It is not the intent of the regulatory text to favor one form of renewable gas over the other. The intent is to provide flexibility to jurisdictions to procure the product(s) that best fit local needs. Regarding measuring the amount of RNG used, the proposed regulatory text provides default conversion factors for jurisdictions to convert the recovered organic waste product procurement target, measured in tons, to amounts of finished product. The reverse is also valid; a jurisdiction can convert the amount of renewable gas, from a utility invoice or other documentation, and calculate the equivalent tons or organic waste. This approach is intended to provide a convenient means for jurisdictions to calculate progress towards meeting their procurement target, and does not require jurisdictions to submit individual measurements for each product. If individual measurements were allowed to be submitted, the broad range of potential conversion factors raises the possibility that evaluation on an individual basis would be overly burdensome and would not be transparent to all stakeholders. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products in the current regulatory proposal using publicly available pathways and conversion factors. CalRecycle staff will clarify in the Final Statement of Reasons the supporting calculations behind the conversion factors.
2080	Wade, Sam, Coalition for Renewable Natural Gas	The Rule Should Clarify Treatment of Compost and/or Mulch Derived from Digestate Digestate from AD facilities can be directly used as biofertilizer or soil conditioner. However, in some cases—since the solid fraction of digestate still contains some biodegradable matter—microbial activity and odor can still occur. To reduce environmental impact and get to a more marketable and stable biofertilizer product, further processing, such as composting and drying, can be conducted. With the addition of the "mulch" category within the procurement targets we request clarity as to what properties the digestate would need to have to fall into this category. We reiterate our request for clarification that digestate-derived compost (or mulch) will be treated like all other compost (or mulch) for the purposes of credit toward procurement targets, and that the technologies to produce these beneficial organic-waste-derived products are not in competition with each other. We continue to assume, from the current rule text, that compost or mulch derived from digestate can qualify for the jurisdictional procurement targets.	Compost and mulch derived from facilities that meet the requirements specified in Section 18993.1(f)(1) or 18993.1(f)(4)(B) respectively are recovered organic waste products. These facilities may receive digestate as a feedstock used in the composting or mulching process. Regarding mulch, mulch is eligible to count toward a jurisdiction's procurement target when certain conditions are met. First the mulch must be produced at: "1. A compostable material handling operation or facility as defined in Section 17852(a)(12), other than a chipping and grinding operation or facility as defined in Section 17852(a)(10), that is permitted or authorized under this division; or 2. A transfer/processing facility or transfer/processing operation as defined in Sections 17402(a)(30) and (31), respectively, that is permitted or authorized under this division; or 3. A solid waste landfill as defined in Public Resources Code Section 40195.1 that is permitted under Division 2 of Title 27 of the California Code of Regulations." Digestate would need to be processed into mulch at one of the facilities noted above before it can be considered a recovered organic waste product. Digestate which is the byproduct of an in-vessel digestion facility could be used as feedstock at one of these facilities that produce mulch. However, CalRecycle notes that this list of facilities does not include in-vessel digestion. The regulations specifically do not incentivize the procurement of byproducts of organic waste

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			recycling such as digestate which is an organic waste and is the byproduct of in-vessel digestion. Second, if a jurisdiction will count mulch toward its recovered organic waste product procurement target, the jurisdiction must have an enforceable ordinance or similarly enforceable mechanism requiring mulch to meet land application standards. Regarding compost, as noted above and in the Final Statement of Reasons for Section 18993.1, compost produced at a facility identified in 18993.1(f)(1) constitutes a recovered organic waste product. Those identified facilities could use digestate as a feedstock to produce compost. However as identified in the note in the regulatory text in Section 18993.1, digestate itself is not compost and is not a recovered organic waste product. Digestate, like food waste, and green material is an organic material and it is appropriately defined as organic waste in the regulations. The note referenced above was included to clarify that items defined as organic waste in the regulations, and "recovered organic waste products" such as compost and mulch should not be confused as equivalents, and that incentivizing procurement of organic waste recycling byproducts is not the intent of the regulations. The procurement requirements are designed to help the state achieve the organic waste disposal targets by requiring the procurement of products intentionally created through the recycling of organic waste. This helps achieve the statutory targets by incentivizing recycling of organic waste such as digestate, food waste, green material which through their use as feedstock tocreate recovered organic waste products that can be procured and count toward a jurisdiction's recovered organic waste product procurement target. All of the methods for creating recovered organic waste products identified in the regulations can also result in byproducts or rejected material that are or include organic waste as defined in the regulations. Digestate is an organic waste byproduct of the creation of renewable gas from in-vessel digestion. In the context of the procurement requirements, this byproduct is similar to other byproducts and rejected materials such as, "overs" (typically material screened out of compost piles) and other rejected material at facilities that divert organic waste from landfills. The rejected materials and byproducts of organic waste recycling may include or be comprised entirely of organic waste; however they are not in and of themselves "recovered organic waste products" as defined in the regulations.
4001	Webb, M. City of Davis	1. Title, Chapter 12, Article 2, Section 18983.1(a)(2)(B The City had previously submitted on concerns about this text, so we appreciate that this text was removed. However, the City could like to see some clarifications given in the next Public Hearing as to whether or not C&D fines and digested sludge from a wastewater treatment plant can be used as alternative daily cover at landfills, or if the use would be counted as "landfill disposal."	Comment noted, this comment is not directed at changes made to the third draft of regulatory text. The use of organic waste as alternative daily cover constitutes landfill disposal of organic waste. Language was added to clarify that disposal of non-organic materials does not constitute landfill disposal of organic waste.
4002	Webb, M. City of Davis	Title 14, Chapter 12, Article 3, Section 18984.1(a)(6)(C) Do the regulations for colors and labeling also apply to temporary dumpsters that are provided by haulers for special projects (construction and demolition projects, land-clearing projects, etc.)? In some projects, a contractor will have a special bin brought in for a short time to fill with green waste from the project. Will these bins need to have green lids and be labeled according to Section 18984.8?	Thank you for the comment regarding the additional time, great cost savings, and easier compliance with the container color and label requirements. That comment is in support of current language. This section is necessary to ensure that containers are properly labeled which is necessary to ensure that collected organic waste is clean and recoverable. The section specifies that a jurisdiction may comply by placing a label (e.g., sticker or hot-print) with text or graphics

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		Most 10-40 yard debris boxes provided by haulers do not have lids. What would be required for these large debris boxes? While most of the time these bins and debris boxes are for temporary uses associated with specific projects, there are a few customers that have these large debris boxes 365 days a year to accommodate large amounts of waste generated on site. If these regulations require that debris boxes without lids to have color-coded bodies and specific labels, this will cause a significant challenge for haulers. Currently, the City's hauler will use the same debris boxes for all material collection requests. A 20 yard box might be at a jobsite and used for green waste only, whereas the following week it may be at a different jobsite for construction and demolition debris. If CalRecycle required that large debris boxes be color coded and labeled for specific materials, it would force haulers to use specific boxes for specific materials only, requiring them to have more of these large boxes available at any given time, and necessitating more space in their corporation yards to store excess bins. In addition, please provide some clarification on compactors that are serviced by haulers. These compactors are generally owned by private businesses and not the hauler. Are they also required to be grey or black? The City requests that CalRecycle include language in the regulations to exempt bins that are 1 yard and larger in size, and are used for temporary projects, from the color and labeling requirements set forth in Sections 18984.7 and 18984.8.	indicating acceptable materials for that container on the body or lid of the container, or by imprinting text or graphics on the body or lid of the container that indicate which materials may be accepted in that container. The labeling requirements were refined through the informal public rulemaking process to accommodate the various types of labels jurisdictions currently use on their containers. Stakeholders indicated that these types of labels are effective and durable. Correctly-colored labels may be applied to existing bins or lids until the containers are replaced at the end of their useful life. Labeling requirements, commencing January 1, 2022, only apply to new containers or lids. Thus, imprinting of labels would be directly onto new containers, either at the end of old containers' useful life or by 2036. A jurisdiction's designee can place labels on the containers. The regulations already apply to all containers provided by a hauler, including temporary dumpsters. The regulations specify that all containers provided by a hauler must meet both the container color and container label requirements by 2036. However, the regulations do allow for either the lid or the body to meet the color requirement. With respect to compactors owned by private businesses and not the hauler, the containers may conform with either the container color requirements or the container label requirements. In regards to the interior containers, this was the least costly and burdensome approach and still achieves the necessary organic disposal reduction. Those businesses subject to AB 827 will have to meet that statute's signage requirements. Nothing in these SB 1383 regulations precludes a jurisdiction from requiring businesses to have signage. In regards to the lid comment, a change was made to allow for the exposed portion of lid or body to be required color and to allow the required color to be on either the lid or the body, not just the lid. The change is necessary because this approach is the least costly and burdensome one that still achieves the organics disposal reductions. For the text and graphics, this section references that primary materials must be included. If there is a change in the primary materials, then the information would need to be updated as containers are replaced. The regulations are allowing flexibility on size of the label (text and graphics), the requirement is only for primary materials, and all containers need labels. However, this includes all containers and residential/non-residential. Also, for consistency purposes, CalRecycle revised Section 18984.8(c)(1) to mention primary items. In regards to the new technology, CalRecycle is unclear on how that will help educate the generators. Nothing prohibits jurisdiction from mailing labels for existing containers, in addition to ensuring that new containers are properly labeled. The current text reflects stakeholder input during the informal rulemaking period that it would be costly to place labels on all containers. CalRecycle determined that this change would provide jurisdictions with flexibility to implement less burdensome education methods (e.g., labels on new containers) that ensure organic waste is collected and recovered, to support the state's efforts to keep organic waste out of landfills and reduce greenhouse gas emissions. However, nothing in the regulations prohibits a jurisdiction from placing labels on all containers at an earlier time. The regulations allow labels to be applied to existing bins or lids until the containers are replaced

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			either at the end of their useful life or by 2036. Correctly-colored labels may be applied to existing bins or lids until the containers are replaced at the end of their useful life or by 2036.
4003	Webb, M. City of Davis	Title 14, Chapter 12, Article 3, Section 18984.8(b)(1) The City has found that imprinting labels directly onto container lids last on the lid longer and do not fall off and contribute to litter. Labeling can be done when lids are replaced as is required by Section 18984.7 in order to be color compliant. However, the lids are not required to be color compliant until 2032 but the labels must be in place by 2022. This would mean that temporary labels are required in the interim; labels which could fall off. While the City appreciates that CalRecycle has removed the requirement that the labels be maintained on the containers, the City does still have concerns about the labels ending up as litter. The City requests that the labeling of outdoor containers be phased-in on the same timeline as Section 18984.7 (at the end of their useful life, or by January 1, 2036) in order for the labels to be imprinted directly onto the container and not contribute to litter.	Labeling requirements, commencing January 1, 2022, only apply to new containers or lids. Thus, imprinting of labels would be directly onto new containers, either at the end of old containers' useful life or by 2036.
4004	Webb, M. City of Davis	Title 14, Chapter 12, Article 3, Section 18984.9(b)(1) The City is concerned that the regulations exempt restrooms. A great deal of organic waste, specifically paper towels, come from restrooms, and in some cases the City has found the restroom contributes to a large portion of generated waste. In order for the City of Davis to meet CalRecycle organics diversion requirements, it is essential to ensure that paper towels are kept out of the landfill. In Section 18984.9(e), CalRecycle has already specified that bins are not required to be in a location where the materials that would be in the bin are not generated. If a restroom does not have paper towels (and has an air dryer instead), it would follow that the restroom would not need an organics or recycling bin. However, most all restrooms still have paper towels available for consumers. Requiring that all paper towels in restrooms be collected for composting is a very simple way to boost the diversion of organics. In the City's experience, this can be easily done by placing a "Compost Paper Towels Here" sticker on the existing trash bins that are placed near the sinks/paper towel dispensers in bathrooms, and placing a tiny trash bin nearby. This way, consumers who are accustomed to using that particular restroom (i.e. employees in a business) do not need to change their normal behavior. The City of Davis requests that CalRecycle remove this exemption from the regulations.	Section 18984.9(b)(1) requires placement of containers in all areas except restrooms but does not prohibit a jurisdiction from also placing in containers in restrooms. Section 18990.1(a) already indicates that a jurisdiction can implement more stringent requirements. Therefore, if a jurisdiction's programs support composting certain types of materials discarded in restrooms, the jurisdiction is free to add these to its program.
4005	Webb, M. City of Davis	Title 14, Chapter 12, Article 3, Section 18984.9(b)(1)(A) This can be interpreted in more than one way, and because of this, the City requests some clarification. For cities such as Davis that have a dual-stream collection, Section 18984.1(a)(6)(B) provides some flexibility in the color requirements: dual stream recycling bin lids could be dark blue and light blue to indicate organic recyclables and non-organic recyclables. As such, how would 18984.9 be interpreted? In order to be color	CalRecycle revised Section 18984.7(a) in response to this comment to clarify that jurisdictions have to provide containers for the collection service that the jurisdiction implements for organic waste generators, not the indoor bins of businesses. Sections 18984.1(a)(6)(B) and (C) and 18984.2(d)(1) do not require that only light and dark blue be used for a split container; they allow any color not already designated for other materials specified in this section to be used for the split container. Additionally, if the color is an issue in this circumstance, the business can use labels instead. CalRecycle will clarify in the FSOR that

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		complaint with 18984.9(b)(1)(A), would indoor recycling bins placed in businesses need to be “light blue” and “dark blue”, to signify organic recyclables and non-organic recyclables? Granted that the bins could be any color at all and just have a complaint label applied, but in order to be color complaint, are different shades of blue required? The City would prefer that the requirement only be for “blue” bins/lids/labels and not specifically shades of blue (i.e. light versus dark blue) to allow some flexibility in purchasing for businesses. Not all recycling bins and lids come in more than one shade of blue. In addition, due to different color processes (RBG vs. CMYK) at professional printers, the color “blue” can come out a variety of shades. Similar clarification is needed for Section 18986.1(a-b) and Section 18986.2(a-b).	Section 18984.9(b), which allows a commercial business to provide containers that comply with either the color or the labeling requirements, applies to Section 18986.1 and Section 18986.2.
4006	Webb, M. City of Davis	Title 14, Chapter 12, Article 3, Section 18984.10(a) Please provide some clarification in this text. Is “containers” referring to the containers that are located inside the business, or are these the containers provided by the hauler that are used for collection service?	Section 18984.10 is related to the collection service containers. Section 18984.7 was revised to clarify that the containers jurisdictions are required to provide are containers for collection services (e.g. the curbside containers, not the internal business containers).
4007	Webb, M. City of Davis	Title 14, Chapter 12, Article 4, Section 18986.1(b) and Section 18986.2(b) As indicated in Response #4, the City does not see the need to exempt restrooms as a required location for organics collection. The City has a number of “non-local entities” and “local education agencies” within its borders, the largest generator of which is the local school district. The schools within the district are large generators of waste, a significant amount of which is paper towels. In order for the City of Davis to meet CalRecycle organics diversion requirements, paper towels need to be kept out of the landfill. The City of Davis requests that this exemption be removed from the regulations.	Section 18984.9(b)(1) requires placement of containers in all areas except restrooms but does not prohibit a jurisdiction from also placing in containers in restrooms. Section 18990.1(a) already indicates that a jurisdiction can implement more stringent requirements. Therefore, if a jurisdiction’s programs support composting certain types of materials discarded in restrooms, the jurisdiction is free to add these to its program.
4008	Webb, M. City of Davis	Title 14, Chapter 12, Article 6, Section 18987.1 Please clarify what management options are allowed for digested sludge from a wastewater treatment plant. Section 18987.2 has now been removed, does this mean that digested sludge can be landfilled or used as alternative daily cover without that tonnage counting against jurisdictions as “organic waste landfilled”, particularly in relation to qualifying as a Performance-Based Source Separated Collection Service?	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
4009	Webb, M. City of Davis	Title 14, Chapter 12, Article 7 Further description is needed to define “self-haulers” in this section. For example, do landscape maintenance businesses that haul yard trimmings away from their commercial and/or residential customers fall under the category of “self-haulers”? Some of these businesses are very small and will operate without a business license, so jurisdictions have no way to identity and notify them of CalRecycle regulations. They also frequently service customers in more than one jurisdiction prior to bringing the material to a disposal or composting site. They cannot accurately report at the scale house where the material came from and jurisdictions struggle to provide these businesses with information about the required diversion regulations.	The definition of ‘hauler’ in Section 18982(a)(31) of these regulations refers to existing Title 14 Section 18815.2(32): “‘Hauler’ means a person who collects material from a generator and delivers it to a reporting entity, end user, or a destination outside of the state. ‘Hauler’ includes public contract haulers, private contract haulers, food waste self-haulers, and self-haulers. A person who transports material from a reporting entity to another person is a transporter, not a hauler.” Landscapers are self-haulers as they are the actual entity generating the waste. Landscapers are self-haulers and if the jurisdiction allows landscapers to self-haul, then the jurisdiction needs to explicitly include this in its enforcement ordinance. The enforcement ordinance needs to require all self-haulers to meet the requirements of Section 18988.3, which while it does not require registration, does require that self-haulers recycle the organics, either through SSO or hauling to a HDOP.

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		Please clarify in the regulations how jurisdictions are required to manage all types of landscape maintenance businesses. There may be a need for a separate section that specifically identifies this particular type of business, and what CalRecycle expects from jurisdictions.	
4010	Webb, M. City of Davis	Title 14, Chapter 12, Article 9 Section 18990.1(b)(5) The City is concerned with this language, and it may not be possible to comply as currently written. Within the current draft regulations, jurisdictions will be required to enter into contracts with waste haulers and waste flow agreements with composting facilities to ensure that all organics generated within their borders are collected, hauled, accepted and recorded at a qualified composting facility. Organic waste collection and hauling may currently be included in franchise waste hauling agreements (as it already is in Davis) in order to keep hauling costs down. As such, generators within a jurisdiction will have no choice but to use the hauling services provided by the contract hauler in their area. In addition, this language places tight restrictions on the ability of a jurisdiction to secure waste flow agreements with a compost facility. It is anticipated that there will be minor changes in the types of materials that a compost facility will accept. Changes in Air Board or Water Board permits at compost facilities, the advent of new consumer products, research into the composting process and contaminations, changing OMRI-certification status requirements, etc.; these factors will require compost facilities to change what they can or cannot accept from time to time. As written, this language will tie jurisdictions to a specific service level of what can be collected as organics, and not allow any flexibility in changes at a composting facility reflecting updated technologies or changes in regulations. For example, if a composting operation loses its permit to accept food waste, or changes its acceptance policy to not include palm fronds, or plastic-lined paper, the jurisdiction will be required to tell organic waste generators to modify what can be placed in the organics containers. However, these regulations will restrict jurisdictions from doing so.	Comment noted. The commenter is noting the overall nature of the regulations but is not proposing a particular change in the language of the regularion. In order to achieve organic waste diversion requirements, organic waste must be diverted to appropriate facilities. It is foreseeable that planning and contracting will be necessary to allow that diversion to occur in a manner that will work for a particular jurisdiction.
4011	Webb, M. City of Davis	Title 14, Chapter 12, Article 9, Section 18990.2 The regulations, as currently written, limit the ways in which a commercial edible food generator is able to keep edible food out of the landfill and organics bin. The City recommends adding some text that allows commercial edible food generators the option to take edible food home themselves, or allow their employees or customers to take food. The City recommends that the following text be added to the regulations: **Section 18990.2(e) Nothing in this chapter shall be construed to limit or conflict with the rights of a commercial edible food generator to provide edible food to their employees, customers, or to keep it for individual reuse, provided that they do not do so in violation of 18991.3(d).** The City requests that the same language be applied to Section 18991.3(b).	Nothing in this chapter prohibits a commercial edible food generator to provide edible food to their employees, customers, or for individual reuse. A revision to the regulatory text is not necessary.

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4012	Webb, M. City of Davis	Title 14, Chapter 12, Article 10, Section 18991.1(a)(2) Title 14, Chapter 12, Article 10, Section 18991.1(a)(4) Title 14, Chapter 12, Article 10, Section 18991.1(b) While the City of Davis supports the concept of supporting and promoting food recovery programs, the City has several concerns about this particular section. Rate payer impacts Currently, most food recovery organizations and food recovery services in Yolo County are operated by non-profit organizations. These organizations receive funds via a variety measures, including grants and direct donations. With the inclusion of Section 18991.1(b), the implication is that these organizations will no longer need to raise funds to support capital expansions of their organization, and to support outreach and education associated with food recovery. They would be able to rely entirely on jurisdictions to fund their capacity-building projects and outreach. Many jurisdictions operate Solid Waste services through enterprise funds. Rate payers would be expected to bear the burden of the increased cost of service associated with the capital improvements of equipment or facilities that the jurisdiction does not own or maintain. This line of text is far too broad in its requirements for jurisdictions to provide any and all funding needed for the edible food recovery programs. Concerns with oversight on the use of public funds As currently written, there is no mechanism of oversight over the use of jurisdictional funds for edible food recovery education, outreach or capital projects. Use of municipal funds is often associated with established grant programs, with accompanying reporting systems and auditing, to ensure funds are used appropriately. It appears that the regulations are only requiring that jurisdictions make up for the gaps in resources edible food recovery organizations have in resources to support SB 1383 programs. In addition, the amount of oversight and the extent of the reporting on the contracts that would be required in order for jurisdictions to fund these organizations will be substantial, and may result in jurisdictions having to expand staffing levels, at additional costs to ratepayers. The City requests that CalRecycle reword this section to clearly limit what operational portions of a food recovery organization jurisdictions are required to fund. City also requests that CalRecycle provide model agreements and contracts for jurisdictions to use that contain language to ensure that public funds are used appropriately and with suitable oversight.	Nothing in SB 1383's edible food recovery regulations requires jurisdictions to provide funding. The language in the regulations regarding funding is permissive. The language states that a jurisdiction may fund their edible food recovery program through franchise fees, local assessments, or other funding mechanisms. The regulatory language uses the word "may" not "shall." This language does not require jurisdictions to provide funding. Rather, it allows jurisdictions to provide funding if they would like to do so. Again, there is no requirement for jurisdictions to provide funding. Also, SB 1383 provides a broad grant of authority to jurisdictions to "collect fees to recover the local jurisdiction's costs incurred in complying with the regulations…" The types of fees a jurisdiction may impose are not limited to tip fees or franchise fees. That said, some jurisdictions in California are already successfully using such fees to fund food recovery activities.
4013	Webb, M. City of Davis	Title 14, Chapter 12, Article 10, Section 18991.2 The City anticipates a number of challenges in working with restaurants to maintain records of food donation. These factors include high staff turnover, rush hours, language barriers, and hours of operation outside of standard business hours. There is concern that collecting this information on a regular basis may not be feasible,	Without the recordkeeping requirements for commercial edible food generators, jurisdictions will not be able to verify if a commercial edible food generator is complying with SB 1383's commercial edible food generator requirements. The recordkeeping requirements are a critical enforcement mechanism. Prior to 2022, CalRecycle does intend on providing SB 1383 recordkeeping tools to assist commercial edible food generators with compliance.

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		and could create an antagonistic relationship between the city and restaurants should the city have to issue fines for anticipated non-compliance. If CalRecycle keeps this requirement in the regulations, the City requests that the State maintain an online reporting system for this purpose. As most restaurants have a license through the CA Dept. of Alcoholic Beverage Control, the City further requests that the State use their own licensing systems to require edible food generators that have an ABC license to report this information directly to the state, leaving the jurisdictions to manage only the Tier 1 and Tier 2 edible food generators that do not have ABC licenses.	CalRecycle would also like to note that many well-established food recovery organizations and food recovery services already provide their donors with some kind of receipt of donation that often contains the amount of food that was donated. Many food recovery organizations do this to provide their donors with information that will help the donor if they intend on claiming the federal enhanced tax deduction offered for food donation. With regard to the comment that the state maintain an online reporting system that restaurants can use, commercial edible food generators are not required to report any information. CalRecycle would like to clarify that recordkeeping and reporting are different. Commercial edible food generators are not required to report.
4014	Webb, M. City of Davis	Title 14, Chapter 12, Article 14, Section 18995.2 There are many items that are required to be included in the implementation record, all of which will require additional time for jurisdictions to compile and to create a new accounting and record systems to maintain. These records may compel some jurisdictions, particularly larger ones, to purchase expensive recordkeeping software and database systems, just to ensure compliance. Rather than require each jurisdictions to create their own recordkeeping and data management system in order to maintain compliance with these regulations, the City requests that CalRecycle provide an electronic method for jurisdictions to maintain an Implementation Record. The electronic format may be a formatted Excel Spreadsheet template, a downloadable database software system, or CalRecycle's own online system (such as the CalRecycle online LoGIC system where jurisdictions submit annual reports). An online system hosted by CalRecycle would give CalRecycle continual access to the records.	CalRecycle intends to allow jurisdictions to report electronically. Jurisdictions are not required to report the contents of their implementation record, only to maintain copies. CalRecycle's will provide guidance and tools regarding these requirements before the regulations take effect.
4015	Webb, M. City of Davis	Title 14, Chapter 12, Article 14, Section 18995.3 The City is concerned about the privacy of its residents and customers. The City requests that the language of this section be amended to further protect information that is confidential and allow for general descriptions of outcomes, including "Per CalRecycle regulations, the City is investigating the issue" and "the investigation has been completed and any required actions, if needed, have been taken."	This section requires that a jurisdiction have a complaint procedure that meets the basic requirements described. Per Section 18990.1(a), jurisdictions are allowed to have requirements that are more stringent that the proposed regulations. This section in particular is silent regarding confidential information. A jurisdiction may include requirements in its own procedures, pursuant to its own ordinance or other similarly enforceable mechanism, to protect confidential information.
4016	Webb, M. City of Davis	Title 14, Chapter 12, Article 17, Section 18998.1(b) The agreement between the City and our contracted waste hauler requires the hauler to bring the organics they collect to whichever facility the City designates. Is that sufficient to meet the requirements of the section, or would the City be required to amend the agreement to state the specific organic waste facility determined by the City?	Comment noted. If the city requires the hauler to only transport waste to a facility that is a designated source separated organic waste facility, this may be sufficient to meet the requirements of Section 18998.1(a)(2) and Section 18998.1(b).
4017	Webb, M. City of Davis	Title 14, Chapter 12, Article 17, Section 18998.2(a)(2) The City requests further clarification on this section. Does this mean that a jurisdiction with Performance-Based Source Separated Collection Service is not allowed to grant waivers and exemptions, OR does it mean that if the jurisdiction does grant a waiver or exemption, they do not need to follow this prescriptive process? The direction is unclear.	Comment noted. If the city requires the hauler to only transport waste to a facility that is a designated source separated organic waste facility, this may be sufficient to meet the requirements of Section 18998.1(a)(2) and Section 18998.1(b). Comment noted. CalRecycle disagrees that including a note in each applicable section would add clarity. CalRecycle will provide guidance to jurisdictions implementing a performance-based source separated organic waste collection service regarding the requirements they are subject to or exempt from.

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		It would be more straightforward if, in addition to listing the sections that jurisdictions with Performance-Based Source Separated Collection Service are exempt from in Section 18998.2(a), there was a note within each applicable section that lists which items are exempt if a jurisdiction has a qualifying Performance-Based Source Separated Collection Service. As this section currently reads, the exact lines of the regulations that are exempt could be interpreted a number of ways.	
4018	Webb, M. City of Davis	Title 14, Chapter 12, Article 17, Section 18998.1(a)(3) How will the State determine if a jurisdiction has an eligible Performance-Based Source Separated Collection Service prior to July 2022?	Jurisdictions that intend to implement a performance-based source separated organic waste collection service to certify that they provide a compliant service to 90 percent of generators subject to their authority by April 1, 2022. A jurisdiction that cannot certify that it is providing a service to 90 percent of generators is ineligible to implement a performance-based source separated organic waste collection service. Regarding the recovery efficiency and waste evaluations, the first annual averages will be evaluated when a full year of data is available in 2023.
4019	Webb, M. City of Davis	Changing out lids to conform to a design standard will be an unnecessary cost burden on jurisdictions. The City is very appreciative that CalRecycle amended the regulation to require only the lids of trash, recycling and organics collection containers to be color-compliant. However, the City is still concerned with the cost and waste associated with having to change out all of the cart lids that are currently being used. Unlike other sections of the regulation that will actively increase access to organics and recycling service and can increase waste diversion, it seems that the expense required to change out lids prior to the end of their useful life is outweighed by the consistency of color coding of bins statewide. The recycling and organics carts that the City uses do not conform to the colors identified in the draft regulation. In Davis, commercial recycling carts are green, organics carts have a brown lid, and the split-recycling cart has a grey body with a blue and black lid. In 2016, the City began a city-wide organics collection program and issued brand new carts to all our customers. The carts are grey with a brown lid. It is anticipated that these new carts will last at least 20 years. While the City appreciates that CalRecycle extended the deadline to change out cart lids until 2036 in order to account for these new carts, regardless of the date that is set this regulation will have the unintended consequence of cart lids being changed out much sooner, far before the end of their useful life. This would not only be extremely costly, but wasteful as well. Many cities may decide to change everything out much sooner than 2036 just to avoid the customer confusion with the new and old colors being in service at the same time. To this end, the City makes the following requests: a. Rather than require that the entire lid be replaced, allow color-coded labels to be applied to existing bins until the lids/bins are replaced at the end of their useful life with color conforming lids. OR	Comment noted. Regarding lids on containers, the regulations allow a lid to be replaced either at the end of its useful life or by 2036, which provides a less burdensome option than replacing the entire container. Nothing prohibits a jurisdiction from painting containers and lids at an earlier time. In addition, the regulations already allow containers including their lids to be replaced at the end of their useful life.

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		b. If existing containers will not be grandfathered in, and if no recycling markets exist for the lids, allow the jurisdictions to file for a disaster waste tonnage exemption for lids and bins that are not color compatible.	
4020	Webb, M. City of Davis	Financial burden of the draft regulations. It is not an understatement to say that the program implementations, extensive requirements for reporting, contamination monitoring, edible food recovery program, recordkeeping, violation reporting and monitoring process, etc. will be a significant cost to jurisdictions and ratepayers. While CalRecycle acknowledges that this will be a financial burden, simply anticipating that costs will be passed along to ratepayers in the form of increased solid waste service fees is problematic. The City of Davis is one of many jurisdictions that is required to use the Proposition 218 process to implement solid waste rates. Majority protests from ratepayers rejecting the increases, therefore, could severely limit the ability of these jurisdictions to fulfill the requirements of these new regulations. The City has recently approved a 40% solid waste rate increase that will occur over the next five years, in part to comply with existing (pre-SB 1383) diversion requirements. Placing additional cost burdens on rate payers for unfunded requirements at this time may create a situation where new rates are rejected by ratepayers. Past disputes in the City of Davis over significant water rate increases have resulted in litigation and a citizen referendum to block rate increases, and the City is at risk of similar responses if waste disposal rates again must be increased due to new state mandates. To this end, the City makes the following requests: a. The City requests that CalRecycle provide financial assistance to jurisdictions in the form of grants, payment programs or other methods to assist jurisdictions in complying with these regulations. b. Recognizing that in some jurisdictions, solid waste rate increases are required to go through the Proposition 218 process, the City requests that CalRecycle provide options for jurisdictions where this occurs and provide assistance with the 218 process to ensure the success of implementing these mandated programs.	Comment noted. CalRecycle acknowledges that the proposed regulations will require regulated entities to invest in actions and programs that will reduce pollution and protect the environment. The timelines were established in the statute and the regulations are necessarily designed to impose requirements in a manner that is in alignment with the ambitious statutory timelines. The legislation did not provide a dedicated source of state funding to fund compliance with the regulations but did provide a specific allowance for local jurisdictions to charge fees to offset their costs of complying.
4021	Webb, M. City of Davis	In addition to the concerns listed above, the City of Davis requests that as part of these regulations, CalRecycle provide the following resources: a. Waste evaluations performed and made public no later than July 2020. In order for jurisdictions to plan for SB 1383 implementation, they will need to know ahead of time if they will qualify as Performance-Based Source Separation Service. This is a key component in the planning of service fees, staffing levels, and contracts with waste haulers. Jurisdictions will need to know far in advance of the January 2022 date whether or not they will qualify to start off as Performance-Based Source Separation Service, or if they will need to increase route audits, etc., as required for all those jurisdictions that are not qualified.	Comment noted. Comment is not commenting on the regulatory language.
4022	Webb, M. City of Davis	In addition to the concerns listed above, the City of Davis requests that as part of these regulations, CalRecycle provide the following resources:	Comment noted. This comment is not specific to any aspect of the regulatory text. CalRecycle intends to provide guidance to jurisdictions throughout 2020 and 2021 prior to the

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		b. Model ordinances. The depth and breadth of what is covered under these new regulations places a particular challenge on jurisdictions to develop language for enforceable ordinances. Please provide several model ordinances that meet the requirements set forth in these regulations so jurisdictions can choose the ones that work best with the programs already in place.	implementation date of the regulatory requirements. CalRecycle will additionally continue to provide regulatory guidance as the regulations take effect.
4023	Webb, M. City of Davis	In addition to the concerns listed above, the City of Davis requests that as part of these regulations, CalRecycle provide the following resources: c. Sample outreach materials. As this regulation provides numerous requirements for specific outreach items, the City requests that the state provide sample outreach pieces in a modifiable form, so that jurisdictions can add their own logo and contact information, distribute the outreach materials and comply with the regulations. d. Translated text of all required outreach materials. This translation is particularly needed for topics that cannot be communicated though the use of images and a limited number of words, such as methane reduction benefits of reducing the disposal of organic waste, and the public health and safety and environmental impacts associated with the disposal of organic waste as required in Title 14, Chapter 12, Article 4, Section 18985.1. These translations would need to be listed in multiple languages, including Spanish, Cantonese, Mandarin, Tagalog, Vietnamese, etc., in order for jurisdictions to comply with the translation requirements of this section. As an alternative, the State could offer a free translation service to jurisdictions that need to comply with the regulations. e. Compliance training. There are many facets to these regulations which solid waste professionals in California will need training on, including outreach, food donation best practices, and required reporting. The City requests that CalRecycle provides web-based training via multiple modules to address the different requirements of these regulations. f. Training for contamination monitoring. As the regulations require every route to be monitored for contamination every quarter, the City requests that CalRecycle provide web-based training modules on visual contamination estimation, so that waste hauling and solid waste staff can learn to provide an accurate estimation of the percentage of contamination in a bin. g. Labels. The requirements to place labels on every single indoor and outdoor bin will require millions of labels. As with all printing projects, bulk purchasing of large quantities is much more cost effective than smaller purchases. Requiring each business to purchase its own labels will be far more expensive than if the State purchases large quantities than offers them for free or at a discounted price. The City requests that CalRecycle provide some method for businesses to order labels for free or at a discounted rate. There is already a precedent set for this as the State offers recycling posters and stickers that can be ordered and shipped in California for free. h.Indoor recycling and organics bins. Should the state move forward with the requirement that all single indoor trash bins will be required to have accompanying	Comment noted. CalRecycle will provide tools and training for jurisdictions.

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		recycling and organics bins that are color compliant, the City requests that the State create partnerships with bin manufacturers to secure low cost purchasing of color compliant indoor bins for jurisdictions, businesses and schools. i.Web-based calculation worksheets. In order to identify the tier 1 and 2 edible food generators, as required in Title 14, Chapter 12, Article 10, it would be helpful if CalRecycle could provide a database that can help calculate which businesses are considered Tier 1 and Tier 2 compliant.	
4024	Webb, M. City of Davis	In addition to the concerns listed above, the City of Davis requests that as part of these regulations, CalRecycle provide the following resources: j. Training on Health Code regulations surrounding edible food donation regulations and serving food. The Edible Food Recovery Program described in the regulations is extensive and is outside of the experience of most individuals in the recycling industry. Requiring professionals within the solid waste industry to manage a food donation program will require a large education campaign for staff and employees. The City requests that CalRecycle provide webinars, online training modules and fact sheets regarding all applicable health code regulations, best management practices, and refrigeration and food storage requirements associated with edible food donations in order for solid waste program staff in jurisdictions to successfully implement these programs. k. Online reporting system for Commercial Edible Food Generators. The City requests that the state develop and maintain an online reporting system that restaurants can use. As most restaurants have a license through the CA Dept. of Alcoholic Beverage Control, the City further requests that the State use their own licensing systems to require edible food generators that have a ABC license to report this information directly to the state, leaving the jurisdictions to manage only the Tier 1 and Tier 2 edible food generators that do not have ABC licenses.	CalRecycle intends on providing resources and tools to help jurisdictions, commercial edible food generators, and food recovery organizations and services with compliance. These resources and tools will include safe surplus food donation guides that contain information about relevant food safety laws, regulations, and food code. CalRecycle will also be providing a model food recovery agreement that can be customized and used by food recovery organizations, food recovery services, and commercial edible food generators. With regard to the comment that the state maintain an online reporting system that restaurants can use, commercial edible food generators are not required to report any information. CalRecycle would like to clarify that recordkeeping and reporting are different. Commercial edible food generators are not required to report.
4025	Webb, M. City of Davis	In addition to the concerns listed above, the City of Davis requests that as part of these regulations, CalRecycle provide the following resources: l. Online database and reporting system. There are many items that are required to be reported to CalRecycle and included in the implementation record, all of which will require additional time for jurisdictions to compile and to create a new accounting and record systems to maintain. These records may compel some jurisdictions, particularly larger ones, to purchase expensive recordkeeping software and database systems, just to ensure compliance. Rather than require each jurisdictions to create their own recordkeeping and data management system in order to maintain compliance with these regulations, the City requests that CalRecycle provide an electronic method for jurisdictions to maintain an Implementation Record. The electronic format may be a formatted Excel Spreadsheet template, a downloadable database software system, or CalRecycle's own online system (such as the CalRecycle online LoGIC system where jurisdictions submit annual reports). An online system hosted by CalRecycle would also give CalRecycle continual access to the records.	CalRecycle intends to allow jurisdictions to report electronically. Jurisdictions are not required to report the contents of their implementation record, only to maintain copies. CalRecycle's will provide guidance and tools regarding these requirements before the regulations take effect.

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		m. Postponement of implementation until assistance is provided. The City requests that CalRecycle postpone the implementation of these regulations until after the assistance requested above has been provided.	
2024	Wells, Ken, Sonoma County Local Task Force on Integrated Waste Management	Article 1. Section 18982. Definitions. • Recommended change: "Edible food" means unsold or unserved food ~~intended~~ **fit** for human consumption.	In an early draft of the proposed regulations edible food was defined as: "Edible food" means unsold or unserved food that is fit for human consumption, even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions. For the purposes of these regulations, "edible food" is not solid waste if it is recovered and not discarded." Several commenters made the argument that this definition was too restrictive, because it described "recoverable food" not "edible food." Commenters also raised concerns that keeping this definition would make the edible food baseline much smaller than it would be with a broader definition, and would potentially discourage donations of foods that were still safe for human consumption. To address commenters' concerns about the definition of "edible food" being too restrictive, CalRecycle revised the definition. In the final regulations, edible food is defined as the following: "Edible food" means food intended for human consumption. (A) For the purposes of this chapter, "edible food" is not solid waste if it is recovered and not discarded. (B) Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. Although the final definition of "edible food" is broader than the previous draft definitions, the final definition includes language to clarify that all edible food that is recovered under SB 1383 must still meet the food safety requirements of the California Retail Food Code. This provision provides an objective standard familiar to regulated entities.
2025	Wells, Ken, Sonoma County Local Task Force on Integrated Waste Management	Article 10. Section 18991.5 Food Recovery Services and Organizations • Recommended change: A food recovery organization or service that has established a contract or written agreement to collect or receive~~s~~ edible food directly from commercial edible food generators pursuant to Section 18991.3(b) shall maintain records specified in this section…	A change to the regulatory text was made in response to this comment. The typo was corrected by removing the letter "s" from the word "receives."
5016	Whalen, B., PreZero	1) In keeping with the EPA's food recovery hierarchy, we ask that Cal Recycle guide jurisdictions and haulers to utilize facilities that follow preferred practices, such as nutrient upcycling using Black Soldier Fly Larvae for feeding animals before considering composting, anerobic digestion, or incineration.	This is not germane to the second 15-day comment period. However, nothing precludes jurisdictions and haulers from utilizing facilities that produce animal feed, and animal feed is considered a reduction in landfill disposal under Article 2.
5017	Whalen, B., PreZero	2) That the frass soil amendment as well as protein meal and -oil contribute towards jurisdictions recovered organic waste procurement targets.	CalRecycle disagrees with the commenter's recommendation to allow the products listed in the comment due to lack of verifiable conversion factors. CalRecycle worked closely with the Air Resources Board to determine the eligibility of the recovered organic waste products using publicly available pathways and conversion factors.
2065	White, Monica, Edgar & Associates, Inc.	Edible Food Recovery Programs Edgar & Associates was provided the list of food permits for businesses and schools in two counties in California. These generators were sorted according to the current Tier one and Tier two definitions. Both counties showed that approximately 15% of	Placing direct requirements on tier one and tier two commercial edible food generators should be sufficient for California to achieve the 20% edible food recovery goal. Food facilities and food service establishments that are not a tier one or tier two commercial edible food generator are exempt from SB 1383's regulations because they typically have smaller amounts of edible food

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		all generators met either the Tier one or Tier two definition, where some of these generators were already recovering food 1. (1 This does not include large events, large venues and state Agencies.) Limiting compliance to the current two Tiers can potentially limit the State's ability to meet the goal of recovering 20% of all edible food currently disposed. 1. Measuring from the 2014 baseline does not account for the early action of these generators 2. Generators are likely to find efficiencies, reducing the total amount of food donated 3. If the 20% baseline includes all edible food wasted, including residential sources, this effectively doubles the amount of food that must be recovered from only 15% of the commercial food generators. CalRecycle can ensure the State can meet the 20% recovery goal by adding language to the regulation that creates a trigger in 2025, where if it is shown that the State is below their 20% edible food recovery goal "Tier three" or otherwise expanded mandatory programs will be added to the requirements.	that would otherwise be disposed available for food recovery. As a result, a trigger was not added to the regulations.
2066	White, Monica, Edgar & Associates, Inc.	Gray Container Waste Evaluations We are disappointed to see CalRecycle has removed the requirements for gray containers to be evaluated at the landfill. This creates a loophole in the regulation where operators that have the ability to direct haul MSW to the landfill, can skirt the recovery requirements, with no ability for a jurisdiction or the State to observe if programs are effectively removing organics from the gray container. It creates an incentive for operators to direct haul materials to landfills to avoid evaluating and reporting the efficiency of their programs. Although the green container will demonstrate that it has been able to reduce contamination, there is no other way for a jurisdiction, or the State, to ensure the programs are effective at removing organics from landfill. CalRecycle should maintain the basic requirement for all operators to collect data through the waste evaluations of the containers to ensure that programs are effective, regardless if they are transferred through a facility or direct hauled to landfill.	Comment noted. Comment is not commenting on the regulatory language.
1044	Zaldivar, Enrique, City of LA Sanitation	Article 9, section 18990.1(a) makes clear that local jurisdictions may make more stringent requirements than those included in this chapter of the CCR. However, section 18990.1(b) constrains the ability of local jurisdictions to further legislate in certain enumerated areas, including that a jurisdiction may not implement "any policy procedure, permit condition, or initiative" that would "limit a particular solid waste facility, operation, property, or activity from accepting organic waste imported from outside of the jurisdiction for processing or recovery."	The requested changes to the regulatory text are not necessary. However, CalRecycle is adding additional language to section 18990.1(b)(1) to further clarify its meaning in light of comments received. Article 9 sections 18990.1 (a) and (b) are not contradictory. Section 18990.1 (a) clarifies that it does not limit a jurisdiction in adopting more stringent standards than the ones outlined in this chapter. The purpose of the specific limitations set forth in paragraphs 1-5 of section 18990.1 (b) are to ensure that jurisdictions do not impose restrictions on the movement and handling of waste and waste-derived recyclables that would interfere with or prevent meeting the organic waste recovery targets established in SB 1383. Article 2 section 18983.1 (b)(6)(b) clarifies that land application of biosolids constitutes a reduction in landfill disposal provided that the application complies with minimum standards. This section specifies that to be considered a reduction in landfill disposal for the purposes of this

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			regulation, land application of biosolids must comply with existing regulatory requirements and have undergone composting or anaerobic digestion. While this regulation defines land application as recovery, this regulation does not allow land application of biosolids to be done in a manner that conflicts with existing public health and safety regulations and requirements. Land application of composted or digested biosolids prevents the landfill disposal of this material and reduces greenhouse gas emissions. This supports the state's efforts to keep organic waste out of landfills and reduce greenhouse gas emissions and is therefore considered a recovery activity for the purposes of this regulation. The additional language will ensure that such restrictions can be reviewed on a case by case basis to determine if they are necessary to protect the public health and safety, or if they are actually unnecessary restrictions.
1045	Zaldivar, Enrique, City of LA Sanitation	Although section 18990.1(c)(4) of the proposed regulations make clear that this prohibition does not extend to a local jurisdiction "arranging through a contract or franchise for a hauler to transport organic waste to a particular solid waste facility or operation for processing or recovery", there is the creation of ambiguity and lack of clarity as it relates to the City Facility Certification Program. Facilities that refuse to comply with the standards set in the Facility Certification Program would not be certified and would be prohibited from taking material collected through recycLA. By way of example, if the facility refused to let an inspector on site, or falsified recycling information reported to recycLA, the facility would be subject to a compliance action, up to revocation of their certification. If revoked, the facility would not be allowed accept organic material from recycLA, thereby potentially violating Sections 18990.1.(b). In order to remove any ambiguities pertaining to the City's ability to implement its Facility Certification Program, the City recommends the following changes to Article 9, section 18990.1(c)(4): "(c) This section does not do any of the following: (4) Prohibit a jurisdiction from arranging through a contract, ~~or~~ franchise, **or certification program** for a hauler to transport organic waste to ~~a~~ particular solid waste facilit~~y~~**ies** or operation**s** for processing or recovery."	This comment is not directed at a regulatory change made in the third draft of regulatory text. The prohibitions in section 18990.1(b) are not intended to apply to situations where facilities are prohibited from accepting material due to enforcement of local ordinances and/or requirements as long as those ordinances and/or requirements that authorize the enforcement are not in conflict the prohibitions in this subsection.
1046	Zaldivar, Enrique, City of LA Sanitation	As mentioned in the City's previous comment letter submitted July 17, 2019, LASAN is assessing projects that would pre-process organic waste at a solid waste facility and then inject the processed waste into the sewer system for conveyance to the POTW. The current requirements for Article 12 Section 18993.1(h)(1) do not clearly define what constitutes "direct" receipt of organic waste from a facility. LASAN requests that the receipt of organic waste material to a POTW includes the conveyance of material through the sewer system in order to promote the diversion of organic waste through the utilization of existing infrastructure which would additionally reduce the requirements for trucking and transportation.	The purpose of the proposed regulatory language is to be consistent with SB 1383 statute that specifies the adoption of policies that incentivize biomethane derived from solid waste facilities. This requirement allows the department to verify that these facilities are reducing the disposal of organic waste.
1047	Zaldivar, Enrique, City of LA Sanitation	Article 16. Administrative Civil Penalties. Section 18997.3 (a) Can CalRecycle provide metrics, that can be measured, as to what constitutes minimal, moderate, or major deviations from the standards? As currently written,	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires.

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		there is no definitive guide to what defines minimal, moderate, or major deviations that would result in minimal, moderate, or major violations.	It is unclear from the comment under what circumstances a “minor” violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines. With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation. Regarding factors taken in to consideration when penalty amounts are set, in addition, the regulatory language defining a “major” violation takes into account knowing, willful or intentional actions. And the factors in subdivision (d) of this section allow consideration of the willfulness of the violator’s conduct in setting a penalty level within the appropriate range. The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires. It is unclear from the comment under what circumstances a “minor” violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines. With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation.
1048	Zaldivar, Enrique, City of LA Sanitation	Section 18998.1 establishes a single set of standards for both single family and small multifamily properties (four units and under), and commercial properties (including large multifamily). For large jurisdictions, such as the City of Los Angeles, single family and small multifamily (four units and fewer), and commercial properties (including large multifamily) collection systems are extremely large and distinctively different. These systems were developed and implemented separately, report individually, and have different systems to ensure compliance. Collection from single family and	Comment noted. CalRecycle acknowledges that some sectors may be more difficult to meet the service requirements than others. The standards were established to ensure that the state can achieve the organic waste reduction targets. Requirements related to providing organic waste collection services are not a new requirement. Jurisdictions are already required by law to offer organic waste collection services to the commercial sector. Additionally, the Article 17 service requirements are specifically designed to apply to an entire jurisdiction. Piecemealing where Article 17 services are provided would unnecessarily complicate enforcement and oversight for the department as well as jurisdictions.

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		small multifamily properties are performed by City staff, while commercial properties (including large multifamily) are performed under the recycLA program (exclusive franchise system). Performance based compliance may be possible for City residential collection but not for the recycLA program. To allow jurisdictions the flexibility to comply, LASAN requests that Section 18998.1 be modified to allow separate compliance methods when a jurisdiction has separate systems for single family and small multifamily properties (four units and fewer), and commercial properties (including large multifamily).	
1049	Zaldivar, Enrique, City of LA Sanitation	Article 6.2. Operating Standards. Section 17409.5.7(c) Gray Container Waste Evaluations Please define “remnant organic material”. Is this the SB 1383 targeted materials listed in the legislation? Are there any qualifiers to this classification of material, e.g., does it matter that the materials are marketable or not marketable, processable or not processable, edible food vs non-edible food, etc.	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations. However, remnant organic material is defined in Section 17402(a)(23.5).
1050	Zaldivar, Enrique, City of LA Sanitation	Article 6.2. Operating Standards. Section 17409.5.8(a) What is meant by “incompatible”? Is this determined by the compatibility or ability to process or to market the materials delivered? The same output material (e.g., non-compostable paper) could be “incompatible” to be used for compost, but “compatible” for use in a biomass plant. How is “incompatibility” defined and tested by the EA? Additionally, how are difficult-to-handle materials such as food-soiled paper, or “biodegradable” or “compostable” products considered when calculating the incompatible or remnant organic material values? Even if a facility accept these types of materials there is always the possibility where these materials will be screened out or need to be run through the process additional times. Is this a “weight-based” analysis? If weight based analysis, compatibility with end destination or product will determine how the “incompatible percentage” is calculated (consistent with other CalRecycle regulations, e.g., are incompatible materials determined on a dry basis or a wet basis (Note that contamination for end product for land application is based on a dry basis).	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations. However, incompatible material is defined in Section 17402(a)(7.5).
2127	Zetz, Eric, SWANA	The SWANA LTF appreciates CalRecycle staff’s efforts to meet with stakeholders and consider comments on these complex proposed regulations. The SWANA LTF and our members participated in the pre-rulemaking workshops and provided written comments on past drafts. Our organization and members have repeatedly echoed one major theme throughout this process, and that is the need for jurisdictional flexibility. Our strong preference, and we think the far more effective approach to securing emissions reduction, would be for the department to adopt a performance-based approach to these regulations. Unfortunately, the proposed regulations continue to go down a very prescriptive path.	Comment noted. CalRecycle appreciates acknowledgement of changes that were addressed. For changes that were not addressed please refer to the appropriate comment number responding to the original comment from the second comment period.
2128	Zetz, Eric, SWANA	Chapter 12, Section 18981.1	Comment noted. CalRecycle does not believe a change is necessary as the term disposal as used in the scoping section clearly refers to landfill disposal. The term disposal and landfill disposal are

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		Proposed Language: (c) This chapter establishes the regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to achieve the organic waste **landfill** disposal reduction targets codified in Section 39730.6 of the Health and Safety Code and Chapter 13.1 of Division 30 of the Public Resources Code. Rationale: SB 1383, Subdivision 39730.6 (a) of the Health & Safety Code states, "Consistent with Section 39730.5, methane emissions reduction goals shall include the following targets to reduce the landfill disposal of organics" by 50% from the 2014 level by 2020 and 75% by 2025. However, this section fails to recognize that the said targets are based on organic waste "landfill" disposal reductions, and failure to indicate this fact causes confusion among regulated communities, governmental agencies, members of public and other stakeholders.	frequently used interchangeably. In fact, the section of the Health and Safety Code codified by SB 1383 commenter does just that: Health and Safety Code Section 39730.6. (a) Consistent with Section 39730.5, methane emissions reduction goals shall include the following targets to reduce the landfill disposal of organics: (1) A 50-percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020. (2) A 75-percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2025. (b) Except as provided in this section and Section 42652.5 of the Public Resources Code, the state board shall not adopt, prior to January 1, 2025, requirements to control methane emissions associated with the disposal of organic waste in landfills other than through landfill methane emissions control regulations." (emphasis added). As noted in the Initial Statement of Reasons, there is no existing definition of landfill disposal, or organic waste disposal in the Health and Safety code. As a result, Article 2 of the regulations specifically identifies activities that constitute landfill disposal of organic waste for the purposes of the regulations. The regulations also identify activities that constitute a reduction of landfill disposal of organic waste. Activities that constitute landfill disposal were identified in the regulations in consultation with CARB, as required by statute. However in response to comments on this item CalRecycle staff conducted a thorough review to ensure the term disposal and landfill disposal were used properly and consistent with the statutory intent throughout the regulation.
2129	Zetz, Eric, SWANA	Article 1 Section 18982 Proposed Language: (B) The facility is a "Composting operation" or "composting facility" as defined in Section 18815.2(a)(13) of this division that has less than 10 percent organic waste contained in materials sent to disposal as reported pursuant to Section 18815.7 of this division and complies with the digestate handling requirements specified in Section 17896.57 of this division if applicable. 1. If the Compostable Material Handling Operation or Facility has more than 10 percent organic waste contained in the materials sent to ~~disposal~~ **landfill disposal** for two (2) consecutive reporting periods, or three (3) reporting periods within three (3) years, the facility shall not qualify as a "Designated Source Separated Organic Waste Facility." Rationale: As stated in our previous comment letter and we'd like to reiterate our concerned about the use of the word "disposal" and the phrase "landfill disposal". In some of the proposed 15-day language changes, "disposal" within the general meaning of the Public Resources Code and Title 14 and Title 27 regulations broadly include landfill disposal, as well as other types of disposal, including transformation. The term "landfill disposal", on the other hand, within the meaning of these proposed SB 1383 regulations only includes landfill disposal, not transformation. It is most important to recognize this distinction when using these terms throughout the proposed regulations.	CalRecycle has revised the sections in response to comments. The term "disposal" was revised to "landfill disposal" where appropriate. This change was necessary to be consistent with the intent of SB 1383 mandate to reduce the organic waste disposed in landfills.

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		The first use of the term “disposal” on line 27 is appropriate as it pertains to the requirements of existing regulations in Title 14. However, the use of the term “disposal” on line 32 does not appear to be appropriate as it refers to new requirements for the diversion of organics from landfills pursuant to these SB 1383 regulations. SWANA understands that products produced from Article 2 technologies will be counted as a diversion from landfill disposal but, when used as a low carbon fuel in an industrial furnace it will still be regulated as a form of disposal under the EMSW. The use of the term “disposal” in line 32 would appear to disqualify a product even though it may be produced as a fuel for use in an EMSW “disposal” facility. Thus, we request that the term “disposal” in line 32 on page 5 be changed to “landfill disposal.”	
2130	Zetz, Eric, SWANA	Article 1, Section 18982 Proposed Language: (39.5) “Lifecycle greenhouse gas emissions” or “Lifecycle GHG emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions, **and emission reductions**), related to the full lifecycle of the technology or process that an applicant wishes to have assessed as a possible means to reduce landfill disposal of organic waste. The lifecycle analysis of emissions includes all stages of organic waste processing and distribution, including collection from a diversion location, waste processing, delivery, use of any finished material by the ultimate consumer, ultimate use of any processing materials. **The GHG emission reductions from low carbon energy generation, fuel production, or chemicals produced by the process or technology should be also be considered.** The mass values for all greenhouse gases shall be adjusted to account for their relative global warming potential. **However, “Lifecycle greenhouse gas emissions” or “Lifecycle GHG emissions” as used in Article 2 of these regulations shall not include emissions associated with other operations or facilities with processes that reduce short-lived climate pollutants, as that term is used in Article 2, that are similar to or consistent with those emissions that were excluded as the basis for developing the 0.30 MTCO2e/short ton of solid waste standard.** Rationale: As stated in our previous comment letter, SWANA LTF understands and supports the 0.30 MTCO2e/ton standard for determining if a technology meets the requirement for a reduction in landfill disposal of organic waste. We realize that this standard is based on the reduction of GHG emission associated with the composting of organic waste, as stated in Section 18983.2 (a)(3). However, we also understand that the 0.30 standard does not include some GHG emissions associated with composting operations. For example, the GHG emissions associated with the transport of organic waste to composting facilities and the transport of compost to the final use of the compost product would not be included in the calculation of the 0.30 standard. There may be other similar exclusions in the calculation of the 0.30 standard. Thus, we believe it is appropriate to exclude similar emissions association with other technologies. For instance, an alternative technology may also require	"Staff used the methodology described in guidance doc referenced in the FSOR to derive the 0.30 MMTCO2e/short ton organic waste threshold specified in Section 18983.2. As noted in the appendix, staff utilized CARB’s Method for Estimating Greenhouse Gas Emission Reductions from Diversion of Organic Waste from Landfills to Compost Facilities, which considers transportation emissions from organic material feedstock collection to compost product delivery to be functionally equivalent to transportation emissions from collection of organic waste to landfill disposal. Therefore, transportation emissions associated with composting (feedstock collection and delivery of finished product) are accounted for in the 0.30 MTCO2e threshold and therefore must be considered in the GHG emissions reduction and the lifecycle GHG emissions calculations."

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		the transport of organic waste residuals to a location where the technology is operating to produce a low-carbon product. Similarly, the resultant low carbon product must be transported to the end-use location. These transportation emissions associated with the production and use of the technology should not be counted as emissions to determine compliance with the 0.30 standard. Any other similar emissions to those excluded from the composting emission calculation should be similarly excluded from the alternative technology approval process.	
2131	Zetz, Eric, SWANA	Article 1 Section 18982 Proposed Language: "Jurisdiction" means a city, county, or **regional agency that is approved by the board pursuant to Section 40975.** Rationale: We recommend that the definition of jurisdiction be harmonized with Public Resources Code Section 40195.	Thank you for the comment. CalRecycle revised the definition of 'jurisdiction' in Section 18982(a)(36) because the original term "handling" as used in the definition is overly broad. This change is necessary to provide clarity. Regional agencies are defined in Public Resources Code Section 40181. Per Public Resources Code Section 40100, that definition extends to regulations adopted under Division 30 of the Public Resources Code.
2132	Zetz, Eric, SWANA	Article 1 Section 18982 Proposed Language: "Hauler route" means the designated itinerary or sequence of stops for ~~a each segment of the~~ jurisdiction's collection service area. Rationale: This revised definition is still not clear. Assuming the intent is to cover the entire service area, the use of segment lends unnecessary and confusing language.	CalRecycle added a definition of 'hauler route.' Section 18984.5 requires jurisdictions to minimize contamination of organic waste containers by either conducting route reviews or conducting waste evaluation studies on each hauler route. The term "hauler route" is key to the jurisdiction's compliance with these requirements because it describes where the jurisdiction should direct its contamination minimization efforts in order to increase detection of container contamination by generators. What constitutes a "hauler route" is dependent upon the designated itinerary or geographical configuration of the jurisdiction's waste collection system. For example, a jurisdiction's collection system may consist of one continuous itinerary or series of stops that services both commercial generators and residential generators for garbage, dry recyclables and organics or the system could be divided into two or more itineraries or segments based on each type of generator and/or material type collected. This section is necessary to maximize detection of container contamination so that the jurisdiction's education and outreach and/or enforcement efforts can be targeted to the generators serviced along the affected routes, thereby reducing contamination and increasing the recoverability of organic waste.
2133	Zetz, Eric, SWANA	Article 1 Section 18982 Proposed Language: (42) "Non-local entity" means an entity that is anorganic waste generator but is not subject to the control of a jurisdiction's regulations related to solid waste. These entities may include, but are not limited to, special districts, federal facilities, prisons, facilities operated by the state parks system, public universities, including community colleges, county fairgrounds, **tribal nations,** and state agencies. Rationale: In addition to the current list of entities that are traditionally outside the local jurisdictions authority to regulate, tribal nations are also outside the local jurisdiction's authority and should be added to the definition's listed entities.	The state cannot enforce civil regulatory requirements, such as state environmental laws, on tribal land. Therefore, it would be inappropriate to include this in the regulations.
2134	Zetz, Eric, SWANA	Article 1, Section 18982 Proposed Language: "Organic waste" means solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, ~~organic textiles~~	Comment noted. The definition of organic waste employed in these regulations is specific to the purpose and necessity of this regulation. Regulations adopted by other agencies or codified in other portions of statute, can employ a different definition for a different purpose. Comment noted. Article 11 uses a narrower definition of organic waste that aligns with existing planning

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		~~and carpets,~~ lumber, wood, paper products, printing and writing paper, manure, ~~biosolids, digestate, and sludges~~ **"Organic waste does not include plastic products"** (or as alternative we can say **"Organic waste exclude fossil-derived materials").** Rationale: SWANA LTF believes the proposed regulations advance a definition that is both impractical and inconsistent with existing definitions of the same term. As stated during the pre-rulemaking workshops and comments, we strongly believe that the definition of "organic waste" should be consistent to reduce operational confusion. We do not think the definition should include items like organic textiles and carpets, biosolids, digestate, and sludges. In addition, some items defined as organics, such as manure, paper, food, and textiles, should not be placed all in the same container since these products will contaminate each other and make diversion nearly impossible. Although not specifically listed, dead animals (domestic and other) are classified as "organic". Disposal of dead animals in a landfill is a common practice due to the lack of rendering capacity. Under the proposed regulations, dead animals will be required to be placed in green containers. Also, the definition is not used consistently throughout the proposed regulations. For example, the three-container Organic Waste Collection Services prohibits some organics in the green container (e.g. carpets and non-compostable paper are prohibited from the green container, Section 18984.1(a)(5)(A)). Gray containers received by a solid waste facility will undergo periodic evaluation for "remnant organic material" (Section 17409.5.7 (a)). The organics in the gray container will be used to evaluate a jurisdictions effectiveness even though some organics are not allowed in the green container. If these items are placed in the gray container, the jurisdiction will be penalized by the presence of these materials. At the CalRecycle's SB 1383 workshop held in Diamond Bar on June 18, 2019, a member of audience asked if "organic waste" as defined in the 2nd Formal Draft of proposed regulations includes plastics? The response from CalRecycle staff's response was "No." The proposed language revises the definition of the "Organic Waste" as defined in Subsection 18982(a)(46) to exclude "plastic products." As an alternative to the phrase "plastic products", we are ok with the phrase "fossil-derived materials." In regard to the proposed revision to the definition of "Organic Waste," if we go with the first alternative, then "Plastic Products" can be defined as "Plastic products means any non-hazardous and non-putrescible solid objects made of synthetic or semi-synthetic organic compounds." (This definition can be added to Article 1, Subdivision 18982(a), new suggested Paragraph (53.5).	requirements which jurisdictions must engage in to plan for organic waste capacity. Comment noted. CalRecycle disagrees that the definition of organic waste is too broad, or should be limited to the types of organic waste included in the definition used in AB 1826. SB 1383 requires CalRecycle to reduce the disposal of organic waste. These reductions are required as a means of achieving the methane emission reduction targets of the SLCP Strategy. AB 1826 only requires that collection services be offered to commercial businesses. SB 1383 requires the state to reduce the disposal of organic waste that is landfilled, it is a substantially broader legislative mandate and requirement. Organic waste that break down in a landfill and create methane must therefore be included in the regulatory definition, including organic waste that are not generated by commercial businesses. Organic waste defined in the regulation are subject to specific requirements (e.g. collection, sampling etc). These requirements are necessary to achieve the purpose of the statute. Comment noted. The definition of organic waste clearly identifies materials that are types of organic waste. It is not feasible or necessary to state in the negative every conceivable material that is not an organic waste. Comment noted. The regulations are structured to specify material that cannot be collected in certain containers, e.g. glass cannot be collected in green containers with organic waste. Further, the regulations define organic waste however they do not specifically require organic specific materials to be collected together, e.g. the regulations do not require food and textiles to be collected together. The regulations allow jurisdictions to source separate materials that are recoverable when mixed together The definition of organic waste itself does not govern how specific types of materials are handled. The definition identifies which materials are organic waste. The active text of the regulation, not the definition, controls how material is handled. Nothing in the regulatory text requires textiles or dead animals to be placed in the green container. Comment noted. The omission or inclusion of non-compostable paper was intentional and specific for each section based on the purpose of the measurement and when the measurement occurs in the waste handling process. Non-compostable paper is still an organic waste. Paper is organic whether it is coated in plastic or other non-compostable material. Paper additionally constitutes a significant portion of the waste stream. With respect to Section 18984.5(f), including non-compostable paper in this section (as an organic material that is not required to be measured as organic waste in a gray container evaluation) would encourage the continued disposal of this material, and would discourage jurisdictions and haulers from identifying recovery solutions for this material. If jurisdictions are unable to find methods to recovery non-compostable paper, they may consider options to prevent its introduction into their waste stream in the first place, rather than solely relying on collection and recovery. Including non-compostable paper in this section would encourage the continued disposal of a significant source of organic waste. With respect to Section 17409.5.7(c)(3), the gray container waste evaluations are not jurisdiction-specific. The evaluations will provide critical data that will inform policy making for jurisdictions and the state by providing data on organic waste that is still collected in gray containers in jurisdictions. Jurisdictions that implement a three-container organic waste collection service are required to prohibit the placement of organic waste in the gray container unless the jurisdiction specifically transports the gray container to a high diversion organic waste processing facility thar

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			recovers 75 percent of the organic content in the gray container. This data will reveal general levels of regulatory compliance, as well as inform the department on the progress toward achieving the SB 1383 targets. Excluding non-compostable paper from this measurement would distort the amount of organic waste identified as being disposed. With respect to Section 17867(a)(16), these measurements are performed by composting facilities evaluating the organic content of the residuals that are sent to disposal. Non-compostable paper should not be received at compost facilities and should not be included in the composting process. Non-compostable paper is allowed not to count against the measurements compost facilities perform as doing so would penalize the facility for removing a non-compostable contaminant from the composting process. With respect to Section 18982(a)(55)(B), this section does not state that non-compostable paper does not need to be measured as organic waste. This section states that non-compostable paper shall be considered a prohibited container contaminant if it is included in the green container. 18982(a)(55)(B) does not state that those materials are allowed in the gray container. Allowances for the collection of organic waste in the gray container are made in the organic waste collection requirements in Article 3. The construction of 18982(a)(55)(D) specifies that paper products, which includes non-compostable paper, may be collected in the blue container. In other words, non-compostable paper should not be collected in the blue container for recovery, it should not be collected in the green container, and it should only be collected in the gray container if the jurisdiction hauls the gray container to a high diversion organic waste processing facility. The definition of organic waste necessarily includes all items that are organic material. Regarding items defined as prohibited container contaminants see 234 (right above)
2135	Zetz, Eric, SWANA	Article 1 Section 18982 As defined, "Self-hauler" is so broad that it could describe nearly every resident, business, government facility or other entity in California. We ask that CalRecycle consider whether this definition is even needed. If so, please revise the definition and how it is used in Article 13 to clarify the state's interest in gathering information on self-haulers.	The “back-haul” definition is intended simply to clarify a portion of the definition of “self hauler” and the definition itself is not the appropriate mechanism to place specific requirements on how self-hauling or back-hauling is conducted. Furthermore, Public Resources Code Section 40059(a)(1) specifically places aspects of solid waste handling which are of local concern, such as means of collection and transportation, within the local control of counties, cities, districts, or other local governmental agencies. In addition, SB 1383 (in Public Resources Code Section 42654) specifically states that nothing in these regulations abrogates or limits the authority of local jurisdictions to enforce local waste transportation requirements. Commenters asked CalRecycle to consider whether the definition is needed since it is so broad. If it is needed, the definition needs to be revised and it needs to be clarified on how the Department will be getting information from jurisdictions about the self-haulers. Section 18994.2(f)(4) regarding reporting on the number of self-haulers by the jurisdiction was deleted. However, the definition in Section 18982(a)(66) is still needed.
2136	Zetz, Eric, SWANA	Article 2 Section 18983.1 Proposed Language: Delete Paragraph (3) of the Subsection 18983.1(a). Rationale: As stated in our previous comment letter and we’d like to reiterate that SB 1383, Subdivision 39730.6 (a) of the H&S Code, states “Consistent with Section 39730.5, methane emissions reduction goals shall include the following targets to reduce the landfill disposal of organics” by 50% from the 2014 level by 2020 and 75% by 2025. However, the proposed regulations consider any disposition of	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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		organic waste not listed in Subsection 189831.1 (b) to be landfill disposal, including any thermal conversion (CTs) and any other emerging technologies. The proposal is inconsistent with Subdivision 39730.5 (a) of the H&S Code, as well as Section 40195.1 of the PRC, which defines "solid waste landfill" as a "disposal facility that accept solid waste for landfill disposal." Therefore, we respectfully disagree with the proposed provision of Subsection 18988.1 (a) (3) which considers, any other disposition not listed in Subsection (b) of this section to be land disposal.	
2137	Zetz, Eric, SWANA	Article 2 Section 18983.1 This section should not apply where the material recovery fines have first been composted or otherwise processed to reduce the organic content and to reduce its methane-producing potential.	Comment noted, finished compost is not organic waste. The term "otherwise processed" is vague, it is unclear what the commenter considers "otherwise processed" so CalRecycle cannot make a regulatory change.
2138	Zetz, Eric, SWANA	Article 2, Section 18983.2 This version removes the mention of material recovery (MRF) fines. MRF fines will contain a portion of organic material. There is no practical means to remove all trace of organic material and there is no other practical use for MRF fines than as alternative daily or intermediate cover. Removing reference to MRF fines leaves the status uncertain. The proposed regulations should clearly identify the status of MRF fines.	Comment noted. The use of organic waste as alternative daily cover constitutes landfill disposal of organic waste. Language was added to clarify that use of non-organic materials does not constitute landfill disposal of organic waste. Facilities are not required to remove organic material from MRF fines. Facilities are required to sample material they send to disposal to determine the portion of organic waste they are sending to disposal. Pursuant to the sampling requirements in the regulations a representative sample of material sent to disposal must be sampled to determine the level of organic waste disposed. This includes sampling of material sent to for use as alternative daily cover. Only the organic fraction of the material sent to disposal is measured as disposal of organic waste. Language was added to clarify that disposal of non-organic materials does not constitute landfill disposal of organic waste.
2139	Zetz, Eric, SWANA	Article 2, Section 18983.2 Proposed Language: Change the word "~~applicant~~" to "**owner operator of the facility**." Rationale: In the case of a process that produces a low carbon energy, fuels or chemicals from residual solid waste, the production of the product is generally separate and distinct from the end use of the energy, fuels or chemicals to produce energy. In most cases the person operating the fuel production process is separate and distinct from the person utilizing the fuel. Which of these parties is the applicant and is the applicant responsible for providing information about both the fuel production process as well as the fuel utilization process in the industrial furnace? Further, while the owner/operator of the fuel production process may remain unchanged, the use of the fuel may change from time to time for a variety of factors. How is the owner/operator of the technology process able to represent all potential future users of the product from the technology? For example, each industrial furnace operator may have different specification requirements for the fuel provided to each different furnace. We recommend that the principle applicant under these regulations be the owner/operator of the fuel production unit that would likely, but not necessarily, located at a permitted solid waste facility. The O/O would provide specific information about the operation of the fuel production unit as well as known information pertaining to the intended end use of the fuel in cooperation with a	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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		proposed known end user or users. Additional generic information about future alternative end users could also be provided. If new end users are added in the future within the constraints of the generic information in accordance with these regulations, no further action would be required – other than to ensure that the end user has separately complied with all appropriate permitting requires (e.g., becoming permitted as an EMSW facility in accordance with CalRecycle regulations).	
2140	Zetz, Eric, SWANA	Article 2, Section 18983.2 Proposed Language: By inserting at the end of the sentence, "**or other target, at the discretion of the Department, if an overall benefit in SLCPs may be achieved**." Rationale: As stated in our previous letter, Section 18983.2(a)(3), approval of a proposed process or technology depends entirely on a pass/fail conclusion that the process or technology results in GHG emissions reductions equal to or greater than 0.30 MTCO2e per ton. This methodology may block the use of valuable technologies that targeted the most problematic items--those that do not compost well. For example, a technology that targeted diversion of source separated organic carpet or lumber, items with lower potential to emit carbon but which we still want to divert from disposal, could easily fail to pass the 0.30 MTCO2e hurdle. This would discourage use of otherwise valuable diversion methods and make it harder to meet the SB 1383 organics diversion goals. We suggest revising this section to provide the CalRecycle Director discretion in approval of additional processes and technologies.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.
2141	Zetz, Eric, SWANA	Article 2, Section 18983.2 Proposed Language: Insert at the end of the sentence: "**and determined to actually reduce GHGs**." Rationale: SWANA LTF would appreciate receiving confirmation that these regulations not only require accounting of GHG emissions, but also GHG emission reductions. For example, diversion of organics from a landfill will have a landfill methane reduction similar to composting, due to the reduction of methane emissions associated with landfilling. In addition, if the largely biomass produced energy, fuels and chemicals is used to displace the use of higher carbon intensity fossil derived energy, fuels and chemicals (e.g., coal, tires, etc.) would be allowed to count the emission reduction associated with converting from high GHG emission fossil products to lower carbon products. The GHG emission reduction will be the combination of both the landfill methane reductions plus the reduction in displaced fossil carbon fuel emissions. Of course, other emissions/reductions associated with the overall process and product use would have to be counted as well.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.
2142	Zetz, Eric, SWANA	Article 2,Section 18983.2 Proposed Language: The Department shall make a determination within **180 days**. If the Department determines that a proposed process or technology does not result in a reduction in landfill disposal within that time period, the application shall be deemed approved. The Department shall post to its website the results of its determination and include a description of the operation.	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.

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		Rationale: Expand Subsection 18983.2 (a) (2) to indicate that the application is deemed approved if the Department fails to respond within 180 days after the applicant has provided the Department with all materials, as requested.	
2143	Zetz, Eric, SWANA	Article 2 Section 18983.2 Rationale: As stated in our previous comment letter, we recommend adding the following sentence, or something similar, to this end of paragraph (3) to ensure that proposed operation is evaluated in a fashion that is consistent with composting operations. Proposed Language: New Subsection **(3)(a) However, in determining emissions from the proposed operation, GHG emissions for activities that are similar to those activities for which GHG emissions were excluded in the determination of the O.30 standard shall not be required to be calculated for the proposed operation, for example, such as transportation GHG emissions.**	Comment noted, this comment is not directed at changes made to the third draft of regulatory text.
2144	Zetz, Eric, SWANA	Article 3 Section 18984.1 Proposed Language: (B) Hazardous wood waste shall not be collected in the ~~green~~ blue ~~container or gray~~ container Rationale: (a)(5)(B) Composite-lined solid waste landfills (Class III) with Waste Discharge Requirements that specifically allow treated wood waste to be commingled with solid waste are not required to segregate the treated wood waste from solid waste. These approved landfills allow treated wood waste to be accepted as solid waste and therefore should not be prohibited from placement in the gray container. Imposing a more restrictive standard will contribute to illegal dumping. The most likely problem of contamination will be if hazardous wood waste is placed in the green container.	This type of waste must be handled separately and cannot be placed in any of the gray, green, or blue containers. DTSC has a guidance document on its webpage on the proper handling, storage, and disposal of TWW generated by businesses and residents: https://dtsc.ca.gov/wp-content/uploads/sites/31/2017/05/Treated-Wood-Waste-Generators-Fact-Sheet.pdf CalRecycle will clarify will provide jurisdictions the guidance from DTSC. For the comment about pre-1924 organic lumber, the 'organic lumber' is organic waste and will be subject to the recycling requirements in Article 3.
2145	Zetz, Eric, SWANA	Article 3 Section 18984.5 Proposed Language: Following "weight," insert "**following removal and diversion from landfill disposal of additional organics by the facility.**" Rationale: In order to take representative samples of different areas of a jurisdiction, it will typically require taking two weeks' worth of samples every six months since some collections are bi-weekly and it takes time to collect from an entire jurisdiction. Daily samples need to be processed each day for two weeks. Stockpiling two weeks of organics would be difficult operationally and possibly result in violations. The proposed methodology does not indicate if it applies to only the green organics carts or includes the blue and gray containers. The term "route" used for determining the number of samples is confusing. There are daily routes for a specific truck or route areas of a community that are served by a number of trucks on a certain day of the week. The average garbage truck only has a capacity for 600 to 800 residential stops per day. Collection at commercial generator routes may be significantly less per day. Some customers are served on an on-call basis and are not part of a designated route. SWANA LTF requests the term "route" be defined.	CalRecycle disagrees that a change is necessary as jurisdictions are not required to pursue this compliance option. The methodology is modeled from existing waste sampling requirements in practice in California and for the methodology the routes are based upon a week timeframe, not daily. The jurisdiction is allowed to determine the frequency for the route. The regulations allow the jurisdiction to determine the route frequency to achieve the required number of samples. This is necessary to allow this flexibility because as the commenter notes routes can vary greatly between jurisdictions. When the regulations are approved CalRecycle will provide the methodology that is used as a tool for jurisdictions. What constitutes a "hauler route" is dependent upon the designated itinerary or geographical configuration of a jurisdiction's waste collection system. The jurisdiction may determine the hauler route. CalRecycle did not specify the timeframe because what constitutes a hauler route is up to the jurisdiction to determine and because it varies so much jurisdictions have the flexibility to determine the timeframe. CalRecycle did not specify a timeframe because hauler routes can significantly vary between jurisdictions depending upon the types of generators, the facility location of where materials will be hauled to, route efficiencies, and a myriad of other factors. For example, one jurisdiction's collection system may consist of one continuous itinerary, another jurisdiction's routes may be a series of stops that services both commercial generators and residential generators for garbage, dry recyclables and

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		The number of samples required for each range of generators does not seem proportionate. A “route” with 500 generators will need 25 samples or 5% of the generator’s samples, but a route with 4001 generators only takes 40 samples or 0.9% of the generators. The ratios should be more proportionate. It is also not clear what size sample is required since later only 200-pound samples are taken of the aggregated route samples. It is also disproportionate to take a 200-pound sample from 25 samples and a 200-pound sample of 40 samples. The proposed regulations sampling methodology is confusing in terms of the number of samples per each range of customers and taking a 200-pound sample of each container stream. The relationship to the number of generators to sample and the size of the samples needs to be clarified. As written, the regulations indicate that the organic content of (e.g.) gray cart contents are measured after collection but before capture of additional organics by mixed waste processing or other methods. A jurisdiction must be allowed to get credit for all organics diverted, including post-collection diversion. Combining source-separated collection and post- collection recovery of organics remaining in gray and blue carts is the best way (and perhaps the only way) to ultimately achieve 75% organics diversion	organics, or in another jurisdiction the route could be divided into two or more itineraries or segments based on each type of generator and/or material type collected. Additionally, a jurisdiction could opt to implement a service under Article 3 instead and meet its contamination monitoring requirements through the performance of route reviews instead of using the waste sampling methodology. This comment also assumes that the recovery efficiency standards established in Article 17 are equivalent to an overall jurisdiction diversion target. They are not, as such a requirement is precluded by statute. regarding the comment about combining source-separated collection and post- collection recovery of organics remaining in gray and blue carts is the best way (and perhaps the only way) to ultimately achieve 75% organics diversion: The gray container waste evaluations are not only indicative of the amount of organic waste that continues to be disposed in jurisdictions that are implementing a performance-based source separated organic waste collection service, which is an important metric for ensuring the state achieves the statewide targets. The requirements also reflect that jurisdictions implementing these services are not required to comply with enforcement and education and outreach requirements included in other portions of the chapter. The gray container waste evaluations are a way of demonstrating performance that is equivalent to or greater than the minimum requirements jurisdictions would otherwise be subject to. Further, after material is recovered from a gray container waste stream, it cannot be accurately associated with the jurisdiction of origin, and even if it could, such a measurement would be used to quantify a jurisdiction-specific diversion target. As noted in several comments, jurisdiction-specific diversion requirements are precluded by statute. Jurisdictions implementing a performance-based source separated organic waste collection system are not subject to the strict education and outreach requirements prescribed in Article 4. This exemption is premised on the jurisdiction’s existing education programs being sufficient to meet or exceed the state’s minimum standards. The requirement to sample green and blue containers is necessary to ensure that contamination is minimized and that jurisdictions can educate generators that continue deposit contaminants into their collection containers.
2146	Zetz, Eric, SWANA	Article 3 Section 18984.5 Proposed Language: (A) A jurisdiction that is implementing a three- container or two-container organic waste collection service pursuant to Sections 18984.1 or 18984.2 shall conduct waste composition studies per the schedule below ~~at least twice per year~~ and the studies shall occur in two distinct seasons of the year. Rationale: The requirement for once per quarter waste composition for the gray container on line 39 is inconsistent with the earlier statement on line 34 that indicates waste composition studies are conducted twice per year.	Comment noted, the requirements are not inconsistent. The specific text referenced (18984.5(c)(1)(A)-(B)requires that jurisdictions implementing a collection service pursuant to Sections 18984.1 or 18984.2 must conduct waste studies twice per year if they elect to monitor compliance in this form. The section additionally specifies that a jurisdiction that implements a collection service under Section 18998.1 (a performance-based source separated organic waste collection service), must continue to monitor contaminants in the green and blue container twice per year, but must also monitor the gray container every quarter. The gray container must be monitored more frequently in a performance-based source separated organic waste collection service, to ensure compliance with the standards established in that section.
2147	Zetz, Eric, SWANA	Article 3 Section 18984.5 Proposed Language: 4. For routes with ~~more than~~ 7,000 generators **or more** the study shall include a minimum of 40 samples	Comment noted, CalRecycle disagrees that additional clarity is needed. It is clear from the text that the third threshold ends at 6,999 and the fourth threshold begins at 7,000.

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		Rationale: Changes to the preceding lower numbers only goes up to 6,999 generators. Without this change, there would be no sample size for exactly 7,000 generators	
2148	Zetz, Eric, SWANA	Article 3 Section 18984.5 Proposed Language: … textiles, carpet, hazardous wood waste, human waste, pet waste, or material subject to a quarantine on movement issued by a county agricultural commissioner, ~~is not required to~~ **shall not be** measured as organic waste Rationale: The allowance that organics from quarantine areas "is not required" to be measured as organics implies that in some cases these quarantined organics might be counted as organics. This language should be revised to clearly indicate that these quarantined materials should not be counted as organics for purposes of waste characterizations to avoid potential safety concerns for workers and spreading of contamination. The safest method of disposal is direct landfill immediately with no chance or required to sort the wastes.	Provisions were added to state that quarantine materials may be disposed without counting against a jurisdiction as they comprise a minimal portion of the organic waste stream and/or are uniquely difficult or problematic to recover from a health and safety perspective.
2149	Zetz, Eric, SWANA	Article 3, 18984.1 1 Proposed Language: ~~(A)(1) The commercial business' total solid waste collection service is two cubic yards or more per week and organic waste subject to collection in a blue container or a green container as specified in Section 18984.1(a) comprises less than 20 gallons per week per applicable container of the business's business' total waste. 2.The commercial business' total solid waste collection service is less than two cubic yards per week and organic waste subject to collection in a blue container or a green container as specified in Section 18984.1(a) comprises less than 10 gallons per week per applicable container of the business' total waste~~ Rationale: This revision seems to indicate that De Minimis Waivers may only be granted to customers with three-container systems. The intent of the waiver is to grant jurisdictions the flexibility to focus their efforts where it is most cost effective while still ensuring state reduction targets are achieved. Since de minimis generators are such, regardless of the container system utilized, this newly added language should be deleted.	There is nothing that prohibits the jurisdiction from having more restrictive criteria. The language does not limit de minimis waivers to three-container systems. Regarding part time residential waivers. CalRecycle is not able to quantify how much material would be exempt, and many of these residents would be captured under the low population waivers in Section 18984.12. Such a waiver could compromise the state's ability to meet the organic waste reduction targets. CalRecycle does not concur with waiving to "part-time" residents as the term is undefined and could encompass a significant amount of waste generation when the property owner is in residence.
2150	Zetz, Eric, SWANA	Article 3 Section 18984.1 2 As stated in our previous comment letter, Section (a)(1) allows rural jurisdictions that were exempt under AB 1826 additional time to implement these proposed regulations since it would be impossible for these exempt jurisdictions to implement these SB 1383 regulations immediately after their AB 1826 exemption expires. This allowance is appreciated.	Thank you for the comment. The comment is in support of the current language.
2151	Zetz, Eric, SWANA	Article 3 Section 18984.1 2 We appreciate this change that will capture some additional low population areas and jurisdictions, avoid placing disproportionate economic costs on a small portion of the state's population, and enable counties to focus on collecting organic waste from more high-density areas where the most organic waste can be recovered.	Per the regulations, an approved waiver should be applicable for 5 years. However, unlike census tracts, census blocks may change in any year in-between censuses. As a result, census blocks can merge/split/change during the course of the waived period, which could result in waived census blocks changing configuration during the waived period. This would require the Department to completely rebuild a database of 710,000 census block data points whenever a waiver request is

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		However, we continue to recommend that there be consideration for large census tracts where the population is condensed in one area of the tract but most of the census tract is under the population density threshold. This could be done by allowing case-by-case proposals that document those low population densities within a tract, e.g. by census block.	being reviewed, as opposed to simply updating the population density from the most recent census. Given the fact that census blocks change, CalRecycle would have no way of quantifying the total amount of organic material potentially exempted. In addition, some census blocks are very low, or no, population areas (parks, businesses, etc.), making it difficult to ascertain which census blocks have populations that should be served and which do not. There also could be commercial census blocks in major cities that are large waste generators but technically do not meet the population density threshold. With respect to greenhouse gas emission, CalRecycle is not able to ascertain any method of objectively defining greenhouse gas emissions within census tracts or blocks, further this only addresses one part of the statute, greenhouse gas reduction, and ignores the central organic waste reduction requirement. For example black carbon generation in a census tract is unrelated to organic waste generation.
2152	Zetz, Eric, SWANA	Article 3 Section 18984.1 2 This change just restates the previously deleted language and continues to disregard the significant “edge effect” common in rural areas where a significant majority of the population in a large census tract is concentrated in a small area where the remaining larger portion of the unincorporated census tract area is sparely populated but the entire census tract is over the proposed 75 people per square mile. Jurisdictions should have ability to exclude those sparsely populated areas of the census tract such as consideration of block groups using the same requirement of 75 people per square mile.	Per the regulations, an approved waiver should be applicable for 5 years. However, unlike census tracts, census blocks may change in any year in-between censuses. As a result, census blocks can merge/split/change during the course of the waived period, which could result in waived census blocks changing configuration during the waived period. This would require the Department to completely rebuild a database of 710,000 census block data points whenever a waiver request is being reviewed, as opposed to simply updating the population density from the most recent census. Given the fact that census blocks change, CalRecycle would have no way of quantifying the total amount of organic material potentially exempted. In addition, some census blocks are very low, or no, population areas (parks, businesses, etc.), making it difficult to ascertain which census blocks have populations that should be served and which do not. There also could be commercial census blocks in major cities that are large waste generators but technically do not meet the population density threshold. With respect to greenhouse gas emission, CalRecycle is not able to ascertain any method of objectively defining greenhouse gas emissions within census tracts or blocks, further this only addresses one part of the statute, greenhouse gas reduction, and ignores the central organic waste reduction requirement. For example black carbon generation in a census tract is unrelated to organic waste generation.
2153	Zetz, Eric, SWANA	Article 3 Section 18984.1 2 Proposed Language: “…at or above 4,500 feet and generators in a lower elevation census tract, on a case by case basis, where there have been documented bear or other wildlife issues that have jeopardized public health and safety.” Rationale: We greatly appreciate the addition of this waiver which will benefit areas that frequently experience bear, or other wildlife, conflicts that endanger public safety. However, under the California Fish and Game Code Section 251.1, it may be interpreted that leaving organic waste out for collections and processing will “…disrupt an animal’s normal behavior patterns.” We suggest that there be a provision added to consider lower elevation areas that experience these same issues:	CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than 5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount

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		1. An incorporated city may apply to the Department for a waiver for some or all of its generators in census tracts located in unincorporated portions of the county that are located at or above 4,500 feet or generators in census tracts which have a well-documented history with animal intrusion into solid waste containers and/or local solid waste operations or facilities. 2. A county may apply to the Department for a waiver for some or all of its generators in census tracts located in unincorporated portions of the county that are located at or above 4,500 feet or generators in census tracts which have a well-documented history with animal intrusion into solid waste containers and/or local solid waste operations or facilities.	of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the following to be eligible would impact organic waste disposal: 1) cities with disposal of less than 5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA's definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile but which are located within a census tract with greater than 50 people per square mile; and 7) rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383. Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede

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			achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection. Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals.
2154	Zetz, Eric, SWANA	Article 4 Section 18984.1 3 Proposed Language: (1) If the facility processing a jurisdiction's organic waste notifies the jurisdiction that unforeseen operational restrictions have been imposed upon it by a regulatory agency or that an unforseen **or temporary** equipment or operational failure will temporarily prevent **or impair** the facility from processing and~~or~~ recovering organic waste, the jurisdiction may allow the organic waste stream transported to that facility to be Rationale: As stated in our previous comment letter, the allowance for unforeseen circumstances is a valuable accommodation, but the removal of the "temporary" condition is problematic and should be reinstated. There are situations when equipment or operations may need to be "temporarily" stopped or slowed, such as extensive maintenance. These conditions can be planned to minimize disruptions but could impact the ability to operate. (a)(2) Not all temporary or unforeseen circumstances will result in a complete failure to receive and process a jurisdiction's wastes.	CalRecycle has revised Section18984.13(a)(2) in response to this comment. The change is add that it can be all or some of the jurisdiction's waste, and also to correct a typo. The change is necessary to reflect that the word 'prevent' implies it refers to all of the waste and 'impair' implies it refers to some of the waste. Both of these may apply in this type of waiver situation. Thank you for the comment. CalRecycle corrected the spelling of 'unforeseen.' No additional changes are necessary for adding "temporary" as the text already has "temporarily' further in the sentence.
2155	Zetz, Eric, SWANA	Article 3, Section 18984.1 3 Proposed Language: (f) Nothing in this chapter requires generators, jurisdictions or other entities subject to these regulations to manage and recover organic waste that is waived pursuant to subsections (a), (b), (c), and/or that federal law explicitly requires to be managed in a manner that constitutes landfill disposal as defined in this chapter. These materials may be subtracted from the "generated" amount and the "disposed organic materials" amount. Rationale: Under this section, jurisdictions are not required to separate or recover certain organic waste, such as homeless encampments, illegal disposal sites, and waste from quarantine areas (line 16 and 24) and these wastes are allowed to be landfilled. However, the allowance for disposal does not exempt the organics from be counted as disposal especially in gray container sorts. There should be a provision that excludes these landfilled wastes from counting as disposed organics. These wastes should also be granted a "disposal reduction credit" or tonnage modifications for purposes of AB 939 counting in the Electronic Annual Report similar to the one existing for quarantined wastes and others.	Jurisdictions are not required to separate and recover organic waste removed from homeless encampments. While waste removed from homeless encampments or illegal disposal sites does still count as statewide disposal, the jurisdiction is allowed to dispose of the material and is not subject to enforcement for disposing of the material. As stated in the statement of purpose and necessity for the regulations, specifically Article 3, this regulation does not subject jurisdictions to diversion targets. This regulation cannot alter what activities count as disposal under AB 939.
2156	Zetz, Eric, SWANA	Article 3 Section 18984.1 3 Proposed Language: (1) If the facility processing a jurisdiction's organic waste notifies the jurisdiction that unforeseen operational restrictions have been imposed	CalRecycle does not concur with the addition of a new waiver because planned and routine maintenance should already be accounted for and the material should not be disposed.

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		upon it by a regulatory agency or that an unforeseen equipment or operational failure or scheduled maintenance will temporarily prevent the facility from processing and recovering organic waste, the jurisdiction may allow the organic waste stream transported to that facility to be deposited in a landfill or landfills for up to 90 days from the date of the restriction or 38 failure. Rationale: This proposed language continues to not recognize that temporary in ability to process and recover organic waste can also be due to scheduled equipment repair. The proposed revisions would require an operator to wait until equipment failure happens to utilize this allowance resulting in more expensive and likely longer down time than if there is an allowance for scheduled maintenance.	
2157	Zetz, Eric, SWANA	Article 4, Section 189851 SWANA appreciates this change	Comment is on text that was removed from the final regulation and replaced with reference to the Government Code Section 7295 linguistic standards.
2158	Zetz, Eric, SWANA	Article 7, Section 18988.3 Proposed Language: C) Notwithstanding Subdivisions (b)(3)(A), if the material is transported to an entity that does not have scales on-site, or has scales that cannot accurately measure small loads, the self-hauler shall not be required to record the weight of the material, and shall provide records of the only if requested by the jurisdiction. ~~or employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of waste received, the self-hauler is not required to record the weight of material but shall keep a record of the entities that received the organic waste.~~ Rationale: The phrase "employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of waste received," lacks clarity and poses the question on how accurate this would be. The usual reason for this scenario is a small quantity of waste that the facility scale calibrated for larger loads cannot accurately weigh.	It is unclear from the comment how the language lacks clarity. This language was added to reflect that certain facilities employ scales designed to measure 25 ton packer trucks, but not necessarily designed to accurately weight passenger vehicles. The scaled employed by a facility will either be capable of weighing the self-haulers vehicle or not. While CalRecycle recognizes that this will mean that some self-hauled organic waste is not measured, this is the least costly burdensome approach and still achieves the necessary organic waste disposal reductions.
2159	Zetz, Eric, SWANA	Article 7 Section 18988.1 Our prior comments on this portion of the regulations took the position that local jurisdictions should not be put in the position of enforcing this statute against residents that self-haul their organic waste. Unfortunately, the regulations were clarified precisely in the direction that we advocated against. To be clear, those of us implementing these regulations are not clear how we would even accurately identify all the residential self-haulers. Even if we could, we have no reason to believe that they would comply with the record-keeping requirements outlined in the proposed regulations. We would respectfully request that the department take the same approach that it did in the AB 901 regulations and only apply the provisions to commercial self-haulers. Local jurisdictions are not going to be able to enforce this requirement without this change.	Jurisdictions are not required to identify every self-hauler. They are required to adopt an ordinance that requires compliance and provide general education about self-hauler requirements. Many comments noted that it would be difficult to identify and provide education information to all self-haulers, such as landscape companies, because jurisdictions do not have business license information on these entities; dedicating additional resources to identifying and educating all self-haulers would be burdensome and costly. Some jurisdictions do require businesses that self-haul, back-haul, share service, or use a third-party independent recycler to submit a Certification of Recycling Service form with information about where they are taking the recyclables or organics. CalRecycle modified deleted the requirements that jurisdictions separately identify and provide education to all self-haulers, along with associated reporting requirements. CalRecycle added a new Section 18985.1(a)(7) to require jurisdictions to include educational material on self-hauling requirements in the educational material that the jurisdictions already are required to provide to all generators. CalRecycle revised Section 18985.1(c) to include all education requirements for single unsegregated collection systems.

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2160	Zetz, Eric, SWANA	Article 8 Section 18989.1 Proposed Language: Add clarifying language citing the CALGreen regulations. Rationale: As stated in our previous comment letter, we disagree with including enforcement of the CALGreen standards in this regulation and recommend this section be deleted to avoid enforcement confusion, duplication and overlap. Building standards are issued by the Building Standards Commission, implemented and enforced by local Building Departments, and are not subject to the authority of CalRecycle.	CalRecycle is not adopting a new building code. The regulations require jurisdictions to enforce the aspects of CalGreen and MWELO requirements that help reduce the disposal of organic waste. Jurisdictions are already required to comply with these requirements, including them in the regulations ensures that CalRecycle can require that policies that are necessary to reduce organic waste disposal are implemented.
2161	Zetz, Eric, SWANA	Article 8 Section 18989.2 Proposed Language: Delete entire section. Rationale: As stated in our previous comment letter, we disagree with including this requirement in the proposed regulations because jurisdictions are already required to adopt Model Water Efficient Landscape Ordinance (MWELO) and, again, to avoid unnecessary regulatory duplication and overlap.	CalRecycle is not adopting a new building code. The regulations require jurisdictions to enforce the aspects of CalGreen and MWELO requirements that help reduce the disposal of organic waste. Jurisdictions are already required to comply with these requirements, including them in the regulations ensures that CalRecycle can require that policies that are necessary to reduce organic waste disposal are implemented.
2162	Zetz, Eric, SWANA	Article 9 Section 18990.1 As stated in our previous comment letter, this section prohibits a jurisdiction from adopting or enforcing an ordinance, policy, permit condition, etc. that would prohibit organic waste coming from outside the jurisdiction. We strongly object to any regulatory construct that usurps local decision-making authority and forces a jurisdiction to utilize local capacity paid for by local ratepayers for organic waste coming from outside of that jurisdiction. This type of blanket prohibition takes away the ability of local jurisdictions to ensure that their own processing capacity is maintained.	The proposed regulatory text currently allows for jurisdictions to guarantee facility capacity for organic waste generated from the jurisdiction. A change to the regulatory text is not necessary.
2163	Zetz, Eric, SWANA	Article 9 Section 18990.1 Proposed Language: (1) Prohibit, ~~or otherwise unreasonably limit or restrict,~~ the lawful processing and recovery of organic waste Rationale: The proposed language is vague an invites legal challenges since it establishes no criteria for determining what would be considered an "unreasonable limit or restrict" processing and recovery or organic waste. An example would be imposing odor controls and limiting hours of operation that someone could consider unreasonable. This language should be removed.	A change to the regulatory text is not necessary. CalRecycle disagrees. This section of the regulatory text was previously updated to reflect stakeholder feedback to allow for reasonable local regulation of organic waste recovery activities such as land application of biosolids. For example, local jurisdictions may have legitimate public health and safety reasons to place time and manner restrictions on the land application of biosolids and this language allows for that. The intent of CalRecycle was to place a nexus between any local restriction and public health, safety, and environmental concerns such that the local requirement is closely tailored to deal with a particular public health, safety or environmental issue and doesn't constitute an overbroad, de facto prohibition.
2164	Zetz, Eric, SWANA	Article 10 Section 18991.1 Proposed Language: Jurisdictions shall not be required to implement such a program. See additional comments in rationale. Rationale: As stated in our previous comment letter, there are several Food Recovery Organizations with programs within the various jurisdictions and counties in the state that are effective in working directly with Edible Food Generators conducting successful Edible Food Recovery Programs. The proposed legislation mandates that jurisdictions now become a go between the current solution, becoming an additional layer to provide education, increase food recovery access, monitor and report among the various active programs. The new mandates within	The jurisdiction edible food recovery program requirements are intended to help increase edible food recovery in California, and will be critical in helping California achieve SB 1383's goal to recover 20% of currently disposed edible food for human consumption by 2025. The jurisdiction edible food recovery program requirements are critical because the program requirements include providing education and outreach to commercial edible food generators so that generators are aware of the edible food recovery requirements that they are subject to. The jurisdiction edible food recovery program requirements also include enforcement requirements where jurisdictions must monitor commercial edible food generators' compliance. In addition, another critical jurisdiction edible food recovery program requirement is that jurisdictions must

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		this regulation would convolute and negatively impact the efficiencies of the many great programs already in place. The legislation should be modified similar to the concept of AB 901, where Edible Food Generations and Food Recovery Organizations report directly to CalRecycle. Implementation of such a methodology would alleviate the expected financial burden on jurisdictions to implement a Food Recovery Program as proposed in current regulation. Additionally, most Food Recovery Organizations already have their own outreach programs and efficient solutions to grow their programs. This regulation should be modified to encourage jurisdictions to partner with Food Recovery Organizations and Generators to further improve the various programs already in place.	increase edible food recovery capacity if it is determined that the jurisdiction does not have sufficient capacity to meet its edible food recovery needs. The new mandates within this regulation should not convolute or negatively impact the edible food recovery programs that are already in place. The jurisdiction edible food recovery program requirements are intended to help California achieve the 20% edible food recovery goal by creating programs in jurisdictions where none exist, and by strengthening existing programs. With regard to the comment that the legislation should be modified similar to the concept of AB 901, where edible food generations and food recovery organizations would report directly to CalRecycle, the comment was noted. Changes to the regulatory text were not made because commercial edible food generators are not required to report any information. CalRecycle would like to clarify that recordkeeping and reporting are different. Commercial edible food generators are not required to report. With regard to the comment that this regulation should be modified to encourage jurisdictions to partner with food recovery organizations and generators to further improve the various programs already in place, the comment was noted. The regulations already include requirements for jurisdictions to work with food recovery organizations and food recovery services to expand and increase food recovery operations in California. This is inherent in the jurisdiction food recovery program requirements.
2165	Zetz, Eric, SWANA	Article 11 Section 18992.1 As stated in our previous comment letter, this section allows a jurisdiction to use a local waste characterization study, which SWANA LTF appreciates. Some jurisdictions do not fit neatly into the averages developed in the statewide waste characterization studies coordinated by CalRecycle. A local waste characterization study provides a jurisdiction insight into specific waste categories in their area and allows for targeting additional categories. A local waste characterization study could be developed by expanding a Gray Container Waste Evaluation proposed in Section 20901. Unfortunately, the advantage of a local waste characterization study is obliterated since the proposed regulations allow CalRecycle's most recent waste characterization study to override the local study. Currently, CalRecycle has been conducting waste characterization studies at two to five-year intervals. Local waste characterization studies are expensive, and the local waste characterization study should be allowed to remain in effect for these planning requirements for at least ten years.	CalRecycle already allows for five years, which provides flexibility to jurisdictions. Given the impacts of the regulations CalRecycle expects the waste stream to significantly change, such that a ten-year old waste characterization study would not be reflective of the organic waste stream.
2166	Zetz, Eric, SWANA	Article 11 Section 18992.2 Proposed Language: (1) ~~Entities~~ **Food recovery organization and food recovery services** contacted by a jurisdiction shall respond to the jurisdiction within 60 days regarding available and potential new or expanded capacity Rationale: The use of the undefined term "entities" is vague and lacks clarity.	Section 18992.2(b) specifies that in complying with this section the county in coordination with jurisdictions and regional agencies located within the county shall consult with food recovery organizations and food recovery services regarding existing, or proposed new and expanded, capacity that could be accessed by the jurisdiction and its commercial edible food generators. It is inherent that the term "entities" in Section 18992.2(b)(1) includes food recovery organizations and food recovery services. For this reason, a change to the regulatory text was not necessary.
2167	Zetz, Eric, SWANA	Article 11, Section 18992.3	CalRecycle revised Section 18984.12(a) regarding low-population waivers for areas that lack collection and processing infrastructure, specifically to include cities with disposal of less than

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		While this added language offers some practical relief to exempted jurisdictions, it is unclear how this applies to jurisdictions with only some areas, e.g. census tracts, exempt. This section should be revised accordingly. Since it will likely be challenging for some jurisdictions to estimate the organic generation of specific census tracts, CalRecycle should modify it's capacity planning calculator to provide a means to do so.	5,000 tons and total population of less than 7,500, and census tracts in unincorporated areas of a county that have a population density of less than 75 people per square mile. Making these changes results in an increase of 0.5% in the amount of organic waste disposal that is potentially exempted. CalRecycle also added a new subsection (d) regarding waivers for specified high-elevation areas where bears create problems with food waste collection containers. CalRecycle initially proposed allowing waivers only for incorporated cities that disposed of less than 5,000 tons of solid waste in 2014 and that had a total population of less than 5,000, and for unincorporated areas of a county that had a population density of less than 50 people per square mile. Under these provisions, if waivers were granted to all eligible entities, then the total amount of organic waste disposal that would potentially be exempted would be 3.6% of total organic waste disposal in the state. Numerous stakeholders suggested revisions to this section to expand the number and type of areas eligible for these waivers. In response, CalRecycle analyzed how allowing one or more of the following to be eligible would impact organic waste disposal: 1) cities with disposal of less than 5,000 tons and total population of less than 7,500 or 10,000; 2) cities with disposal of less than 5,000 tons but with no population limit; 3) census tracts in unincorporated areas of a county that have a higher range of population densities (e.g., 75, 100, 250 people per square mile); 4) jurisdictions with populations > 5,000 people and that are low-income disadvantaged communities with no organic processing facilities within 100 miles; 5) cities that are entirely disadvantaged communities under CalEPA's definitions (see https://oehha.ca.gov/calenviroscreen/sb535); 6) areas with less than 50 people per square mile but which are located within a census tract with greater than 50 people per square mile; and 7) rural areas as defined under Section 14571(A) of the California Beverage Container Recycling and Litter Reduction Act. As noted above, CalRecycle revised Section 18984.12(a) to include two of the recommended alternatives. However, most of the other alternatives would result in much large amounts of organic waste disposal being potentially exempted. For example, replacing the existing rural waiver with one based on Section 14571(A) or increasing the census tract threshold to 250 to 500 people per square mile would both result in much greater amounts of tons of organic waste disposal being potentially exempted. CalRecycle also did not accept the proposed alternative to only use the <5000 tons threshold because all of the affected jurisdictions have organics processing facilities within 100 miles. CalRecycle also did not accept the proposed revision to allow submittal of reasonable jurisdiction-proposed alternatives, because this is too open-ended and it was not clear what the basis would be for evaluating the reasonableness of such proposals. Absent clear objective standards the proposal is unworkable. Lastly, CalRecycle did not accept the proposals to allow waivers for all disadvantaged communities, because many of these communities are located in urban areas where collection and processing is readily available, and this would exempt a substantial portion of the organic waste stream. The established elevation allows flexibility for jurisdictions that face specific waste collection challenges while still achieving the legislatively mandated goals. CalRecycle analyzed the amount of organic waste exempted by all of the waivers in order to determine if the regulations could still achieve the organic waste diversion and greenhouse gas reduction goals established in SB 1383.

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			Allowing an elevation waiver on case by case basis or for jurisdictions with a well-document history of animal instruction is not quantifiable, therefore the Department cannot determine if this waiver would impede achieving the goals mandated by SB 1383. CalRecycle compared the map of jurisdictions eligible for the elevation, low population, or rural waivers and found it to overlap considerably with the Department of Fish and Wildlife's black bear habitat map. CalRecycle understands that bears and other wildlife do not adhere strictly to elevation thresholds. CalRecycle, however, had to set an elevation threshold in order to quantify the organic waste that would not be diverted from landfills with this waiver. Quantifying the amount of waiver organic waste diversion was critical in order to determine if the waiver would impede achieving SB 1383's organic waste diversion and greenhouse gas reduction goals. Many census tracts in the counties the comment identifies will be 68 eligible for other exceptions granted by CalRecycle. Additionally, the elevation waiver is limited in scope and jurisdictions that qualify for this waiver will still be subject to other 1383 requirements, including procurement, edible food recovery, and other types of organic waste collection. Allowing submittal of jurisdiction-proposed alternatives is too open-ended and it is not clear what the basis would be for evaluating the reasonableness of such proposals. Thank you for the comment. CalRecycle will be providing such tools. Also for clarification, the regulation does not require food waste capacity to be verifiably available or to develop an exact estimate of capacity. However, there does need to be engagement with the FROs to determine if there is sufficient capacity. Cities and the counties will have to work together in gathering info from the FROs and mapping out capacity.
2168	Zetz, Eric, SWANA	Article 11 Section 18992.3 As stated in our previous comment letter, this section sets due dates and reporting periods for each county, in coordination with cities and regional agencies, to submit a report on organic waste recycling and food waste recovery capacity planning. The reports cover a period of years but are all due on August 1st, which is also the date jurisdictions need to submit their Electronic Annual Report (EAR). Currently, the EAR requires annual review and update for counties and regional agencies to submit long-term organics infrastructure planning (AB 876). In order to avoid duplicative efforts and possibly conflicting information, this reporting requirement should be included in the appropriate year's EAR. Also, Regional Agencies should be allowed to submit the report in coordination with the county and cities. Regional Agencies, in coordination with the county and cities, should be allowed to develop all aspects in Article 11. Regional cooperation is a key benefit of a Regional Agency; each Regional Agency includes the unincorporated area of the county and the included cities. One currently approved Regional Agency is a bi-county effort. Another Regional Agency only comprises a portion of a county unincorporated area and some of the cities.	CalRecycle amended the capacity planning requirement to allow jurisdictions until August 1, 2022 to report capacity plans as that is in alignment with the timing that capacity plans are required under AB 876 (2016).
2169	Zetz, Eric, SWANA	Article 11 section 18992.3 As stated in our previous comment letter, this section is not clear if reporting will be part of the existing EAR or separate. We ask for clarifying language.	Comment noted. CalRecycle may consider streamlined jurisdiction reporting opportunities, such as modifying the Electronic Annual Report process.

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2170	Zetz, Eric, SWANA	Article 12 Section 18993.1 Proposed Language: Delete entire section. Rationale: As stated in our previous comment letter, the second draft to these regulation increases the mandate by 14.3%, to 0.08 tons per resident per day. The huge gap between this requirement and the jurisdiction's actual needs for organics-derived materials indicates a serious flaw in the assumptions underlying this provision. The assumed link between local government's 13% share of GPD and local government's ability to absorb organics-derived products appears to be faulty. In any case, the requirements presume the availability of products that are not currently available and may not be available for years. We ask that Article 12 be deleted from this regulatory phase and taken up as a separate, future item when we all have more information on the types and availability of end products made from diverted organics. Please see attachment B.	A specified procurement amount is necessary for jurisdictions to measure compliance with Article 12, which is necessary to achieve the ambitious diversion targets required by SB 1383. The per capita procurement target increase from 0.07 to 0.08 is based on higher than estimated disposal data recently obtained from the department's Disposal Reporting System (DRS). The corresponding increase in diversion impacted the per capita procurement target. For reference, the initial per capita procurement target was based on an estimated 21,000,000 tons of organics diversion by 2025. The new DRS data increased the organics diversion estimate to 25,043,272 tons. That number is multiplied by 13% (government GDP), and divided by CA population estimated in 2025 (42,066,880); result is 0.08. The procurement requirements are designed to build markets for recovered organic waste products, which is an essential component of achieving the highly ambitious organic waste diversion targets mandated by SB 1383. CalRecycle developed an open and transparent method to calculate the procurement target that is necessary to help meet the highly ambitious diversion targets set forth by the Legislature. CalRecycle also recognizes that, in some extraordinary cases, the procurement target may exceed a jurisdiction's need for recovered organic waste products. Section 18993.1(j) provides jurisdictions with a method to lower the procurement target to ensure that a jurisdiction does not procure more recovered organic waste products than it can use. CalRecycle disagrees with the need for a second regulatory proceeding. If the state is to achieve the ambitious landfill diversion targets required by SB 1383, it would be detrimental to delay the much-needed organics diversion that these procurement regulations are designed to encourage.
2171	Zetz, Eric, SWANA	Article 12 Section 18993.1 As stated in our previous comment letter, for the purpose of this Article, the discussion and the procurement targets need to be expanded to include appropriate provisions for compliance by "non-local entities" (such as state agencies, public universities, etc.) and "local education agencies" (such as school districts, community colleges, etc.) as further defined in Sections 18982 (a) (42) & (40).	Regarding state agencies. State agency procurement is within the purview of the Legislature through the annual budgeting process, the Governor's office through Executive Orders, the Department of General Services through the establishment of the State Administrative Manual (SAM), and other control agencies that oversee budgeting and procurement. CalRecycle cannot supersede those existing authorities and impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks. There are existing procurement requirements on state agencies and this rulemaking will not be adding to those. CalRecycle currently works with sister agencies to implement existing procurement-related legislation. For example, CalRecycle coordinates with the Department of General Services (DGS) to implement the State Agency Buy Recycled Campaign (SABRC), Public Contract Code 12200 to 12217, which requires state agencies to purchase products, including compost and paper, containing recycled content. Additionally, AB 2411 (McCarty, Statutes of 2018), requires CalRecycle to develop a plan for compost use in wildfire debris removal efforts, and to coordinate with the Department of Transportation to identify best practices for compost use along roadways. CalRecycle also worked with sister agencies through the AB 1045 process, which directed CalEPA, CalRecycle, the Water Board, ARB, and CDFA to "develop and implement policies to aid in diverting organic waste from landfills by promoting the composting of specified organic waste and by promoting the appropriate use of that compost throughout the state." These are examples of how CalRecycle works with sister agencies, but

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			CalRecycle cannot impose procurement mandates on other state agencies without the necessary statutory authority, which SB 1383 lacks. Regarding "nonlocal entities", it is important to clarify that the populations in, for example, local education agencies and special districts are already included in a jurisdiction's population-based procurement target; the population data published by the Department of Finance (DOF) includes universities, community colleges, and other local education agencies. The populations inherent in these entities are built into the procurement target calculation, and jurisdictions are encouraged to work with these entities to meet their procurement targets, which may be accomplished through a contract or agreement, such as a Memorandum of Understanding (MOU). Applying procurement targets to these entities, especially population-based procurement targets, would result in double counting individuals contributing to the procurement requirements.
2172	Zetz, Eric, SWANA	Article 12 Section 18993.1 As stated in our previous comment letter, the prescriptive nature of the requirements of this Article is of great concern. As currently written, a jurisdiction would be required to purchase material from itself to meet the requirements of this Article. We believe a better approach would be to require a jurisdiction to use a certain amount of these types of materials. This would increase incentive for the jurisdictions to produce such products from their own waste stream and would allow for jurisdictions to make use of their own products.	The proposed regulatory text does not limit jurisdictions to the procurement of recovered organic waste products from "their" organics to satisfy the procurement requirements, nor do the products need to be consumed within the jurisdiction. The commenter states, "We believe a better approach would be to require a jurisdiction to use a certain amount of these types of materials." This is essentially exactly what the procurement requirements do. A jurisdiction may procure from any entity provided the end products meet the Section 18982(60) definition of "recovered organic waste products", and a jurisdiction may use the end products in a way that best fits local needs.
2173	Zetz, Eric, SWANA	Article 12 Section 18993.1 Proposed Language: e)(2) Requiring, through a written contract or agreement, that a direct service provider, including a regional agency or special district, to the jurisdiction procure recovered organic waste products and provide written documentation of such procurement to the jurisdiction. Rationale: This subsection should be revised to authorize regional agencies and special districts to coordinate procurement on behalf of their individual members. These entities are included in the definition of jurisdictions in Article 1, Section 18982 (36). Although cities and counties are ultimately responsible for compliance, the benefits of a regional agency to coordinate resources is the most important service to the members. There are currently 27 Regional Agencies representing 142 cities and unincorporated counties (many of them are in rural areas). Explicitly allowing Regional Agencies and special districts to be a means to comply with this requirement is important. The current language does not clarify that a Regional Agency or special district can also be a "direct service provider".	Nothing in the proposed regulatory text prohibits a regional agency or special district from coordinating resources for procurement. CalRecycle disagrees with revising language as it is unnecessary. Regarding special districts as direct service providers, the definition of "direct service provider" clarifies that a contract or other written agreement, for example a Memorandum of Understanding (MOU), could be used to prove the direct service provider relationship. Regional agencies could be considered direct service providers if there was a contract or agreement in place with the jurisdiction. Without said contract or agreement, any entities that are not part of the jurisdiction's departments, divisions, etc. would not by default be considered part of the jurisdiction nor would their procurement count towards the jurisdiction's procurement target. Jurisdictions are encouraged to work with these entities to meet their procurement targets, which may be accomplished through a contract or agreement, such as a Memorandum of Understanding (MOU).
2174	Zetz, Eric, SWANA	Article 12 Section 18993.1 Proposed Language: (A) The jurisdiction has an enforceable ordinance, or similarly enforceable mechanism, that requires the mulch procured by the jurisdiction to comply with this article; ~~to meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in Section 17852(a)(24.5)(A)(1) through (3) of this division;~~ Rationale: The addition of mulch for meeting the procurement requirements is much appreciated however the requirement that all mulch undergo testing for	The intent of requiring jurisdictions to establish an ordinance per Section 18993.1(f)(4)(A) is to ensure that mulch is procured from solid waste facilities meets land application environmental health standards. The intent is to ensure these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383. CalRecycle disagrees with the comment that the solid waste facilities and reporting requirements alone will be sufficient to ensure mulch meets the land application standards. Due to the utmost importance of protecting public health and safety, it is necessary for jurisdictions to have the ability to take enforcement action against entities who apply contaminated material on local lands.

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		pathogens and metal content is unwarranted. A considerable amount of mulch is derived from wood waste. This testing requirements should be deleted as unnecessary. At a minimum, the testing requirement for mulch from wood waste should be exempt.	
2175	Zetz, Eric, SWANA	Article 12 Section 18993.1 Proposed Language: (B) The mulch is produced at one or more of the following: 1. A compostable material handling operation or facility as defined in Section 17852(a)(12), ~~other than~~ **including** a chipping and grinding operation or facility as defined in Section 17852(a)(10), that is permitted or authorized under this division; or Rationale: There is no basis for not allowing chipping and grinding operations or facilities to contribute the mulch procurement target. This limitation should be deleted as unnecessary.	CalRecycle disagrees with the comment. Chipping and grinding facilities are excluded because the feedstock entering those facilities is not typically landfilled, and therefore does not contribute to organic waste reduction. Chipping and grinding facilities are defined in 14 CCR 17852(10) as limited to handling "green material". "Green material" is defined in 17852(21) as "any plant material except food material and vegetative food material that is separated at the point of generation…", which in turn is defined in 17852(35) as "material separated from the solid waste stream by the generator of that material." Therefore, material entering a chipping and grinding facility is not considered landfill-diverted organics. CalRecycle added mulch provided it is derived from certain solid waste facilities. The intent is to provide stakeholders requested flexibility while still ensuring that these materials are diverted from a landfill in order to be consistent with the statutory requirements of SB 1383.
2176	Zetz, Eric, SWANA	Proposed Language: ~~(2) The name, physical location, and contact information of the each entity, operation, or facility from whom the recovered organic waste products were procured, and a general description of how the product was used, and. if applicable, where the product was applied~~ Rationale: This section continues to be expanded to be more burdensome to jurisdictions. This level of detail in the reporting is over-prescriptive and should be deleted.	The intent of the proposed language is to provide greater accountability for the use of recovered organic waste products by jurisdictions. The information is also intended to provide the Department with information about how and where recovered organic waste products are being used across the state in order to guide future efforts for using recovered organic waste products in California.
2177	Zetz, Eric, SWANA	Article 15, Section 18996.2 SWANA LTF appreciates this change.	Thank you for the comment. The comment is in support of draft language.
2178	Zetz, Eric, SWANA	Article 14 Section 18995.1 As stated in our previous comment letter and we'd like to reiterate our concerns with provision of Section 18995.1 (c) which for the purpose of measuring compliance mandates jurisdictions to generate a written report for each inspection, route review, and the name or account name of each person or entity. Some information from haulers to a jurisdiction are confidential and cannot be released to CalRecycle. We recommend jurisdiction be required to only provide CalRecycle with (a) A general description of the route location, (b) A general description of account reviewed, and (c) A list of account holders determined by the jurisdiction to be subject to enforcement actions.	This comment is not directed at changes to the third regulatory draft. Changes to the regulatory text to address this issue were made in a prior regulatory draft and comments on prior regulatory drafts on this issue were already responded to.
2179	Zetz, Eric, SWANA	Article 14, Section 18995.1 This section has been revised to add more reporting requirements. We repeat our previous comment that neither SB 1383 nor CALGreen requirements give CalRecycle the authority to oversee CALGreen requirements. This should be deleted to avoid enforcement confusion, duplication and overlap. Building standards are issued by the Building Standards Commission, implemented and enforced by local Building Departments, and are not subject to the authority of CalRecycle.	With respect to Section 18995.1 Comment noted, this section includes actions a jurisdiction must take relevant to inspection and enforcement. No reporting requirements were added to this specific Section. With respect to CalGreen, the relevant regulatory sections do not have CalRecycle enforcing substantive CALGreen requirements. CalRecycle would only be enforcing whether a jurisdiction has adopted an ordinance or other enforceable requirement that requires compliance with

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			certain portions of CALGreen that pertain to recycling organic waste. The enforcement of the ordinance itself would be up to the jurisdiction.
2180	Zetz, Eric, SWANA	Article 14 Section 18995.4 Proposed Language: Add: **(c)(4) The failure of state agencies, federal agencies, and other non-local entities to comply with local requirements.** Rationale: Allowing extensions to the compliance deadline for extenuating circumstances is much appreciated; however, some jurisdictions will experience impracticable compliance due to the lack of or limited participation due to state agencies, federal agencies, schools, or other entities that are not required to comply with local ordinances or other enforceable mechanisms. Failure to comply with the proposed regulations for these entities only results in placement on a list of non-complying entities and other minor actions while the jurisdiction could be penalized for their non-participation. A new extenuating circumstance should be added to address this problem that is currently impacting jurisdiction and will be significantly increased to the cost of implementation of these proposed mandates.	It is unclear from the comment exactly how state agencies, federal facilities and other non-local entities will impact the compliance by other entities with regulatory requirements. As such, it is unclear why it is necessary to add another extenuating circumstance to the regulations.
2181	Zetz, Eric, SWANA	Article 15 Section 18996.2 Proposed Language: (a) If the Department finds that a jurisdiction is violating one or more of the requirements 38 of this chapter **it shall consider whether the jurisdiction has put forth a good faith effort. If the Department finds that the jurisdiction has not provided a good faith effort [t]he Department**, then the Department may take the following actions: Rationale: CalRecycle's Statutory Background and Primary Regulatory Policies document states, in part, that "Legislative guidance directs CalRecycle not to…utilize the "Good Faith Effort" compliance model specified in PRC Section 41825." This is inaccurate and contrary to the language of SB 1383. Section 42652.5. (a)(4) of the PRC specifically requires CalRecycle to consider "good faith effort" in determining a jurisdiction's progress in complying with the law. It states that CalRecycle "shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to Section 41825." Since PRC Section 41825 establishes the process to determine whether a jurisdiction has made a "good faith effort" to comply with the law, it is clear that CalRecycle is required to consider "good faith effort" in making its determination of a jurisdiction's progress.	The comment is not directed at changes in the third regulatory draft. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction.
2182	Zetz, Eric, SWANA	Article 15, Section 18996.2 Proposed Language: (1) Issue a Notice of Violation requiring compliance within 90 days **of the date of issuance of that notice. The Department may grant** ~~a~~An extension ~~may be granted~~ for a reasonable period according to the actions required. ~~up to an additional 90a total of 180 days from the date of issuance of the Notice of Violation, if the jurisdiction submits a written request to the Department within 60 days of the Notice of Violation's issuance thatif it finds that additional time is necessary for the jurisdiction to comply.~~	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text.

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		Rationale: This section does not provide sufficient flexibility to the Department to address unique challenges that jurisdictions may encounter. The Department may find that extenuating circumstances, such as insufficient facility capacity, require more than 180 days to address. This section should allow the Department the flexibility to grant, at its discretion, a reasonable period.	CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service

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			beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets. With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction Finally, CalRecycle notes that the commenter recommends replacing all timelines with "for a reasonable period according to the actions required." The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of "reasonable" is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no

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			recommendation for factors to determine how "reasonable" would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for "any extenuating circumstance" or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances
2183	Zetz, Eric, SWANA	Article 15, Section 18996.2 (A) If a jurisdiction ~~claims that the cause of the~~ **is unable to comply with the maximum compliance deadline allowed in Subdivision (a)(1)** ~~delay is due to deficiencies in organic waste recycling capacity infrastructure inadequate capacity of organic waste recovery facilities~~, due to extenuating circumstances detailed in Section (a)(2)(C) **the Department may issue a Corrective Action Plan for such violations** ~~it shall document the lack of capacity and~~ **upon making a finding that**: Rationale: This section appears to apply only in the situation where the reason for the deficiency in lack of infrastructure. The rules for when to develop a Corrective Action Plan can be made flexible enough to be consistent regardless of the reason, avoiding confusion, providing clarity, and allowing reasonable oversight. The rules should be broadened to apply more generally to reflect the language in section 18996.2 (a)(1) and Section (a)(2)(C).	Thank you for the comment. To clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances are not limited to infrastructure deficiencies. They also include circumstances such as natural disasters. The section identified by the commenter applies additional prerequisites to the use of CAPs that are issued due to a lack of infrastructure, but it does not preclude CAPs from being issued for circumstances not related to infrastructure. No change to the regulatory text is necessary as the existing text accommodates the policy requested by the commenter.
2184	Zetz, Eric, SWANA	Article 15, Section 18996.2 Proposed Language: 2. **The jurisdiction** ~~demonstrate that it~~ has provided **organic waste collection** service **to all hauler routes** where **it is** ~~possible~~ **practicable** and ~~that it has only delayed compliance~~ **the inability to comply with** ~~this chapter~~ **the maximum compliance deadline in Subdivision (a)(1) is limited to** ~~for areas where service cannot be provided due to only those hauler routes where organic waste recycling capacity limits infrastructure deficiencies have caused the~~ extenuating circumstances detailed in Section (a)(2)(C) ~~provision of organic waste collection service to be impracticable.~~ Rationale: Corrective Actions plans may be needed for more than just the situation where there is insufficient infrastructure. Therefore, this section should not specify only infrastructure deficiencies but rather any of the extenuating circumstances listed in Section (a)(2)(C).	Thank you for the comment. To clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances are not limited to infrastructure deficiencies. They also include circumstances such as natural disasters. The section identified by the commenter applies additional prerequisites to the use of CAPs that are issued due to a lack of infrastructure, but it does not preclude CAPs from being issued for circumstances not related to infrastructure. No change to the regulatory text is necessary as the existing text accommodates the policy requested by the commenter.
2185	Zetz, Eric, SWANA	Article 15, Section 18996.2 Proposed Language: 3. **The Department must**~~ay~~ **consider** ~~i~~Implementation schedules, under **as described in** Article 11 **of this chapter,** ~~may be considered~~ for purposes of developing a Corrective Action Plan, and it must not impose requirements that are impracticable. However, the Department ~~**but**~~ **shall not be restricted in mandating actions**; however, the Department ~~may set compliance milestones~~ **to remedy violation(s) and developing applicable compliance deadline(s)** ~~other~~ **to those** ~~than those~~ provided in the Implementation Schedule.	Requiring CalRecycle to strictly follow an implementation schedule prepared by a jurisdiction would remove enforcement discretion from CalRecycle and allow jurisdictions to set compliance timelines in a manner that could potentially frustrate the statutory timelines organic waste diversion mandates in SB 1383. As such, CalRecycle will maintain the discretion to consider the implementation plans prepared by local jurisdictions, but not be mandated to follow them to the letter.

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		Rationale: This section inappropriately asks the Department to disregard the work done by local governments to address necessary actions and appropriate time schedules. It should, in fact, do the opposite. These regulations should not allow the Department to disregard actions and implementation schedules considered practicable by jurisdictions or to impose actions and schedules that may not be practicable	
2186	Zetz, Eric, SWANA	Article 15 Section 18996.2 Proposed Language: (B) For the purposes of this section, "substantial effort" means that a jurisdiction has taken all practicable actions to comply including extenuating circumstances as identified in Section 18995.4 (b). Rationale: Another consideration when a jurisdiction is unable to meet a compliance deadline is the extenuating circumstances listed in Section 18995.4 (b) and also as outlined in comments on Section 18995.4 (b) the non-compliance of state agencies, federal agencies, and other non-local entities. The allowance for considering extenuating circumstances should also be considered	"Extenuating circumstances" under Section 18996.2 is already defined to include "delays in obtaining discretionary permits or other government approvals." It is unclear from the comment exactly how state agencies, federal facilities and other non-local entities will impact the compliance by other entities with regulatory requirements. As such, it is unclear why it is necessary to add another extenuating circumstance to the regulations.
2187	Zetz, Eric, SWANA	Article 15, Section 18996.2 Proposed Language: ~~are~~ include but are not limited to any factor outside of the control of the jurisdiction, including the actions of other government agencies and facilities, and the following: Rationale: This section, addressing extenuating circumstances, should provide the flexibility for the Department, at its discretion, to consider any extenuating circumstance outside of a jurisdiction's control. For example, local government cannot control the behavior of state of federal government agencies.	"Extenuating circumstances" under Section 18996.2 is already defined to include "delays in obtaining discretionary permits or other government approvals." It is unclear from the comment exactly how state agencies, federal facilities and other non-local entities will impact the compliance by other entities with regulatory requirements. As such, it is unclear why it is necessary to add another extenuating circumstance to the regulations.
2188	Zetz, Eric, SWANA	Article 15, Section 18996.2 Proposed Language: (4) An initial Corrective Action Plan issued due to inadequate organic waste recycling infrastructure capacity may be extended for a period of up to 12 months if the department finds that the Rationale: Allowing 24 months for compliance may be sufficient for some jurisdiction measures but others may take considerable time to resolve beyond 24 months or even 36 months if an extension is granted per section 18996.2 (a)(4). In some cases all new agreements may need to be drafted and approved and limiting that situation to an absolute deadline of 36 months lacks a fundamental understanding of the realties of solid waste agreements.	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory.

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			The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are affirmatively designed to meet the required intent of the statute, the regulations necessarily include penalties for violations of the requirements. In recognition of stakeholder feedback regarding a lack of infrastructure, CalRecycle developed the CAP to allow jurisdictions that are in violation of the requirements, such as the requirement to provide organic waste recycling services to generators due to a lack of infrastructure, additional time to come in to compliance by 2025. The requirement to provide organic waste recycling services is the foundational requirement of the regulation, and it is indisputably essential to achieving the 2025 reduction targets.(see Article 3 of the Statement of Reasons) Allowing jurisdictions to violate the requirement to provide service beyond 2025 with no penalties or consequences would invalidate the regulations. That is the department could not adopt the regulations as they would not meet the basic statutory obligation that they be designed to achieve the statutory target to reduce disposal 75 percent below 2014 levels by the year 2025. In other words, intentionally crafting language allowing jurisdictions to violate the requirement to provide organic waste recycling service beyond 2025 is fundamentally incompatible with the requirement to achieve the 2025 organic waste reduction targets. With respect to the timelines in the CAP, CalRecycle notes the CAP must be viewed with consideration of existing statutory timelines and requirements, not only the timelines in this regulation. Requirements for jurisdictions to provide organic waste recycling services are not

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			novel or unique to these regulations. The state began phasing in requirements for jurisdictions to provide organic waste recycling requirements 2014 (see AB 1826), and as early as 2008 the State's Scoping Plan established reductions in organic waste disposal as a key part of the state's climate strategy. Existing state law requires jurisdictions to gradually offer organic waste recycling services to an increasing number of generators. As a result, jurisdictions are required to offer organic waste recycling service to the vast majority of their commercial businesses prior to the effective date of these regulations. As noted in Appendix A to the ISOR, commercial businesses constitute 60 percent of solid waste generation. If jurisdictions took action to secure capacity necessary to comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction Finally, CalRecycle notes that the commenter recommends replacing all timelines with "for a reasonable period according to the actions required." The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of "reasonable" is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how "reasonable" would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for "any extenuating circumstance" or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances

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2189	Zetz, Eric, SWANA	Proposed Language: jurisdiction has demonstrated substantial effort. Additional extensions in 12-month increments may be granted if the department finds that the jurisdiction has demonstrated substantial effort. Rationale: Some circumstances could include the extenuating circumstances identified in section 18995.4 (b). Another circumstance requiring more than 36 months could include if a new hauler or facility agreement is necessary for compliance. A Request for Proposals would need to be developed, circulated, submittals received, evaluated, and then awarded. The amount of such agreements is significant and usually requires approval of an elected body with all of the required public notices including any associated fee increases which have a separate timeline for approval and often subject to the proposition 218 process. Notice will be required to the current contractor and the new contractor, or even the current provided if successful will potentially need to secure new property and collection equipment and possible processing equipment or negotiate agreements for use of a suitable facility. Successful completion of all these steps can easily consume 24 months assuming the facilities to be utilized by the jurisdiction may need to revise the solid waste permit which requires public notices and potential environmental review that could take at least a year or more. In addition, CalRecycle has determined that will be sufficient capacity in California for processing all of the required organics, that capacity will likely not be available within a reasonable distance to the jurisdiction. That lack of organic waste recycling capacity is recognized in the proposed regulations in section 18996.2 (a)(2)(A). Limiting an extension to only a maximum 36 months assumes that sufficient capacity will exist within a few years of the determination of non-compliance. Another factor that could require more than 36 months for a jurisdiction to comply is a major portion of the non- compliant organic recycling is due to organic waste generators located in multiple jurisdictions and enforcement activities are undertaken as identified in section 18996.5. A non-compliant jurisdiction should not be penalized due to delays since the timing for such an action will be determined by CalRecycle and delays in resolving those situations, and then once resolved local jurisdiction compliance will need to be implied. It is a likely situation that the multi-jurisdictional entity is a national or international entity and could even be a federal agency. Allowing for extensions beyond 36 months is necessary and reasonable given the magnitude of the efforts of these proposed regulations and the magnitude of fines for non-compliance.	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP issued specifically due to a lack of recycling capacity to be extended and additional 12 months, allowing a CAP to extend a total of 36 months providing three years to correct a violation. The commenter requests that rather than allowing CAPS due to infrastructure deficiencies to be extended for a period of 12 months, that CAPS can be extended in perpetuity. This proposal would violate the intent and the provisions of SB 1383. The statute requires CalRecycle to adopt regulations to achieve organic waste reduction goals for 2020 and 2025. The timelines for the CAP were carefully crafted in consideration of these statutory timelines and the effective date of the regulation. An extended CAP allows a jurisdiction that is in violation of requirements due to infrastructure deficiencies, 36 months from the effective date of the regulations to come into compliance. This effectively allows jurisdictions to be in violation of the requirements of SB 1383 through the year 2025. The timelines allowed for in the CAP represent the maximum amount of flexibility CalRecycle can provide while still meeting the requirements of the statute. The statute requires that the regulations are designed to achieve the statutory targets required by 2025. The regulations comply with this requirement by imposing requirements on regulated entities that those entities must implement beginning in 2022. To ensure that the regulations are effective and are

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2190	Zetz, Eric, SWANA	Article 15, Section 18996.2 Proposed Language: (4) An initial Corrective Action Plan issued due to inadequate **organic waste recycling infrastructure** capacity ~~of organic waste recovery facilities~~ may be extended for a reasonable period according to the actions required ~~period of up to 12 months~~ if the department finds that the jurisdiction has demonstrated substantial effort. Rationale: SWANA LTF believes that this section does not provide sufficient flexibility to the Department to address unique challenges that jurisdictions may encounter. The Department may find that extenuating circumstances, such as insufficient facility capacity, require more than 12 months to address. The Corrective Action Plan issued by the Department should allow an extension, at its discretion, for a reasonable period.	With respect to the time frame for issuing NOVs; The comment is not directed at the changes to the third regulatory draft. The 90-day timeline was established in the first draft of regulatory text. The 180-day timeline is not a substantive change from the original draft. The original text allowed for an extension of up to 90 days (allowing a total extension of 180 days), the text was changed to read more clearly to state that an extension may be granted for up to a total of 180 days which is functionally equivalent to the original text. Comments on the NOV timeline are addressed in Enforcement Table I which addresses comments on the original draft of text. CalRecycle established the timeline of 90 days and allowed for 90- day extensions as it is a common regulatory timeline for correcting violations or complying with regulatory orders or agreements. The 90-day timeline and the 90-day extension (providing for a total of 180 days) reflects timelines for stipulated agreements issued by solid waste Enforcement Agencies (EAs) to bring facility operators into compliance. This is articulated in CCR Section 17211.2. This section allows an EA to issue a stipulated agreement establishing terms and conditions that must be met within 90 days and provides EAs an allowance to extend the timeline once by 90 days. Similarly, CCR Section 18072 requires EAs to correct staffing deficiencies within 90 days, and CCR Section 18362 provides solid waste facilities 90 days to correct violations of state minimum standards prior to being listed in the facility inventory. The timelines for correcting NOVs and extended NOVs is intended to accommodate violations that can be corrected within three months or six months respectively, such as a deficiency in records, or similar to CCR Section 18072 a deficiency in staffing. For violations that require additional time to cure, CalRecycle established the Corrective Action Plan in this article with minimum timeframes. The language allows initial CAPs (which allow up to 24 months to achieve compliance) to be issued when a jurisdictions has made substantial effort to correct violations but extenuating circumstances prevent compliance within 180 days. The regulations further allow an initial CAP

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			comply with the provisions of existing law, the requirements to provide service to the balance of their generators will be a smaller step. Even if jurisdictions have not made a good faith effort to comply with existing organic waste recycling statutes, CalRecycle further notes that the SB 1383 was adopted in 2016. One should not view the timeline the years 2022-2025 in isolation, but should consider that many of the basic requirements of the statute were clear as early as 2016, nine years prior to when the first CAPS will expire. The legislature amended SB 1383 to strip the requirement that CalRecycle use the "Good Faith Effort" requirement of AB 939 (Sher, Chapter 1095, Statutes of 1989) for enforcement for SB 1383. SB 1383 requires a more prescriptive approach and state minimum standards; jurisdictions must demonstrate compliance with each prescriptive standard. CalRecycle does exercise its enforcement discretion to allow consideration of "substantial efforts" made by the jurisdiction and the placement on a "Corrective Action Plan" (CAP). This effectively allows CalRecycle to consider efforts made by a jurisdiction, while not absolving them of responsibility. This structure allows CalRecycle to focus on compliance first and dedicate enforcement efforts to egregious offenders. The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the Good Faith Effort standard. Implementation of the prescriptive regulatory requirements of the regulation are designed to achieve the organic waste reduction targets, which is consistent with the explicit statutory direction Finally, CalRecycle notes that the commenter recommends replacing all timelines with “for a reasonable period according to the actions required.” The established timelines are specifically designed to allow a reasonable period for compliance depending on the circumstances of the violation (whether it can be corrected in the timeline of an NOV, or if it the violation requires and warrants a CAP). The proposed language of “reasonable” is open-ended and provides no regulatory certainty to entities subject to oversight. The commenters have provided no recommendation for factors to determine how “reasonable” would be interpreted as an objective standard that can be applied equally to all regulated entities. As proposed, the alternative text could result in an uneven application of enforcement. With respect to allowing CAPS to also be extended for “any extenuating circumstance” or any violation in general, to clarify, the existing language provides that a CAP may be issued for any violation that occurs provided that the jurisdiction made a substantial effort to achieve compliance, but extenuating circumstances prevented compliance. Extenuating circumstances
2191	Zetz, Eric, SWANA	Article 16, Section 18997.3 Proposed Language: no more than $4,000 per violation per day, and no more than $100,000 per year. Rationale: SWANA LTF believes the Department Penalty Amounts are unreasonably high. Unless more flexibility is given to keep penalties reasonable, the Department could be forced to impose fines that could cause jurisdiction bankruptcy, even over minor violations. It is unreasonable to have “minor” violations so high that it could potentially cause a city to go bankrupt, and they should never exceed $100,00 per year. “Major” violations, resulting in up to $10,000 per violation per day should be levied for only the most serious offenses, and should not be for even accidentally	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires. It is unclear from the comment under what circumstances a “minor” violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines.

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		omitting “any” information required in Sections 18994.1 and 18994.2. Major violations should be reserved for failing to provide a meaningful effort to comply with the regulations.	With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation. Regarding factors taken in to consideration when penalty amounts are set, in addition, the regulatory language defining a “major” violation takes into account knowing, willful or intentional actions. And the factors in subdivision (d) of this section allow consideration of the willfulness of the violator’s conduct in setting a penalty level within the appropriate range. The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires. It is unclear from the comment under what circumstances a “minor” violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines. With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation.
2192	Zetz, Eric, SWANA	Article 16, Section 18997.3 Proposed Language: no more than $7,500 per violation per day, and no more than $500,000 per year. Rationale: “Moderate” violations should never result in more than $500,000 (total) per year.	The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires. It is unclear from the comment under what circumstances a “minor” violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines. With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report

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2193	Zetz, Eric, SWANA	Article 16, Section 18997.3 Proposed Language: E) A jurisdiction **willfully** implements or enforces… (F) A jurisdiction **willfully** fails to **report information that is crucial to determining compliance** Rationale: "Major" violations, resulting in up to $10,000 per violation per day should be levied for only the most serious offenses, and should not be for even accidentally omitting "any" information required in sections 18994.1 and 18994.2. Major violations should be reserved for failing to provide a meaningful effort to comply with the regulations.	In addition, the regulatory language defining a "major" violation takes into account knowing, willful or intentional actions. And the factors in subdivision (d) of this section allow consideration of the willfulness of the violator's conduct in setting a penalty level within the appropriate range. The penalty assessment criteria are consistent with those used by other CalEPA agencies such as CARB and the SWRCB and are designed to be flexible enough to take into account case-by-case situations without forcing the imposition a one-size-fits-all penalty that may be counter to what justice requires. It is unclear from the comment under what circumstances a "minor" violation would bankrupt a jurisdiction. Any penalty assessment would be subject to limitations in the California Constitution on excessive fines.

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			With regard to the comment that a jurisdiction has committed a major violation for accidentally omitting information from a report, that is not the intent of this section. To clarify, the language in Section 18997.3(b)(3)((F) states that a major violation occurs when a jurisdiction fails to report any information at all. The information reported to CalRecycle is the keystone to verifying compliance with the regulations and a failure to comply with this requirement threatens the viability of the regulatory program. The text should not be interpreted to read that any omission is considered a failure to report. Rather, it is the act of not reporting any information at all that is always considered a major violation.
2194	Zetz, Eric, SWANA	Article 16 Section 18997.3 Proposed Language: Delete entire section. Rationale: As stated in our previous comment letter, this section is unclear; it appears that the intent is to provide a mechanism to apply partial fines for not meeting the full procurement target, but it needs clarification to avoid the misperception that the regulation is establishing a daily procurement target/expectation. Local procurement mandates are not authorized by SB 1383. CalRecycle's authorizing statue (Public Resources Code (PRC) 42652.5) clearly contemplates regulation of organics generators and other relevant entities, not consumers. SB 1383 also prohibits establishment of specific limits and targets for individual jurisdictions. While the prohibition is framed in terms of disposal targets, that is because procurement targets were not contemplated. Recommend Article 16 be deleted from this regulatory phase and taken up as a separate, future item when we all have more information on the types and availability of end products made from diverted organics. We also recommend creating an exemption for jurisdictions who, due to unforeseen circumstances, are unable to meet the procurement requirements in Article 12. There may be instances where it's impossible to procure organic waste products due to lack of availability, infrastructure, or budget constraints.	This comment is not directed at changes in the third regulatory draft. Comments regarding procurement authority, misperception regarding a daily procurement target, and the complete deletion of administrative civil penalty provisions have been responded to on prior regulatory drafts.
2195	Zetz, Eric, SWANA	Article 16 Section 18997.3 Proposed Language: New Subsection **(f) – Penalties imposed on a jurisdiction for violations of the regulations as stipulated in the Article 16 are not cumulative regardless of number of penalties at a given time. Additionally, the maximum penalty amount that CalRecycle is authorized to impose on a jurisdiction for failure to comply with any or all requirements of this Chapter is limited to an amount not to exceed $10,000 per day.** Rationale: Pursuant to Section 41850 (a) of the Public Resources Code, SB 1383 authorizes CalRecycle to impose penalties of up to $10,000 per day upon jurisdictions for failure to comply with regulations. However, as currently written, Section 18997.3 of the Second Draft of the proposed regulations appears to provide for CalRecycle's penalties to be concurrent and cumulative (emphasis added). For example, if CalRecycle finds a jurisdiction in violation of several requirements (let's	The third regulatory draft addressed this issue in 18997.3(e). This new subsection limits the Department in setting a penalty amount for multiple violations to an aggregated penalty amount for all violations shall 18 not exceed the amount authorized in Section 42652.5 of the Public Resources Code ($10,000 per day).

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		assume nine) of the proposed regulations and each violation is subject to a maximum provided Penalty of $1,000 per day, then the jurisdiction could be subject to a penalty of $90,000 per day. This is not consistent with state law (PRC, Section 42652.5). Therefore, Section 18997.3 needs to be revised to include provisions which specifically prohibit CalRecycle from cumulating penalties regardless of the number of violations by a jurisdiction while limiting the amount of penalties that CalRecycle is allowed to impose on a jurisdiction for failure to comply with any or all requirements of the proposed regulations to a maximum amount of $10,000 per day.	
2196	Zetz, Eric, SWANA	Article 16, Section 18997.4 Proposed Language: ~~(d)~~(c) Upon receipt of the ~~The~~ accusation, the respondent shall ~~have 15 days to~~ file a request for hearing with the director of the Department within 45 ~~15~~ days, or the respondent will ~~automatically~~ be deemed to have waived its rights to a hearing. Rationale: Allowing a jurisdiction only 15-days to file a request for a hearing is an unreasonable expectation. The process for a jurisdiction to evaluate whether to file a hearing request involves a jurisdiction to take formal local action which may be subject to a vote of an elected body since jurisdiction resources will be expended in preparing and participating in a hearing that cannot be convened within the 15-day time frame. Allowing time for the jurisdiction to prepare and notice such an action should allow more time.	The timeline for requesting a hearing is set for a short duration because it is expected that, based on the requirements and procedures in the regulations, a jurisdiction will be familiar with the compliance issue. A jurisdiction is required under the regulations to designate a primary contact person and/or agent for service of enforcement process. This individual will be receiving all notices of violation from CalRecycle. By the time a violation gets to the point where penalties will be imposed, it is expected that the contact person or agent for service of process should be familiar with the circumstances of the violation and already in touch with the appropriate departments or individuals within the jurisdiction. In addition, the informational bar for the hearing request is set low and it should not be prohibitive for the jurisdiction to submit such a request even in the absence of legal counsel. To be clear, the request for the hearing and the hearing itself are two separate things. The hearing itself would be held at least 90 days from the request for hearing which should allow the jurisdiction sufficient time to consult with counsel and prepare for the proceeding.
2197	Zetz, Eric, SWANA	Article 16 section 18997.5 Proposed Language: (d) The Department shall schedule a hearing within ~~30~~ 60 days of receipt of a request for hearing that complies with the requirements of this section. Rationale: Similar to the comments on section 18997.5 (c), a jurisdiction will need additional time to prepare a defense. Legal staff and consultants will need to be assigned or retained. These expenses will likely need approval of the elected body. This approval and the subsequent preparation will need a significant more time than 30 days. Given the magnitude of the potential penalties, the penalty phase should not be rushed.	The initial 30 day timeline is only to schedule the hearing date. The actual hearing has to be held within 90 days of that scheduling date.
2198	Zetz, Eric, SWANA	Article 17, Section 18998.1 Proposed Language After the words “of this chapter” delete the rest of the sentence and replace it with generating 90% of the commercial waste that is subject to the jurisdiction’s authority. Rationale: SWANA LTF suggests Section 18998.1. (a)(1) requirement to provide 3-container service to 90% of the commercial businesses should be reconsidered. Cities have a large scale of commercial establishments (small to large scale establishments) with a wide- range of waste generation rate. Therefore, we request that the 3-container service providing requirement should be based on 90% of tonnage generated from all commercial businesses combined.	Comment noted. The tons generated by commercial generators can vary from year to year and from day to day. Although the total number of businesses is knowable, the waste each business will generate in a given day is not. It is unclear how a jurisdiction could comply with a requirement to provide service to 90 percent of the tons generated, when the tons are still yet to be generated. This alternative would require jurisdictions to constantly evaluate waste generation on a daily basis to ensure they actually capture 90 percent of the commercial tons generated, which would be unnecessarily burdensome. CalRecycle agrees that jurisdictions should prioritize generators which is why this article allows jurisdictions to forego providing service to 10 percent of their commercial generators.

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2199	Zetz, Eric, SWANA	Article 17, Section 18998.1 Proposed Language: Insert a new (a) (3) subsection (4): **(3) Between January 1, 2022 - December 31, 2024: No more than 50 percent of the organic waste collected in the jurisdiction is disposed in a landfill.** ~~(3)~~ **(4) After January 1, 2025: No more than 25 percent of the organic waste collected in the jurisdiction is disposed in a landfill to** ensure that the presence of organic waste in the gray container collection stream does not exceed an annual average ~~aggregate~~ of 25 percent by ~~weight of total solid waste collected in that stream on an annual basis.~~ Measurement of the organics content of the "gray container waste" as collected does not account for organics sorted from the gray container by post-collection processing. A methodology that's a combination of front end source-separated organics and post-collection recovery of organics before disposal is the best way (perhaps the only way) to achieve 75% diversion. Instead of imposing 75% diversion mandate from January 1, 2022, a two-phase compliance schedule should be considered, which would allow facilities to come in compliance in a phased approach which is more realistic. Furthermore, the percentage of organic waste present in the gray container collection stream collected and the percentage of organic waste disposed in a landfill shall be determined by a measurement methodology submitted by the jurisdiction to the department for approval no less than 180 days prior to the start of the performance-based collection system.	Comment noted. The definition of designated source separated organic waste facility phases in the requirements as proposed in the comment. Several commenters proposing this approach appear to assume that the recovery efficiency target is an overall jurisdiction diversion target. It is not. See response to General Comment 62, also see Specific Purpose and Necessity as presented in the ISOR and FSOR for Article 2 and Article 3. The provisions related to compost operations and facilities were amended to phase in the organic disposal levels from 20 percent in 2022 to 10 percent in 2024. The definition of "designated source separated organic waste recycling facility" in Section 18982(a)(14.5) includes cross-references that make it clear that a facility that is seeking to qualify as a designated source separated organic waste recovery facility can rely upon the sampling and measurement and reporting requirements that are included in Sections 17409.5.8 and 18815.5. Facilities are not required to qualify as designated source separated organic waste facilities. They may demonstrate that they meet the standards through the applicable reporting requirements. The emphasis of the requirements in Article 17 rest with jurisdictions who may only use a facility that has demonstrated that it meets the designated source separation organic waste facility standards. Comment noted. The proposed change is vague and does not include any objective standards that would be applied to the methodology. This could result in uneven application whereby one entity is subject to a different set of regulatory standards than another. The standard established in the regulation is objective, measurable and applies equally to all entities subject to the regulation.
2200	Zetz, Eric, SWANA	Article 6.2 Section 17409.5.6 Add the following: **(1) The facility operator shall be allowed to combine recovered materials for operational efficiency from any source or sector that meets their end user's specifications if the operator can verify that the combined materials are maintained in compliance with their Facility Plan or Transfer/Processing Report.** (b) Source-separated organic waste and organic waste removed from a mixed waste organic collection service for recovery shall be: (1) stored for **operational efficiency and** away from other activity areas in **designated and** ~~specified, clearly~~ identifiable areas as described in the Facility Plan or Transfer/Processing Report; and, (2) ~~removed~~ **Removed** from the site consistent with section 17410.1 and either: (A) transported ~~only~~ to another solid waste facility, **POTW**, or operation for additional processing, composting, in-vessel digestion, or other recovery as specified in section (xxxx20.1) of this Division; or, (B) used in a manner approved by local, state, and federal agencies having appropriate jurisdiction; or, **(C) sent for disposal.** Rationale: As stated in our previous comment letter, this section requires that source-separated organics waste processing be kept separate from other solid	This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.

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		waste streams. This is not practical, especially in facilities that may also combine organic streams for further on-site processing.	
2201	Zetz, Eric, SWANA	Article 6.2 Section 17409.5.8 Proposed Language (a) A transfer/processing facility or operation shall ~~only~~ send offsite that organic waste recovered after processing from the source separated organic waste stream and from the mixed waste organic collection stream that meets the following requirements Rationale: It is not clear why the word "only" was inserted in this requirement. As written, the ONLY waste that can leave a transfer/processing facility or operation is "organic waste recovered after processing from the source separated organic waste stream and from the mixed waste organic collection stream". What happens with the rest of the solid waste collected at the transfer/processing facility or operation?	A change to the regulatory text is not necessary. The purpose of this section is to require transfer/processing facilities to only send organic waste offsite to facilities of their choice if it meets an incompatible materials limit of less than 20% on and after 2022 and 10% on and after 2024. If the material sent offsite is greater than those percentage limits, then it can only go to specific facilities. These facilities include a transfer/processing facility or operation that meets the incompatible materials limit, a compost or in-vessel digestion operation or facility that disposes of less than 20% organic waste on and after 2022 and 10% organic waste on and after 2024 in their materials sent for disposal, or a recycling center that meets the definition specified in Section 17402.5(d). In order to achieve the targets established in SB1383, regulatory limitations for processing organic waste must be implemented.
2202	Zetz, Eric, SWANA	Article 6.2 Section 17409.5 Proposed Language: (b) When required by this article, the operator shall report tonnages using a scale **or**~~. If scales are not accessible, the EA may approve, with concurrence by the Department,~~ the operator to report the tonnages using a method described in Section 18815.9(g). Rationale: The use of alternatives to scales, such as volume conversion for small facilities, was extensively discussed throughout the AB 901/Recycling and Disposal Reporting System. The criteria are already established in Section 18815.9 (g). This process is clearly detailed in 18815.9 (g) and does not require EA approval nor concurrence by CalRecycle. There is no justification for imposing levels of approval on a concept that has successfully been operating for nearly 20 years.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
2203	Zetz, Eric, SWANA	Article 6.2 section 17409.5.10 Proposed Language: (d) Materials shall be transported only to transfer/processing facilities or operations, that comply with Section 17409.5.1. or landfills, or recycling centers or other location that accepts the material. Rationale: There are consolidation sites, such as limited volume transfer stations, that transport collected materials directly to a landfill rather than transfer/processing facility or operation. Also, some of these consolidation sites also collect recyclables or provide containers for customers to source separate recyclables. Mandating that these materials ONLY go to a transfer/processing facility or operation imposes significant costs and double handling. If there is no transfer/processing facility or operation between the consolidation site and the landfill or recycler, the wastes will need to be transported excessive distances increasing vehicle emissions and wasting fuel.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
2204	Zetz, Eric, SWANA	Article 6.3 Section 17414.2 Proposed Language: Delete (10) (d). ~~(c)(d) All records required by this article shall be kept by the operator in one location 29 and accessible for three (3) five (5) years and shall be available for inspection by the 30 EA and other duly authorized regulatory agencies during normal working hours.~~	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.

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		Rationale: As stated in our previous comment letter, solid waste facilities are currently required to retain records for a period of 3-years; the requirement for 5-years is excessive and above what is already required.	
2205	Zetz, Eric, SWANA	Article 3 Section 17896.4 4.1 Proposed Language: 1. For each reporting period, the operator shall perform the sampling protocol required in subdivision (a)(16)(B) **Section _** over at least ten (10) consecutive operating days. Rationale: There seems to a missing reference section number. We ask for CalRecycle to include the appropriate section number.	CalRecycle has revised this section accordingly.
2206	Zetz, Eric, SWANA	Article 9.25 Section 18815.5 As stated in our previous comment letter, the use of a rolling quarterly recovery efficiency does not adequately allow for seasonal fluctuations or changes in waste flows. A longer period should be used. Calculating a new annual average every quarter based upon the immediately preceding quarters could result in jurisdictions having to change facilities too often, resulting in increased transportation costs and would require contract negotiations with multiple sites.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
2207	Zetz, Eric, SWANA	Rationale: The recovery efficiencies are reported to CalRecycle but there is no requirement on when or who notifies the jurisdictions of the rates.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
2208	Zetz, Eric, SWANA	Article 3.2 Section 21695 Proposed Language (d) The SIR shall be submitted to CalRecycle **within one and a half years (545 days)** from the effective date of this regulation. **The EA may approve an extension of up to 180 days. The operator must submit an extension request in writing to the EA no later than 60 days prior to the initial deadline with the reason(s) why the deadline can not be met. In the event the EA does not respond to the extension request by the initial deadline the request shall be deemed approved as submitted. In no event shall submittal of the SIR exceed 2 years from the effective date of this regulation** Rationale: As stated in our previous comment letter, a municipality will not be able to procure a consultant, have them perform the extensive requirements for the SIR, have the consultant draft the SIR for review, review and comment on the SIR, finalize and submit the SIR within 365 days. We believe an extension is necessary.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.
2209	Zetz, Eric, SWANA	Article 3.2Section 21695 Proposed Language: (f) For a SIR determined to be incomplete, the operator shall submit a revised SIR 16 addressing any enumerated deficiencies within ~~30~~ **60** days of receipt of notice from CalRecycle of an incomplete SIR. Rationale: As stated in our previous comment letter, we believe that 30 days to address any enumerated deficiencies is insufficient, especially for a municipality. We suggest increasing the 30-days requirement to 60-days.	Comment noted. This comment is not related to the text revisions outlined in this second 15-day comment period for the October 2 draft regulations.