

Attachment 2

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

Section	Summary of Comment	CalRecycle Response	Revision Needed
Chapter 9.4 and 18835	Change Chapter 9.4 heading and Section 18835 to reflect "Mandatory Commercial Recycling of Commercial Solid Waste"	CalRecycle does not see the need to change the title or purpose statement of the regulation. This issue was discussed during the informal rulemaking and at that time CalRecycle decided to change the heading of Subsection 18837 to "Mandatory recycling of commercial solid waste by businesses."	No
18836a1	Business definition - The proposed definition should exclude industry facility/industrial facilities.	CalRecycle disagrees that this change is needed. Industrial waste is already excluded in the definition of commercial solid waste. However, industrial facilities that generate recyclables, such as paper, metal, etc., are included in the definition of businesses. CalRecycle will develop an FAQ to provide this guidance.	No
18836a1	Business definition - Amend the definition to exempt businesses from the requirement to contract with a waste hauler with mixed waste processing for waste generation that occurs off-site or that is short-term in duration.	CalRecycle disagrees that this change is needed. Statute does not allow CalRecycle to preclude certain businesses from recycling. Amending the definition to exempt the requirement to recycle would discourage any attempt at recycling in these situations. CalRecycle understands the potential challenges of this situation and will develop an FAQ and guidance for local jurisdictions so they are aware of these potential situations with remote sites.	No
18836a1	Business definition and enforcement on public entities -- Because the proposed regulation indicates that public entities are included in the definition of a business, comments questioned how jurisdictions will take enforcement action against public entities or suggested that the regulation clearly recognize that a jurisdiction has no means to take such enforcement on public entities.	CalRecycle disagrees that this change is needed. The regulations state that enforcement by jurisdictions is permissive, but not required. In addition, CalRecycle recognizes that jurisdictions do not have authority to take enforcement actions against schools. However, jurisdictions are required to provide education and outreach to public entities and monitor if they are recycling. This is further addressed in both the ISOR and FAQs. Jurisdictions are only required to provide education, outreach and monitoring to these entities to inform them of the state law to recycle and how they can recycle in the jurisdiction.	No
18836a2	Commercial Solid Waste definition – Comment that the proposed definition is inconsistent with AB 341 [PRC 42649.1 (b)].	CalRecycle disagrees that this change is needed, but to provide more clarity agrees to add a phrase that industrial waste is excluded, consistent with the PRC.	Yes (non-subst.)
18837a2	Mixed Waste Processing – Numerous comments, for example: <ol style="list-style-type: none"> 1) Requirement is self-contradictory since mixed waste processing does not yield diversion results that are comparable to source separation. 2) There is no baseline to compare results; proposal must clearly define how to measure so that jurisdictions are not penalized. 3) This is substantively different and weaker than the language in AB 341, which 	CalRecycle will revise this section to reflect the exact language in AB 341 in order to avoid the impression that it is somehow changing the standard in statute. However, as explained below, the additional language in the previous draft that resulted in this comment was not intended to change the standard in statute, but was simply designed to reflect the reality of how this requirement would be implemented.	Yes (non-subst.)

<p>allows businesses to “subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation”. The language in the regulation and ISOR might be interpreted to be weaker than the language in statute.</p>	<p>Subsection (a)(2) specifies a method that a business may take to meet the requirement of this Chapter to recycle the business’s commercial solid waste: by subscribing to a recycling service that may include mixed waste processing that diverts recyclable and/or compostable materials from disposal, yielding diversion results comparable to source separation.</p> <p>In reality, however, there is not sufficient data or standards available to make a comparison to source separation, and therefore CalRecycle is not establishing such a threshold at this time. The language in the existing statute has been interpreted differently by various stakeholders regarding whether or not it establishes a particular threshold for mixed waste processing. On its face, the statute clearly does not do so. Instead, statute has provided a subjective standard to be evaluated on a case-by-case basis that allows flexibility for compliance. While Subsection 42649.2(b)(2) allows for a recycling service that may include mixed waste processing comparable to source separation as part of that recycling service, by using the term “may” instead of “shall” in this section, it does not require it. That is, mixed waste processing is not necessarily required and therefore a recycling service can include other programmatic aspects. Thus, the recycling service may include more than just mixed waste recycling (consistent with the “may” in statute), but also emphasizes the need for the overall recycling service to yield comparable results to the other compliance alternative in (b)(1) (source separation). Mixed waste processing is intended here to include a myriad of processes to recover recyclable and/or compostable materials from solid waste. This Subsection is not intended to change marketplace dynamics or express a preference for any particular diversion activity, program or process over another. It is intended to provide local governments with flexibility in designing programs specific to their community.</p> <p>While no single quantitative recovery rate standard exists, the section does establish an expectation that overall diversion results from a recycling service that includes mixed waste processing, and that may include other programs and activities, will be comparable to the overall diversion results of recycling services that rely on source-separated processing of recyclables, and that may also include other programs and activities. In lieu of a quantitative standard, CalRecycle will review jurisdiction compliance on a case-by-case basis using the “good faith effort” standard as already provided in statute (See PRC 41825(e)). As part of its evaluation of local jurisdiction program implementation, the diversion performance of a particular facility may be considered by CalRecycle to see if the facility’s recovery appears to be significantly low (also see section 18839(b). In this case CalRecycle would take into account relevant factors such as, but not limited to, the character and composition of the solid waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, and the nature and amount of feedstock processed at facilities used for solid waste generated in the jurisdiction. That is, CalRecycle would conduct a case-by-case qualitative evaluation in the context of the entire set of programs in a jurisdiction, whether the facilities involved are mixed waste processing</p>
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18836a5 18837a2	<p>Mixed Waste Processing – In addition to the above issue re: “comparable to source separation,” two additional questions about mixed waste processing:</p> <ol style="list-style-type: none"> 1) The term "processing" needs to be defined and. Is processing limited only to physical separation or waste materials or does it include chemical, biological, or any combination of these processes? 2) The difference between mixed waste processing facility and a materials recovery facility needs to be defined. 	<ol style="list-style-type: none"> 1) CalRecycle disagrees that a definition of “processing” is needed. This provision refers to material recovery and mixed waste facilities that typically use physical means of separation (such as manual, mechanical, optical, etc.), not chemical or biological processing. 2) CalRecycle disagrees that this difference needs to be explained because it would be impossible to account for the range of variability in processing facilities and the distinction is not necessary for understanding the regulation. For example, many MRFs use a variety of technology and many MRFs take in many different variations of single streams and mixed solid waste, e.g., wet/dry streams, mixed solid waste, etc. (see CalRecycle’s 2006 MRF study for more information on this wide variety).. 	No
18836a6	<p>"Self hauler" or "self hauling" definition – Comment suggesting that the definition be changed to be consistent with AB341, specifically to “Self-hauler” or “self-hauling” means a business that transports <u>hauls</u> its own <u>commercial solid waste</u> and/or <u>recyclables</u> <u>recyclable materials</u> rather than contracting with a hauler for that service.”</p>	<p>CalRecycle disagrees that this change is needed. CalRecycle considers the words “transport” and haul” to be equivalent, but is using transport to avoid confusion with other uses of the term “hauling.” CalRecycle added the word “recyclables” to clarify the provisions in PRC 42649.2(b)(1), which refer to self-hauling of recyclables.</p>	No

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

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

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

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