

Food Recovery Questions and Answers

Edible Food Recovery Goal

- 1. Please clarify the 20 percent edible food recovery goal. Do individual jurisdictions or individual generators have to arrange for 20 percent of their edible food to be recovered for human consumption?**

SB 1383 requires the state, by 2025, to recover 20 percent of edible food for human consumption that would otherwise be disposed. This statewide goal that California must collectively achieve. It is not a goal for individual jurisdictions to achieve. To achieve this statewide goal, SB 1383's regulations require commercial edible food generators donate the maximum amount of their edible food that would otherwise be disposed (not 20 percent of it). The regulations also require jurisdictions to implement edible food recovery programs to help increase food recovery throughout the state.

- 2. Does edible food have to be recovered for human consumption?**

Yes, edible food must be recovered for human consumption by the commercial edible food generators subject to the regulations. SB 1383 requires CalRecycle to adopt regulations that include requirements intended to meet the goal that no less than 20 percent of edible food that is currently disposed be recovered for human consumption by 2025.

- 3. How will the calculation for the baseline of edible food be determined? Will the baseline year be 2014?**

The 2014 baseline year only applies to SB 1383's organic waste disposal reduction targets. A baseline year is not specified in SB 1383's statute for edible food recovery.

CalRecycle's 2018 statewide waste characterization studies will be used to help measure the edible food baseline for SB 1383. CalRecycle's 2018 disposal-based and generator-based waste characterization studies sorted food waste into eight categories based on the edibility of the food that was disposed. The eight food waste categories were defined in a manner that will allow CalRecycle to quantify the amount of edible food (food intended for human consumption) that is disposed, and the amount of potentially donatable food (edible food that could have potentially been recovered for human consumption) that is disposed.

Edible Food Recovery Regulation Sections to Review

- 1. Where can I find the edible food recovery requirements in the regulations?
Note – if there is ever a term in the regulations that is unclear, please refer back to the definitions section to see how the term is defined.**

- **The definition of “edible food”** can be found in Article 1, Section 18982 Definitions on page 53.

The commercial edible food generators (mandated food donors) that will be required to donate the maximum amount of their edible food are specified in Article 1, Section 18982 Definitions on page 58 under ‘Tier One Commercial Edible Food Generator’ and ‘Tier Two Commercial Edible Food Generator.’

- Edible Food Recovery Education and Outreach: **Article 4, Section 18985.2** (pgs. 77-78)

Edible Food Recovery Standards and Policies: Article 9, Section 18990.2 (pg. 85)

- Jurisdiction Edible Food Recovery Programs, Food Generators, and Food Recovery: **Article 10** (pgs. 85-88)
 - **Edible Food Recovery Capacity: Article 11, Section 18992.2** (pgs. 91-92)
- Jurisdiction Annual Reporting: **Article 13, Section 18994.2 Subsection (h) only.** (pg. 99, lines 7-19 only)

Definitions

1. **Does edible food have to meet all food safety requirements for it to be recovered for human consumption?**

Yes. All food that is recovered for human consumption must meet the food safety requirements of the . SB 1383’s regulations specify in the definition of ‘edible food’ that *“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.”* Please note, CalRecycle does not monitor or enforce food safety. Food safety is monitored and enforced by local environmental health departments and the California Department of Public Health.

2. **Please clarify the term “on-site food facility.”**

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.

As found in California Retail Food Code excerpt from the California Health and Safety Code, Article 2, Section 113789:

"Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

1. An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.
2. Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

"Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

1. Public and private school cafeterias
2. Restricted food service facilities
3. Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).
4. Commissaries
5. Mobile food facilities
6. Mobile support units
7. Temporary food facilities
8. Vending Machines
9. Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
10. Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.
11. Fishermen's markets
12. Microenterprise home kitchen operations
13. Catering operation
14. Host facility

For additional information on the entities that 'food facility' does not include, please refer to Section 113789 subdivision (c) of the California Retail Food Code.

CalRecycle also provided information in the Final Statement of Purpose and Necessity to help clarify the term "food facility" beyond the definition that is provided in the California Health and Safety Code.

3. Is a privately owned businesses within a grocery store part of the definition of a 'grocery store?' If they are not a part of the definition, are those businesses subject to the commercial edible food generator requirements?

If a privately owned business within a grocery store meets any of the commercial edible food generator definitions and their associated thresholds, then the business would be required to comply with the commercial edible food generator requirements specified in Section 18991.3 of the regulations. If the privately owned business does not independently meet the commercial edible food generator definitions or thresholds, it is not subject to the commercial edible food generator requirements of SB 1383.

4. Please clarify the definition of 'restaurant', as it is not clear what the threshold is for "primarily engaged" fast-food businesses with both sit-down and take-out orders.

Whether the restaurant offers sit-down or take-out orders is irrelevant because fast food is prepared for 'immediate consumption.' A fast food business must comply with commercial edible food generator requirements specified in Section 18991.3 of the regulations if:

- The business is primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, and
- The facility is equal to or greater than 5,000 square feet or has 250 or more seats.

Jurisdictions

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 county 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.

(d) Nothing in this chapter authorizes a jurisdiction to delegate its authority to impose civil penalties, or to maintain an action to impose civil penalties, to a private entity.”

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. Are inspections of food recovery organizations and food recovery services limited to the recordkeeping requirements in Article 10?

To clarify, SB 1383-related inspections of food recovery organizations and food recovery services will be limited to verifying that the recordkeeping requirements of Section 18991.5 have been met. In addition, if a food recovery organization or a food recovery service fails to meet the reporting requirements of Section 18994

(h)(2)(A), then a jurisdiction could inspect the food recovery organization or food recovery service to ensure that the reporting requirements are met.

3. Will CalRecycle be providing methodology for estimating the amount of edible food disposed by commercial edible food generators?

CalRecycle will develop a to assist jurisdictions with estimating the amount of edible food that will be disposed by commercial edible food generators that are located within the county and jurisdictions within the county.

Please note that this requirement does not require estimates to be exact or absent of uncertainty. Rather it requires that each estimate is defensible and conducted in compliance with the requirements of the edible food recovery capacity planning section of the regulations.

4. Provide guidance on how to determine if a commercial edible food generator has "intentionally" allowed food to spoil, thereby preventing it from being recovered.

One example of intentionally spoiling edible food would be if a commercial edible food generator placed edible food that could be recovered for human consumption into a dumpster and then poured bleach or some other substance over the edible food to render it inedible. There are examples of businesses practicing this kind of activity to prevent individuals from taking food from dumpsters and consuming it. Since some commercial edible food generators do intentionally spoil edible food that could be recovered for human consumption, CalRecycle added language to section 18991.3(e) stating that "*An edible food generator shall not intentionally spoil edible food that is capable of being recovered by a food recovery organization or service.*"

5. Please clarify the entity subject to enforcement action if a county is unable to determine organic waste/edible food capacity needed.

If a county fails to provide the estimates that are required by Article 11, then the county could be subject to enforcement action. If a jurisdiction or regional agency fails to provide the county with the information necessary to comply with the Article within 120 days, then the county is not required to include estimates for that jurisdiction in the report it submits pursuant to Section 18992.3. If a jurisdiction fails to comply with its requirements under Article 11, then the jurisdiction could be subject to enforcement action.

6. Are jurisdictions required to educate all food facilities or only the tier one and tier two commercial edible food generators?

Jurisdictions are not required to provide education and outreach to all food facilities or food businesses. Jurisdictions are only required to educate tier one and tier two commercial edible food generators (including non-local entity and local education agency commercial edible food generators). However, if a jurisdiction would like to provide education and outreach to all food facilities or

businesses in addition to commercial edible food generators, then they may do so.

7. Are jurisdictions required to provide education to ‘non-local entities’ and ‘local education agencies?’

Although jurisdictions will not enforce non-local entities or local education agencies, jurisdictions are still required to provide non-local entities and local education agencies with edible food recovery education and outreach pursuant to Section 18985.2 of the regulations.

8. The need for an inspection of commercial edible food generators is duplicative of inspections already required for food safety requirements.

Section 18981.2 specifies that a jurisdiction may designate a public or private entity, which could potentially include county environmental health departments, to fulfill its regulatory responsibilities. If a jurisdiction designated their environmental health department to monitor commercial edible food generator compliance, then the inspections would not be duplicative. Rather the local environmental health department could add to their existing food facility inspections to verify that commercial edible food generators are maintaining records.

In addition, if a jurisdiction designated their environmental health department to monitor commercial edible food generator compliance, then health inspectors could also provide guidance to commercial edible food generators about safe surplus food donation best practices and food safety requirements. Please note that SB 1383 does not include food safety requirements. Food safety requirements are established in the California Health and Safety Code and enforced by environmental and public health departments.

9. What if a chain supermarket or grocery store does not keep its records that individual store on site?

The expectation for compliance is that each store maintains its own records specific to the food recovery activities of that store, and that those records are made available to the jurisdiction upon request by the jurisdiction.

10. With regard to edible food recovery capacity planning, please clarify what “verifiably available” mean. Would a jurisdiction report on an edible food recovery service or organization’s ability to collect food?

The amount of capacity “verifiably available” to the county and cities within the county, was intended to address the amount of capacity that the jurisdiction has verified exists and is available for use. Jurisdictions are required to report to counties and counties are required to report to CalRecycle.

11. Provide guidance on how to determine if a grocery store or restaurant meets the square footage thresholds. Clarification is needed as to whether

this is gross or net square footage (e.g. does it include storage areas, restrooms, etc.).

CalRecycle revised the threshold for grocery stores from 7,500 square feet to 10,000 square feet. This change was made in an effort to have the threshold align with environmental health inspections of grocery stores, so that these commercial edible food generators can be more easily identified by the jurisdiction through their local environmental health department's food facility permit records. The same methodology could be used to help identify restaurants that meet the 250 or more seats or total facility size equal to or greater than 5,000 square feet threshold.

The precise language used in the regulations is a "grocery store with a **total** facility size equal to or greater than 10,000 square feet." This includes storage areas and restrooms. The same is true for restaurants. Restaurants with 250 or more seats or a **total** facility size equal to or greater than 5,000 square feet are required to comply with the commercial edible food generator requirements.

Food Recovery Organizations and Food Recovery Services

- 1. Are food recovery organizations and food recovery services required to entire into contracts or written agreements with commercial edible food generators?**

No. Nothing in SB 1383's regulations requires a food recovery organization or a food recovery service to establish a contract or written agreement with a commercial edible food generator.

- 2. Are food recovery organizations required to accept a commercial edible food generator's edible food?**

No. Food recovery organizations and food recovery services are not required to accept a commercial edible food generator's edible food. Section 18990.2 of the regulations specifies that, "(d) Nothing in this chapter prohibits an edible food recovery service or organization from refusing to accept edible food from a generator."

- 3. Do SB 1383's food recovery requirements differentiate between healthy foods eligible for donation, and "junk" food which does 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 of 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 an edible food recovery service or organization from refusing to accept edible food from a generator.”*

4. Do food recovery organizations need to be formally registered as non-profits? Would a group of people that recovers food (without being formally incorporated) be included in that definition? What about for-profit organizations?

Food recovery organizations do not need to be registered as non-profits. A for-profit entity could also be a food recovery organization. Recognizing that many different types of food recovery organizations exist, a broad definition of food recovery organization was developed to ensure that the definition would be inclusive of these non-traditional food recovery groups. The final definition of ‘food recovery organization’ is below:

(25) “Food recovery organization” means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities, including, but not limited to:

(A) A food bank as defined in Section 113783 of the Health and Safety Code;

(B) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

(C) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

5. Are food recovery organizations and services required to report to multiple jurisdictions or only one jurisdiction?

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 **one** jurisdiction the total pounds collected (from commercial edible food generators) in the previous calendar year. They should report to the jurisdiction where their primary address is physically located. 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 jurisdiction that they are physically located in.

6. What if double counting of pounds recovered occurs since food recovery organizations and food recovery services are both reporting recovery numbers?

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 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.

7. Are food recovery organizations and services required to separate out jurisdiction-specific data for recordkeeping and reporting?

No. Food recovery organizations and services that contract with or have written agreements with commercial edible food generators shall report the total pounds of edible food recovered (from commercial edible food generators) in the previous calendar year to one jurisdiction (that is the jurisdiction where the organization's or service's primary address is physically located).

8. Are food recovery organizations and services only required to report the total pounds collected from commercial edible food generators only, or the pounds collected from all food donors?

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 the total pounds of edible food that were collected or received directly from the commercial edible food generators that they have contract with or have written agreements with. 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 track or report residual food waste, as such a requirement could be overly burdensome and infeasible to comply with.

Food recovery organizations and services should have the data on pounds recovered from tier one and tier two commercial edible food generators because Section 18991.5 requires them to maintain a record of the quantity in pounds of edible food collected and received from each commercial edible food generator that they contract with or have a written agreement with pursuant to Section

18991.3(b). If food recovery organizations and food recovery services are in compliance with this section, then they will have the information that is necessary to comply with the requirement to report the total pounds collected from tier one and tier two commercial edible food generators in the previous calendar year to the jurisdiction.

9. Are food recovery organizations and services required to track and report residual food waste as a result of food recovery activities?

Food recovery organizations and food recovery services are not required to track or report the pounds of residual food waste associated with food recovery activities. They are required to track and report the total pounds of edible food recovered (from commercial edible food generators) in the previous calendar year to the jurisdiction that the organization or service is physically located in.

10. Do the SB 1383 regulations allow 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.

11. Are food recovery organizations and services required to report individual food donor's names to the jurisdictions?

There is no requirement in SB 1383's regulations for food recovery organizations or food recovery services to report donor names. They are only required to report total pounds collected in the previous calendar year from the commercial edible food generators that they contract with or have written agreements with pursuant to Section 18991.3 (b). Reporting the total pounds collected is critical for measuring progress and to help jurisdictions and CalRecycle identify if more capacity building needs to occur.

12. 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 contract/written 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.

13. Do existing contracts between local food banks and commercial edible food generators (such as grocery retailer or wholesalers) comply with the SB 1383 contract/written agreement regulatory requirements for their partner agencies not listed in these contracts?

In most cases, local governments will review food recovery contracts as proof of compliance that commercial edible food generators have arrangements in place for the collection of edible food. The contracts will not be reviewed for legal sufficiency.

The regulations allow a food bank to use a partner agency to collect edible food on behalf of the food bank. Although not a regulatory requirement, CalRecycle recommends that the local food bank include a list of partner agencies in its agreements with commercial edible food generators. This best business practice would ensure that commercial edible food generators are maintaining records consistent with the requirements in SB 1383 and would alert these businesses as to whom is working on behalf of the food bank. Jurisdictions may also find a list of partner agencies helpful.

For more information about the applicable regulations see 14 CCR Sections 18991.3–18991.4.

14. Will food banks be able to submit annual donation reports to local jurisdictions on behalf of their partner agencies?

Yes, if food banks work with partner agencies acting on their behalf to collect edible food, the food bank should compile the appropriate information from those partner agencies and report that information to the jurisdiction.

If a partner agency is acting independently from a food bank's control or direction and has a direct contract or written agreement with a commercial edible food generator, the partner agency should separately report to the jurisdiction all edible food recovery that occurs as a result of that independent and direct contract.

For more information about the applicable regulations, please refer to 14 CCR Section 18994.2(h)(2)(A).

15. Will Commercial Edible Food Generators be permitted to use the donation reports that food banks and/or Feeding America provide to them? Food banks would like to confirm that food generators are able to use the

records we send on a monthly basis, rather than generators having to come up with a scan-out or weighing process of their own.

Yes, Commercial Edible Food Generators can use these reports for their recordkeeping, if they contain all the information required by 14 CCR Section 18991.4 , which includes:

1. A list of each food recovery service or organization that collects or receives its edible food pursuant to a contract or written agreement established under Section 18991.3(b).
2. A copy of contracts or written agreements between the commercial edible food generator and a food recovery service or organization.
3. A record of the following for each food recovery organization or service that the commercial edible food generator has a contract or written agreement with pursuant to Section 18991.3(b):
 - o (A) The name, address and contact information of the service or organization.
 - o (B) The types of food that will be collected by or self-hauled to the service or organization.
 - o (C) The established frequency that food will be collected or self-hauled.
 - o (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.

Generators must also keep records of any food donated to other organizations or services not included in those reports.

For more information about the applicable regulations, please refer to 14 CCR Section 18991.4.

Commercial Edible Food Generators

1. **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?**

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.

2. **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 to protect food recovery organization 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.

3. Clarify and expand on what 'extraordinary circumstances' are in Section 18991.3(d)(1)-(2).

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. Please note, "other emergencies" could, under certain circumstances, include planned safety power shut offs to prevent wildfires and business closures due to disease pandemics.

4. Will Schools with vending machines be required to comply?

Some vending machines, such as vending machines with temperature control units, are required to have a food facility permit and be 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 and to recover the maximum amount of edible food that would otherwise be disposed. This extends beyond donating surplus food from vending machines.

5. Are commercial edible food generators required to report information to the jurisdiction?

No. Commercial edible food generators are not required to report information to the jurisdiction. However, commercial edible food generators are required to comply with recordkeeping requirements, and jurisdictions can request to see a generator's records to verify that the generator is in compliance with SB 1383's commercial edible food generator requirements.

6. Are food sales at large event and large venues that are not a part of the venue's direct concession services exempt from the food donation requirements? Examples include food trucks located in/at large venues and events, nonregulated food vendors, and persons serving food outside of the event or venue (such as tailgating).

Food vendors operating at large events and venues are not exempt from the edible food recovery regulations. Large event and venue operators must make arrangements to ensure that the food vendors operating at their event or venue are recovering the maximum amount of their edible food that would otherwise be disposed. In a situation where the food vendors at a large venue or event are not in compliance with Section 18991.3 of the regulations, the operator of the large event or venue would be responsible for compliance. SB 1383 does not regulate the activities of tailgaters.

7. Will commercial edible food generators be penalized if local food recovery organizations or services do not have the capacity to accept the edible food that the business generates?

Section 18991.3 specifies that a commercial edible food generator shall comply unless the commercial edible food generator can demonstrate extraordinary circumstances beyond its control that make such compliance impracticable. One of the extraordinary circumstances specified is a failure by the jurisdiction to increase edible food recovery capacity as required by Section 18992.2, Edible Food Recovery Capacity.

Therefore, if a jurisdiction has failed to increase edible food recovery capacity then commercial edible food generators located in that jurisdiction are not required to comply with the requirements of Section 18991.3 as long as they can demonstrate that the jurisdiction has failed to comply with SB 1383's edible food recovery capacity planning requirements. However, the regulations also specify that the burden of proof shall be upon the commercial edible food generator to demonstrate extraordinary circumstances.

SB 1383 requires jurisdictions to implement edible food recovery programs, which includes the requirement that a jurisdiction shall increase edible food recovery capacity if it is determined that they do not have sufficient capacity to meet their edible food recovery needs. Jurisdictions are required to begin edible food recovery capacity planning in 2022.

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