Frequently Asked Questions about Implementing SB 1383

Collections

1. **Where in the regulations does it say a jurisdiction must automatically enroll generators in services? What does providing automatic service look like?**

   The phrase “automatically enroll” does not appear in the regulations. Jurisdictions, however, are specifically required to *provide* service per Article 3, Sections 18984 – 18984.3. The word provide was specifically chosen as the operative word as it differs from AB 1826, which only requires that they *offer* service. Just as jurisdictions must provide services such as water or garbage collection, they now need to provide recycling.

2. **Do the regulations require single-family residences and multifamily complexes to subscribe to organics collection and recycle both green waste and food waste beginning January 1, 2022?**

   Yes, the regulations require jurisdictions to provide organic waste collection services to all single-family and multifamily residences of all sizes and businesses that generate organic waste beginning January 1, 2022.

   Yes, single-family and multifamily complexes are required to recycle both green waste and food waste, as well as other organic waste materials, beginning January 1, 2022.

3. **What is the definition of a "hauler route"?**

   “Hauler route” means the designated itinerary or sequence of stops for each segment of the jurisdiction’s collection service area.

   The regulations allow the jurisdiction flexibility to determine its hauler routes. The regulations require jurisdictions to minimize contamination of organic waste containers by either conducting route reviews or conducting waste evaluation studies on each hauler route [Article 3, Section 18984.5]. The term hauler route is key to the jurisdiction’s compliance with these requirements, because it describes where the jurisdiction should direct its education and outreach effort to reduce contamination of organic waste.

   This is because hauler routes can significantly vary between jurisdictions depending upon the types of generators, facility location of where materials will be hauled to, route efficiencies, and a myriad of other factors. 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 a 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.

4. Can residents provide their own containers for organics collection?

Jurisdictions or its designee (like a hauler) must provide containers to the generator. Containers provided by the residents themselves would not comply with the regulations.
Providing a container is an inextricable part of providing a collection service. Requirements for local jurisdictions to collect and recover organic waste from their residential and commercial generators are critical for the state's efforts to keep organic waste out of landfills and reduce greenhouse gas emissions.

Further, jurisdictions are in a position to obtain uniform collection containers with standardized colors from specialized suppliers, whereas individual generators are not. If jurisdictions are not required to provide compliant containers, generators are left to comply with the color requirements on their own and may have a difficult time obtaining standardized containers due to the whims of market availability of properly colored containers through hardware stores, supply stores, or other business that have no obligations to stock compliant container colors. This sets up an untenable, large-scale regulatory noncompliance problem.

The requirement for jurisdictional provision of collection containers is also necessary from an efficient enforcement perspective. Placing the compliance responsibility on generators would create an unnecessarily burdensome enforcement model. Ensuring container color compliance would necessitate inspections of generators by the jurisdiction, potentially involving thousands of homes or businesses. Furthermore, potentially broad numbers of individual generators may be subject to enforcement if compliant containers are not reasonably available for purchase (see preceding paragraph). Instead of this burdensome model, CalRecycle finds that a single point of enforcement with the jurisdiction is more efficient and equitable. Jurisdictions are in a position to obtain uniform collection containers with standardized colors from specialized suppliers where individual generators are not.

The only exception is that generators in high-elevation jurisdictions will be able to continue to use customer provided containers that fit in their locked bear boxes.

5. Do the regulations for colors and labels apply to temporary dumpsters and compactors that are provided by the hauler?

The regulations 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.

For more detailed question and answers, see Collections Q&A

Edible Food

1. **Can a jurisdiction contract with their local environmental health department to fulfill some or all the jurisdiction edible food recovery program requirements such as educating commercial edible food generators and monitoring commercial edible food generator compliance?**

   Yes. Section 18981.2 of the regulations specifies that a jurisdiction may designate a public or private entity, which includes local environmental health departments, to fulfill its regulatory responsibilities. The 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."
   Please note however, if a jurisdiction does designate a separate entity to fulfill any requirements, the jurisdiction shall remain ultimately responsible for compliance with the requirements of this chapter.

2. **Do the SB 1383 regulations allow food recovery organizations to negotiate contracts and charge commercial edible food generators for their recovery costs?**

   This question falls outside of CalRecycle's regulatory purview. Nothing in SB 1383's regulations would prohibit a food recovery organization or a food recovery service from developing a sustainable funding model to help cover their costs.

3. **Do the regulations address donation dumping?**

   CalRecycle recognizes that donation dumping occurs and included policies in the regulations to help prevent this activity. 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 food recovery service from terminating their relationship with that particular generator.

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. The 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 services from donation dumping and unexpected donations. The model food recovery agreement is a template and is intended to be customized based on the needs of food recovery entities and commercial edible food generators.

4. **Do SB 1383's food recovery requirements differentiate between healthy foods eligible for donation, and "junk" food that do not meet the minimum nutrition standards for many food pantries and food banks?**

   SB 1383's statute requires CalRecycle to adopt regulations that include requirements intended to meet the goal that not less than 20 percent of edible food that is currently disposed is recovered for human consumption by 2025. The statute does not state that 20 percent of healthy or nutritious food must be recovered. As a result, SB 1383's regulations do not include requirements that differentiate between healthy and unhealthy food. CalRecycle recognizes that a core value of many food recovery organizations and services is to reduce food insecurity in their communities by rescuing and distributing healthy and nutritious food to help feed people in need, and that some organizations have nutrition standards for the food they are willing to accept. As a result, CalRecycle included language in Section 18990.2 that 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."*

5. **With regard to the requirement for commercial edible food generators to establish contracts and written agreements with food recovery organizations and services, would an arrangement for food recovery that is not a contract or written agreement be acceptable for compliance?**

   SB 1383's regulations require commercial edible food generators to establish a contract or written agreement with a food recovery organization or a food recovery service for food recovery. Requiring a contract or written agreement with supporting documentation of the contract or written agreement is critical to ensure that edible food is recovered in a safe, professional, and reliable manner.

Contracts and written agreements add a layer of food safety, professionalism, and reliability into food recovery and can also serve as a mechanism to help protect food recovery organizations and services from donation dumping. CalRecycle developed a model food recovery agreement that can be customized by food recovery organizations, food recovery services, and commercial edible food generators.

Although a contract or written agreement for food recovery must be established, it is at the discretion of food recovery organizations, food recovery services, and commercial edible food generators to determine the exact provisions to include in their contracts or written agreements. For example, some food recovery organizations may include provisions in their contracts to protect their operation from receiving food that they are not able or willing to accept. Other food recovery organizations or food recovery services could include cost-sharing provisions as part of their contracts or written agreements with commercial edible food generators. 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.

Contracts and written agreements are also critical for enforcement purposes. Jurisdictions will be able to monitor commercial edible food generator compliance by verifying that a contract or written agreement has been established. To further help jurisdictions monitor compliance, the regulations include recordkeeping requirements for commercial edible food generators and for food recovery organizations and services. A jurisdiction could use the record to verify that a commercial edible food generator has established a contract or written agreement with a food recovery organization or service by requesting to see their records.

For more detailed question and answers, see Edible Food Q&A

Procurement

1. **What if a jurisdiction already has procurement programs in place? Can that procurement count towards meeting the SB 1383 procurement requirements?**

   If a jurisdiction is already procuring recovered organic waste products that meet the requirements outlined in 14 CCR Section 18993.1, these can count towards a jurisdiction's procurement target. A jurisdiction is not required to prove additional procurement beyond any other mandatory or voluntary procurement programs they already have in place, as long as their target is met.

   For example, a city may use mulch in a city landscaping project or give away compost to their residents and these end uses may count towards the city's SB 1383 procurement target, regardless of whether these are already required by existing city programs.

Similarly, a jurisdiction may count eligible renewable gas or electricity products procured from a utility towards their SB 1383 procurement target, regardless of whether that utility has to meet separate renewable energy procurement requirements, such as through the Bioenergy Market Adjusting Tariff (BioMAT) program, or whether the jurisdiction was already procuring eligible renewable energy before the implementation of SB 1383.

2. **Do recovered organic waste products that a jurisdiction procures need to be sourced from the jurisdiction's generated organic waste, produced in the jurisdiction, or used within the jurisdiction?**

   No, jurisdictions are not required to procure recovered organic waste products made from "their" organic waste to satisfy the procurement requirements, nor do the products need to be produced or consumed within their jurisdiction. A jurisdiction may purchase or otherwise acquire products from any entity, or produce it themselves, and use these toward their procurement target, provided the end products meet the 14 CCR Section 18982(60) definition of "recovered organic waste products." The jurisdiction may use the end products in a way that best fits local needs, which may include use or free distribution within their jurisdiction or other jurisdictions.

3. **How can a jurisdiction meet their procurement target? Are they required to purchase recovered organic waste products? Can the sale of recovered organic waste products count towards a jurisdiction's procurement target?**

   Jurisdictions can meet their procurement target through their own direct procurement or through a direct service provider working on the jurisdiction's behalf. Direct procurement involves a jurisdiction's procurement of products for their own use or giveaway. Procurement through a direct service provider requires that the jurisdiction have a written contract or agreement with the direct service provider to procure recovered organic waste product(s) on behalf of that jurisdiction.

   These products do not have to be obtained solely through purchasing. A jurisdiction may also produce or otherwise acquire products (e.g., free delivery or free distribution from a hauler or other entity via an agreement) and subsequently use or donate those products to meet their procurement target. However, 14 CCR Section 18993.1(e)(1) limits procurement to "use or giveaway," and does not include the sale of products.

   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 third party does not meet the intent of these regulations, which is to build markets for the use of recovered organic waste products.

4. **Does a jurisdiction have to procure specific products, such as compost and mulch, to meet their procurement target?**

   No, the regulations provide flexibility for jurisdictions to choose a combination of the types of recovered organic waste product(s) defined in the regulations that best fit local needs to meet their procurement target. A jurisdiction has the option to meet their procurement target by procuring a sufficient quantity of one product or a mix of products.

5. **When will jurisdictions be notified of their procurement target, so that they may plan for the procurement of recovered organic waste products?**

   CalRecycle will calculate the annual recovered organic waste product procurement target for each jurisdiction and notify each jurisdiction of this target annually, beginning on or before January 1, 2022.

   However, for planning purposes, the jurisdiction may choose to make these calculations on their own to derive their procurement target and determine the quantities of recovered organic waste products needed to meet this target.

   CalRecycle has created a Procurement Calculator Tool to assist jurisdictions with making these determinations, which will be made available soon, but jurisdictions may also make these calculations on their own by using the formula set forth in the regulations (see FAQ #6 for an example of these calculations).

   It is important to note that calculations made now will be preliminary, as official procurement targets will take into account newer population data than is currently available. The jurisdiction procurement targets for the first year of compliance, 2022, will utilize the January 1, 2021 population estimates reported by the California Department of Finance (DOF) (Population Estimates for Cities, Counties, and the State), which will be released on May 1, 2021. The procurement targets will be recalculated every five years to reflect population changes.

   For more detailed question and answers, see Procurement Q&A

Solid Waste Facilities

1. **Is a source separated organics stream required to meet the 75 percent organic waste recovery efficiency described in Section 17409.5.1?**

   No. Facilities that receive only source separated organic waste collection streams would not be subject to the organic waste recovery efficiency requirement.

2. **How should operators consider difficult-to-handle materials such as food-soiled paper or biodegradable or compostable product when calculating the incompatible material measurement? [Sections 17409.5.2 through 17409.5.5, 17409.5.7, and 17409.5.8]**

   Incompatible material means any human-made inert material and any waste for which the receiving end-user, facility, operation, property, or activity is not designed, permitted, or authorized to process, as defined in Section 17402(a)(7.5). Therefore, if the receiving facility is not permitted or designed to process that material it would be counted as incompatible material for the facility sending the material.

3. **What is the definition of a high diversion organic waste processing facility?**

   A high diversion organic waste processing facility refers to transfer/processing facilities and operations that meet the 50 percent (by 2022) or 75 percent (by 2025) mixed waste organic recovery rates set forth in Section 18815.5(e).

4. **Can a consolidation site transport waste directly to a landfill for disposal? [Section 17409.5.10]**

   No. The regulations state that the material be transported only to a transfer/processing facility or operation that comply with the organic waste recovery efficiency requirements found in Section 17409.5.1. However, it can go to an organic waste recovery activity located on a landfill.

5. **What are the measurement requirements for composting facilities and operations?**

   The measurement requirements are to determine the amount of organic waste sent for disposal. For details on how to perform the measurement protocol see Section 17867(a)(16).

   For more detailed question and answers, see Solid Waste Facilities Q&A.

Enforcement

1. **How can a jurisdiction designate responsibilities to a public or private entity to comply with SB 1383 regulations? (see Title 14, CCR, General Provisions section 18981.2)**

   A jurisdiction can designate responsibilities through:

   - Contracts with haulers or other private entities, or

- Agreements with other jurisdictions, entities, regional agencies (as defined in Public Resource Code section 40181), or other government agencies, including environmental health departments.

For example, a jurisdiction may enter into an agreement with a hauler to perform route reviews for container contamination or an agreement with the environmental health department to inspect edible food generators.

A jurisdiction cannot delegate:

- The authority to issue a waiver to a private entity [see Article 3 Section 18984.11(c)] or

- The authority to impose civil penalties, or to maintain an action to impose civil penalties, to a private entity.

If a jurisdiction delegates responsibilities to a public or private entity, except responsibilities delegated to a Joint Powers Authority, it is still ultimately responsible for compliance with the requirements.

2. Does CalRecycle have further guidance on how many are a "sufficient amount" of route reviews? (see Title 14, CCR, Article 14 section 18995.1)

Beginning on January 1, 2022, a jurisdiction is required to conduct annual route reviews and inspections of regulated entities to determine overall compliance. The regulations do not include a specific number of route reviews and inspections. Therefore, a jurisdiction shall determine an adequate amount based on the characteristics of their jurisdiction, such as, prioritizing inspections on larger organic waste generators and generators that the jurisdiction may suspect to be out of compliance.

A jurisdiction is required to conduct enough route reviews and inspections to adequately determine the overall compliance of the generators under its authority and to ensure its own compliance.

3. How often does a jurisdiction have to inspect commercial edible food generators? (see Title 14, CCR, Article 14 section 18995.1)

Beginning on January 1, 2022, jurisdictions are required to inspect Tier One commercial edible food generators and verify they are recovering the maximum amount of edible food possible and are not intentionally spoiling edible food that is recoverable. Inspections should be at a level/rate to adequately determine compliance with the requirements. Tier One commercial edible food generators include:

- Supermarkets

- Grocery stores with a total facility size equal to or greater than 10,000 square feet
- Food service providers
- Food distributors
- Wholesale food vendors

On or before January 1, 2024, a jurisdiction is required to inspect Tier One and Tier Two commercial edible food generators for the same requirements. Tier Two commercial edible food generators include:

- Restaurants with 250 or more seats or a total facility size equal to or greater than 5,000 square feet
- Hotels with an on-site food facility and 200 or more rooms
- Health facilities with an on-site food facility and 100 or more beds
- Large venues
- Large events
- State agencies with a cafeteria with 250 or more seats or a total cafeteria facility size equal to or greater than 5,000 square feet
- Local education agencies with an on-site food facility

4. Does CalRecycle apply the “Good Faith Effort” when determining compliance with the SB 1383 requirements as it does with AB 939?

No, SB 1383 mandates organic waste diversion targets on a relatively short timeline. The 75 percent organic waste diversion target will not be achieved by 2025 if using the more lengthy compliance process under the Good Faith Effort standard.

CalRecycle does exercise its enforcement discretion in determining whether to commence the enforcement process as well as allowing consideration of "substantial efforts" made by the jurisdiction and “extenuating circumstances” that would allow the use of extended compliance deadlines in a "Corrective Action Plan" (CAP).

CalRecycle's focus is on compliance first and will dedicate enforcement efforts to the most egregious offenders.

5. **Will CalRecycle consider the COVID-19 pandemic as an extenuating circumstance when determining a jurisdiction's eligibility for a Corrective Action Plan?**

   It may, depending on the circumstances. The regulations do allow for flexibility and deadline extensions for instances when there are extenuating circumstances, such as emergencies, that may cause compliance issues despite a jurisdiction's substantial efforts. CalRecycle may consider a Corrective Action Plan with a longer compliance deadline if the facts demonstrate that the jurisdiction has made a substantial effort to comply and that the COVID-19 pandemic has a direct causal link to a lack of compliance. However, CalRecycle will consider the totality of circumstances surrounding a jurisdiction's compliance.

   For more detailed question and answers, see Enforcement Q&A

Article 2

1. **What is considered landfill disposal under the SB 1383 regulations?**

   Organic waste disposed at a landfill, used as alternative daily cover (ADC) or alternative intermediate cover (AIC) at a landfill, or any other disposition not explicitly identified in 14 CCR Section 18983.1 as a reduction in landfill disposal is considered landfill disposal.

   What constitutes a reduction in landfill disposal under the SB 1383 regulations? Organic waste sent to one of the following operations, facilities, or uses is considered a reduction in landfill disposal, provided the organic waste is not subsequently landfilled [refer to 14 CCR Section 18983.1(b)]:

   Operations or Facilities:

   - Recycling centers
   - Compostable material handling facilities
   - In-vessel digestion facilities
   - Biomass conversion facilities

   Uses:

   - Soil amendment for erosion control, revegetation, or slope stabilization
   - Soil amendment for landscaping at a landfill
   - Land application
   - Animal feed

2. **How will CalRecycle determine if a process or technology not already listed in Section 18983.1 of the regulations is a reduction in landfill disposal?**

   CalRecycle will conduct an application review and notify the applicant within 30 days of receipt whether it is complete. Section 18983.2(a)(1) of the regulations specifies the information that must be included in an application. To count as a reduction in landfill disposal, a process or technology must demonstrate it will result in permanent lifecycle GHG emission reductions equal to or greater than the emission reductions from composting organic waste (0.30 MTCO2e per short ton of organic waste). CalRecycle will consult with the California Air Resources Board to determine if the proposed process or technology constitutes a reduction of landfill disposal. Applicants will be notified within 180 days of submittal of a complete application if their technology or process constitutes a reduction in landfill disposal. A list of technologies and processes that are determined to constitute a reduction in landfill disposal will be posted on CalRecycle's website.

3. **When will CalRecycle begin accepting applications and making these determinations?**

   CalRecycle will accept applications starting on January 1, 2022, when the SB 1383 regulations take effect. Interested parties are encouraged to contact CalRecycle staff now to discuss potential applications for new technologies or processes they may want considered as a reduction in landfill disposal.

   Email mailto:SLCP.organics@calrecycle.ca.govand please include Article 2 in the subject line of your email.

Schools and Local Education Agencies

1. **Are private schools considered non-local entities or local education agencies?**

   No. Private schools meet the definition of a commercial business, a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or multifamily residential dwelling.

2. **If the jurisdiction qualified for a low-population, rural exemption, or elevation waiver, do unified school districts within the jurisdiction also qualify for the waiver?**

   If a jurisdiction is granted a low –population, rural exemption or elevation waiver, then the local education agency will not have to comply with the requirements in Article 5. If the jurisdiction does not have to comply with Article 3 and provide collection services, then there will be no collection services for these entities to utilize to meet the requirements in Article 5.

3. **What type of containers are required for classroom use?**

   Classroom containers should reflect the type of collection service the local education agency has. Additionally, if organics are not present in the classroom, organics bins are not required in the classroom.

4. **How often should local education agencies inspect containers?**

   Though there is no set number of inspections specified, local education agencies are required to inspect containers periodically to ensure organics recycling participation and container contamination minimization. For example, entities may inspect more frequently at the onset of a program and taper off inspections after users are educated and adequately participating.

5. **For schools that have a central kitchen that delivers meals to additional schools, is the central kitchen or the recipient school responsible for edible food recovery?**

   The school district can decide the logistics for edible food recovery and may decide that either the central kitchen or recipient schools should coordinate with food recovery organizations and services.