

SUMMARY OF THE PROPOSED REGULATION

This chapter provides a summary and the key components of the proposed Commercial Recycling Regulation. This chapter is also intended to satisfy the requirements of Government Code section 11346.2, which requires that a non-controlling “plain English” summary of the regulation be made available to the public. Additionally, this chapter describes the rationale for each section and subsection of the regulation. This chapter also discusses alternatives considered during the development of the proposed regulation.

A. Components of the Proposed Regulation

The purpose of the proposed regulation is to increase the amount of commercial waste recycled in California by requiring businesses, multi-family residences with 5 or more units, and public entities that generate more than 4 cubic yards of solid waste per week to recycle. This increased diversion (through recycling and composting) of 1.5 to 3.5 million tons of commercial solid waste will reduce greenhouse gas (GHG) emissions by 5 million metric tons of carbon dioxide (CO₂) equivalents (MMTCO₂e) per year by 2020 and will expand the opportunity for additional recycling services and recycling manufacturing facilities in California. Additionally, local jurisdictions would be required to provide education and outreach to affected businesses and to monitor compliance with the proposed regulation. The proposed regulation includes the following components:

- Requires businesses, multi-family complexes of 5 or more residential units, and public entities that generate 4 cubic yards or more of trash per week to recycle solid waste that they generate by selecting one, or any of combination of the following: subscribing to a recycling service, source separating their material and self-hauling to a recycling facility, allowing for the pick-up of recyclables, and/or having their material processed in a mixed waste processing facility that yields diversion results comparable to source separation.
- Requires each local jurisdiction, regardless of whether the jurisdiction has met its AB 939 50 percent diversion requirement, to implement a commercial recycling program by July 1, 2012, that provides education, outreach and monitoring of businesses subject to the Commercial Recycling Regulation. If a jurisdiction already has a commercial recycling program that targets businesses required to comply with the regulation, and if the program includes education, outreach, and monitoring elements, it would not be required to implement a new or expanded program. Because the jurisdiction requirement is to only provide education/outreach/monitoring to inform businesses of their obligation to recycle and enforcement by local jurisdictions is not required, jurisdictions need not have legal control over the businesses.
- Establishes general criteria for education and outreach to provide information explaining the requirements of the Commercial Recycling Regulation, as well as,

the recycling opportunities available, within the jurisdiction. Jurisdictions have flexibility to conduct education and outreach that fits their existing programs and resources. For example, the jurisdiction may choose whether they or the hauler(s) or community groups conduct these activities, or they may choose a combination. Jurisdictions are also encouraged to utilize existing programs to incorporate information about the new state requirement, such as an existing website, newsletter, etc., to maximize outreach opportunities.

- Establishes general criteria for monitoring of affected businesses (businesses, multi-family complexes of 5 or more residential units, and public entities that generate 4 cubic yards or more of trash per week) and includes assessing if affected businesses are subscribing to and participating in recycling services, and notifying affected businesses that are not in compliance with these regulations. This is necessary to ensure that affected businesses that are required by these regulations to recycle commercial waste are identified and monitored, and that they are notified if not in compliance. Jurisdictions have flexibility to implement monitoring that fits their existing programs and resources. For example, the jurisdiction may choose whether it and/or the hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to inform businesses of the state requirement to recycle, such as letters that are sent to businesses, on-site visits, phone calls from the hauler's sales representative, or other approaches to maximize resources. Jurisdictions might also choose to phase in monitoring over time depending on how many businesses are in the jurisdiction.
- Identifies commercial recycling program options that may be used by local jurisdictions to implement the regulation including: implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the franchise contract or agreement, and/or requiring that all commercial recycling materials go through a mixed waste processing system that yields diversion results comparable to source separation.
- Allows jurisdictions the flexibility to implement a commercial program that meets their local needs and works with their existing infrastructure. For example, a jurisdiction's recycling program may include an enforcement component; the enforcement component may include all businesses subject to a jurisdiction's recycling program or a subset of these businesses; and, a jurisdiction's recycling program may apply to businesses beyond those as defined in this regulation.
- Recognizes rural jurisdictions' limitations (such as small geographic size, low population density, or distance to markets) when CalRecycle evaluates program implementation and makes a determination regarding whether a rural jurisdiction is making a "good faith effort" to implement a commercial recycling program.
- Protects existing franchise agreements, contracts, licenses, and the right of businesses to sell or donate recyclable materials.

- Allows property owners of multi-family complexes to comply with requirements by requiring, if needed, tenants to source separate their recyclable materials.
- Makes CalRecycle responsible for evaluating and enforcing jurisdiction performance in implementing the mandatory commercial recycling program, and for measuring GHG emissions reductions associated with commercial recycling at the statewide level.
- Provides ARB with the ultimate authority for oversight and implementation of the proposed regulation, including, if required, use of ARB's statutory enforcement procedures.

B. Requirements of the Proposed Regulation

1. Purpose (section 95620)

The purpose of this Article is to implement the Mandatory Commercial Recycling regulation pursuant to Section 38561 of the Health and Safety Code to reduce greenhouse gas emissions (GHG) by five million metric tons of carbon dioxide equivalents. The purpose of this regulation is to reduce these GHG emissions by diverting commercial solid waste that would otherwise be landfilled to recycling and composting efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California. This could provide increased feedstock for California recycling manufacturing facilities.

2. Definitions (section 95621)

Section 95621 is necessary to explain a number of technical and administrative terms from the PRC that appear in this Article that are not contained in the Health and Safety Code and therefore, require definition to ensure regulatory consistency and clarity.

Subsection 95621(a)

Because this proposed regulation will be adopted pursuant to AB 32 and appear in the regulations governing ARB, for convenience and to insure regulatory consistency and clarity, subsection (a) is necessary to explain that, except as specifically noted in the proposed regulation, the technical and administrative terms in this Article incorporate the definitions of those terms that appear in the PRC sections pertaining to CalRecycle.

Subsection 95621(b)

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

Subsection (b)(1)

Subsection (b)(1) defines the term “Annual Report.” This subsection is necessary to clarify the type of report required and the method in which it is to be submitted, which is electronically.

Subsection (b)(2)

Subsection (b)(2) is necessary to clarify that the term “CalRecycle” used in this Article means the Department of Resources Recycling and Recovery.

Subsection (b)(3)

Subsection (b)(3) defines the term “Jurisdiction.” This subsection is necessary to clarify which types of governmental entities are subject to the requirements of section 95623 through section 95625.

Subsection (b)(4)

Subsection (b)(4) defines the term “Business.” This subsection is necessary to clarify which types of commercial or public entities are subject to the requirements of this Article, and to explicitly state that public entities are included. Public entities include military installations, school districts, schools, federal, state, local, regional agencies or facilities, special districts, California State Universities, Universities of California, and community colleges. Additionally, the definition of business includes strip malls containing two or more commercial entities. This also clarifies that the threshold for businesses and multi-family residences of 5 units or more is 4 cubic yards of commercial solid waste per week, not 4 cubic yards of commercial solid waste and recyclables. This makes a distinction between recyclable materials that already are separated prior to any solid waste being discarded, versus potentially recyclable materials that are not separated and instead are included in the solid waste being discarded. Requiring the threshold to only include solid waste should make it easier for a jurisdiction to determine which businesses fall under the regulation; a jurisdiction does not have to conduct a generation study to determine if 4 cubic yards of commercial solid waste is generated. Within this definition then the term “generates” refers to commercial solid waste produced, not the amount of solid waste diverted plus the amount of solid waste disposed.

Subsection (b)(5)

Subsection (b)(5) defines the term “Commercial solid waste.” This subsection is necessary to clarify the types of material that shall be recycled in order to meet the requirements of this Article. Also, commercial solid waste does not include solid waste from single family residences or multi-family residences of less than 4 units.

Subsection (b)(6)

Subsection (b)(6) defines the terms “Diversion” or “divert.” This subsection is necessary to clarify the required end result of a jurisdiction’s implementation of its commercial recycling program, specifically to reduce the amount of solid waste being disposed of in landfills.

Subsection (b)(7)

Subsection (b)(7) defines the term “Disposal.” This subsection is necessary to clarify the activity that a business shall minimize through diversion.

Subsection (b)(8)

Subsection (b)(8) defines the term “Franchise.” This subsection is necessary to clarify that the existing contractual and other legal obligations between a jurisdiction and a hauler to transport solid waste would not be modified or abrogated by this Article. For purposes of these regulations the definition for “Franchise” is limited to commercial solid waste.

Subsection (b)(9)

Subsection (b)(9) defines the term “Hauler.” This subsection is necessary to clarify the action required of businesses regarding movement of commercial solid waste. This action includes either self-haul or subscribing to a service that hauls.

Subsection (b)(10)

Subsection (b)(10) defines the term “Landfill.” This subsection is necessary to ensure regulatory clarity and consistency with CalRecycle regulations.

Subsection (b)(11)

Subsection (b)(11) defines the term “Mixed Waste Processing.” This subsection is necessary to clarify that the option for a business to subscribe to a recycling service that includes mixed waste processing means a service that processes solid waste that contains both recyclable and compostable materials and trash.

Subsection (b)(12)

Subsection (b)(12) defines the terms “Recycle” or “recycling.” This subsection is necessary to clarify the type of program a business shall undertake and a jurisdiction shall implement to satisfy the requirements of this Article; and to assure regulatory clarity and consistency with existing definitions in CalRecycle regulations. For purposes of this regulation, recycling does not include transformation as defined in PRC 40201. However, this does not prohibit commercial solid waste from being sent to transformation facilities as long as the existing requirement is met regarding front-end processing to remove recyclable materials to the maximum extent feasible, and it does not change the provision that allows jurisdictions to use transformation to satisfy up to a maximum of 10 percent of their per-capita disposal rate. Under limited circumstances, this requirement may be met even if a small proportion of businesses have their waste taken directly to the transformation facility without processing, where it has been determined that those loads are of such a nature that they: (1) contain a small amount of recyclables; and/or (2) would contaminate the recyclables in other loads.

Subsection (b)(13)

Subsection (b)(13) defines the terms “Recyclables” and “recyclable materials.” This subsection is necessary to clarify what materials are considered as being subject to or able to be counted toward compliance with the regulation.

Subsection (b)(14)

Subsection (b)(14) defines the terms “rural city” and “rural county” and “rural regional agency.” The subsection is necessary to clarify which jurisdictions are considered rural.

Subsection (b)(15)

Subsection (b)(15) defines the terms “Self hauler” or “self-hauling.” This subsection is necessary to add clarity to an option for a business to consider for meeting the requirement to recycle its commercial solid waste. One option is transporting its own waste to a recycling facility.

Subsection (b)(16)

Subsection (b)(16) defines the terms “Source separating” or “source separation.” This subsection is necessary to clarify the process required of the owner or operator of a business to recycle its commercial solid waste when choosing the option described in subsection 95622(a) to either self-haul or subscribe to a service that hauls the recyclable materials separately from the solid waste to divert them from disposal.

Subsection (b)(17)

Subsection (b)(17) defines the term “Solid waste.” This subsection is necessary to define the types of materials subject to requirements of this Article and to assure regulatory clarity and consistency with the definitions in CalRecycle regulations.

Subsection (b)(18)

Subsection (b)(18) defines the term “Transformation.” This subsection is necessary to clarify that there is no change to the existing interpretation of section 41783 of the PRC.

3. Mandatory Recycling of Commercial Solid Waste by Businesses (section 95622)

Section 95622 specifies the requirements a business shall meet to recycle its commercial solid waste.

Subsection (a)

Subsection 95622(a) specifies a business shall reuse, recycle, compost, or otherwise divert its commercial solid waste from disposal by either or both of the following materials management options described in subsection 95622(a)(1) or subsection 95622(a)(2). This is necessary to define the party responsible for recycling commercial solid waste.

Subsection (a)(1)

Subsection (a)(1) specifies methods that a business may take to meet the requirement of this Article to recycle the business’ commercial solid waste: by source separating recyclable materials and self-hauling these separately from the solid waste to a recycling facility, or subscribing to a service that hauls these source-separated recyclable materials to a recycling facility, and/or otherwise arranging for the pick-up of recyclables. This is necessary to inform business owners, operators, and employees of

actions they may take to meet the requirement that commercial solid waste generated as part of business operations is recycled.

Subsection (a)(2)

Subsection (a)(2) specifies a method that a business may take to meet the requirement of this Article to recycle the business's commercial solid waste: by subscribing to a recycling service that includes mixed waste processing that diverts recyclable materials from disposal and that yields diversion results comparable to source separation. This Subsection does not express a preference for any particular diversion activity, program or process over another. However, while no single quantitative 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, will be comparable to the overall diversion results of recycling services that rely on source-separated processing of recyclables. The diversion performance of a particular activity, program or process will be evaluated by CalRecycle on a case-by-case basis as part of its evaluation of local jurisdiction program implementation to see if the recycling rate of the activity, program or process appears to be significantly low. In this case CalRecycle would take into account relevant factors such as, but not limited to, the character and composition of the waste stream generated in the jurisdiction, the nature of collection systems in the jurisdiction, and the nature and amount of feedstock processed at facilities used for waste generated in the jurisdiction. This is necessary to provide information to business owners, operators, and employees with another option to meet the requirement to recycle commercial solid waste generated as part of business operations.

Subsection (b)

Subsection (b) clarifies that property owners of multi-family complexes may require tenants to source separate their recyclable materials. Tenants in multi-family complexes must source separate their recyclable materials if required by the property owner.

Subsection (c)

Subsection (c) specifies that each business is responsible for ensuring and demonstrating compliance with the requirements of section 95622. It also specifies that the activities a business undertakes pursuant to subsection 95622(a) shall be consistent with local requirements, including, but not limited to, a local ordinance or agreement applicable to the collection, handling or recycling of solid waste. This is necessary to inform businesses of their responsibilities to ensure and demonstrate compliance with the commercial recycling requirement. In addition, this allows a jurisdiction and CalRecycle to determine whether or not a business is in compliance with the commercial recycling requirements of this Section.

Subsection (d)

Subsection (d) specifies that except as expressly set forth in subsection 95622(e)(3), the authority of a jurisdiction is not limited by this section and that it may adopt, implement, or enforce a more stringent or comprehensive recycling program and that

businesses located in such a jurisdiction are required to comply with local requirements. This is necessary to inform affected parties that in regards to more stringent or comprehensive recycling programs, a local jurisdiction is not limited by the statewide requirements for a business to recycle its commercial solid waste and businesses within a jurisdiction shall, at minimum, comply with the more stringent requirements (either statewide or local). This allows jurisdictions a level of autonomy to adopt, implement, or enforce more stringent or comprehensive recycling programs more suited to local conditions.

Subsection (e)

Subsection (e) specifies that legal mechanisms and rights described in this Subsection shall not be modified or abrogated by section 95622. This is necessary to assure relevant parties that this subsection does not affect legal mechanisms and rights.

Subsection (e)(1)

Subsection (e)(1) specifies that a franchise agreement granted or extended by a city, county, or other local government agency cannot be modified or abrogated by section 95622. This is necessary to assure franchisees that this section does not modify or abrogate a franchise agreement granted by local government. This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing franchise agreement.

Subsection (e)(2)

Subsection (e)(2) specifies that a contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local government agency cannot be modified or abrogated by section 95622. This is necessary to ensure that this section does not modify or abrogate a contract, license, or permit to collect solid waste granted by local government. This offers protection from the threat of unforeseen and disruptive changes to an existing contract, license, or permit to collect solid waste.

Subsection (e)(3)

Subsection (e)(3) specifies that nothing in these regulations is intended to prevent or otherwise regulate the right of a business prior to discarding materials to sell, donate, or otherwise legally dispose of its recyclable materials. This subsection is a codification of statutory and case law that protects a business from being required to sell or exchange its recyclable materials at less than fair market value, and allows a business to donate its recyclable materials to another entity for reuse or recycling prior to discarding them.

Subsection (e)(4)

Subsection (e)(4) clarifies that interpretation of the provisions of PRC section 41783 are not affected by this regulation. Commercial solid waste may be taken to a transformation facility, as long as the existing requirement in PRC section 41783 for front-end processing to remove recyclable materials to the maximum extent feasible is met. For example front-end processing includes source-separating recyclables or processing material at a mixed waste processing facility. The subsection clarifies that there is no change to the existing provisions of section 41783 of the PRC related to

transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. A relatively small number of businesses may also have waste taken directly to a transformation facility without front-end processing under limited circumstances; this is limited to situations where it has been determined that those loads are of such a nature that they contain a small amount of recyclables or would contaminate the recyclables in other loads.

4. Implementation of Commercial Recycling Program by Jurisdictions (section 95623)

Section 95623 specifies the requirements a jurisdiction shall meet to implement a commercial recycling program.

Subsection (a)

Subsection (a) specifies that effective July 1, 2012, each jurisdiction shall implement a commercial recycling program that diverts commercial solid waste generated by businesses, as defined in subsection 95621(b)(4). This is necessary to define the party responsible and timeline for implementing a commercial recycling program.

Subsection (b)

Subsection (b) specifies that, in addition to the businesses defined in subsection 95621(b)(4), the businesses subject to commercial recycling may also include any other commercial entity that the jurisdiction identifies as being a source of commercial solid waste. This section is necessary to allow jurisdictions the flexibility to include commercial entities that are sources of recyclable materials that otherwise do not meet the subsection 95621(b)(4) definition of business.

Subsection (c)

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

Subsection (d)

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

Subsection (e)

Subsection (e) makes it explicit that if, in order to satisfy the requirements of this Article,

a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of PRC section 41800 et seq. In addition, this subsection specifies that the jurisdiction shall include the addition or expansion of a commercial recycling program in its electronic annual report. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' implementation of their commercial recycling programs, but offers relief to jurisdictions by exempting them from the statutory requirement to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.

Subsection (f)

Subsection (f) specifies that the recycling program adopted pursuant to subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses, to recycle; requiring a mandatory commercial recycling program, through a franchise agreement or contract; or requiring that commercial solid waste from businesses be sent to a mixed waste processing facility. This is necessary to inform jurisdictions of optional components that may be included in a recycling program. Additionally, this clarifies that a policy or ordinance cannot limit the right of a business to donate, sell or otherwise dispose of its recyclable materials, as provided by section 41952 of the PRC.

Subsection (f)(1)

Subsection (f)(1) clarifies that as part of developing a commercial recycling program a jurisdiction needs to consider whether an exemption is warranted for multi-family complexes that lack sufficient space to provide additional recycling bins.

Subsection (g)

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

- 1) Electronic: Place information on the jurisdiction's website that informs businesses of the state requirement to recycle and explains how businesses can recycle in the jurisdiction. The information placed on the website could include contact information for the franchise hauler for service information, locations to self-haul recyclables to, and other relevant information.
- 2) Print: Send out information to the affected businesses via a brochure, letter, or newsletter. At a minimum, this information should be sent annually, but could be done more frequently.

- 3) **Direct Contact:** Present at business forums, such as the Chamber of Commerce, and/or provide technical assistance through waste assessments to explain the state requirement and how businesses can recycle in the jurisdiction. Provide a contact person that businesses can call to ask questions.

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

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

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

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

Subsection (h)

Subsection (h) specifies that the commercial recycling program shall include identification and monitoring of businesses, to assess if businesses are complying with subsection 95622(a). In addition, this subsection specifies that the jurisdiction shall, at a minimum, notify businesses that are not in compliance with these regulations. This is necessary to ensure that businesses required by these regulations to recycle commercial solid waste are identified and monitored, and that they are notified if not in compliance. While specific elements of a jurisdiction's monitoring program will be unique the following are examples of what jurisdictions could do annually to notify businesses that are out of compliance with the state requirement and how the businesses can comply. The jurisdiction may choose whether the jurisdiction and/or hauler(s) conduct these activities. Jurisdictions are encouraged to utilize existing programs to incorporate information about the new state requirement, such as letters that are sent to businesses, notifications sent electronically, on-site visits, phone calls from the hauler's sales representative, etc., to maximize resources. Jurisdictions might also choose to phase in monitoring depending on how many businesses are in the jurisdiction, including phasing in monitoring to focus first on multi-family residences with 16 units or more.

Examples related to monitoring include the following:

- 1) The jurisdiction, if it is a city run program, or the franchise hauler(s) would track businesses and report to the jurisdiction on those businesses that are not recycling.
- 2) For those businesses that are not complying, either the jurisdiction or the hauler would send a notice to the business to inform them of the state requirement and how the business can recycle in the jurisdiction.

An additional approach to monitoring that jurisdictions might choose is the following:

- 3) Either the hauler or the jurisdiction could follow-up in person or with a phone call with the businesses that are not in compliance with the state regulation. The purpose of this follow-up would be to assist the business with identifying how it can recycle in the local jurisdiction.

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

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

Subsection (i)

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

Subsection (i)(1)

Subsection (i)(1) specifies that an additional component of the recycling program may include, but is not required to include, enforcement. If an enforcement component is implemented, jurisdictions may include, a penalty or fine structure that, consistent with a jurisdiction's authority, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. In addition, this subsection specifies that consistent with a jurisdiction's authority any fees or penalties generated by the enforcement program could, in the jurisdiction's discretion, be used to pay the costs of operation, outreach, education, and other associated program costs. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program. In developing compliance criteria for an enforcement program, a jurisdiction could consider a multi-family complex owner's effort to comply with recycling requirements. Criteria for exempting a multi-family complex owner from enforcement

penalties could include the owner not being able to get a hauler to provide recycling services to the complex, or the efforts the owner has made to address tenants' refusal to source separate their recyclables.

Subsection (i)(2)

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

Subsection (i)(3)

Subsection (i)(3) specifies that an additional component of the recycling program may include exemptions deemed appropriate by the jurisdiction including, but not limited to, zoning requirements, lack of storage space, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (i)(4)

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

Subsection (j)

Subsection (j) specifies that each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, monitoring, and, if applicable, enforcement efforts if the jurisdiction has implemented enforcement program, by providing updates in its electronic annual report. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' recycling programs without requiring jurisdictions to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.

Subsection (k)

Subsection (k) specifies that the recycling program implemented by the jurisdiction does not limit the right of any business prior to discarding the material to sell, donate, or otherwise dispose of its recyclable materials. This subsection is necessary to protect a business from being required by a jurisdiction's recycling program to sell or exchange its recyclable materials at less than fair market value, or donating its recyclable materials to another entity for reuse or recycling.

5. CalRecycle Review (section 95624)

Section 95624 specifies the oversight responsibilities of CalRecycle in ensuring a jurisdiction implements a commercial recycling program in accordance with this Article.

Subsection (a)

Subsection (a) specifies it is CalRecycle's responsibility to review a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program. Also, this subsection specifies the commencement date and mechanism for this review. This is necessary to clarify the responsibilities of CalRecycle in reviewing a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program.

Subsection (b)

Subsection (b) specifies that CalRecycle may also review whether a jurisdiction is in compliance with its requirements under this Article to implement a commercial recycling program any time it receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement its program. This is necessary to provide CalRecycle with an additional method for determining whether a jurisdiction is in compliance with its requirements under this Article to implement a commercial recycling program, other than through review of a jurisdiction's Source Reduction and Recycling Element and Household Hazardous Waste Element. Also, this is necessary to clarify that CalRecycle can act any time it determines that a jurisdiction is not meeting its requirements under section 95623.

Subsection (c)

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

Subsection (c) also specifies that a jurisdiction's failure to implement its commercial recycling program may be a sufficient basis for issuance of a compliance order, even if

the jurisdiction has met its AB 939 50 percent per capita equivalent disposal target. This is necessary to ensure that in the event a jurisdiction fails to implement its commercial recycling program, CalRecycle can issue a compliance order for achieving compliance. This is necessary to ensure each jurisdiction is meeting the requirements of this Article to implement a commercial recycling program.

Subsection (c)(1)

Subsection (c)(1) specifies that in its evaluation of a jurisdiction’s “good faith effort,” CalRecycle may include, but is not limited to, considering the extent to which the businesses are complying with subsection 95622(a), including information on the amount of disposal that is being diverted from the businesses, if available, and the number of businesses that are subscribing to service. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program.

Subsection (c)(2)

Subsection (c)(2) specifies that in its evaluation of a jurisdiction’s “good faith effort,” CalRecycle may include, but is not limited to, considering the recovery rate of the commercial waste from the material recovery facilities that are utilized by the 14CCR subsection 18809.4. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a “good faith effort” to implement a commercial recycling program.

Subsection (c)(3)

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

Subsection (c)(4)

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

Subsection (c)(5)

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

Subsection (c)(6)

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

Subsection (c)(7)

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

Subsection (d)

Subsection (d) specifies that if, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program, CalRecycle shall issue a compliance order with a specific schedule for achieving the requirements of this Article. This is necessary to ensure that a jurisdiction that is not complying with the requirements to implement a commercial recycling program is issued a compliance order with a specific schedule for achieving these requirements.

Subsection (e)

Subsection (e) specifies that the compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision.

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

Subsection (f)

Subsection (f) specifies that CalRecycle shall hold a public hearing to determine whether the jurisdiction has complied with the terms of the compliance order in subsection 95624(d). If CalRecycle determines that the jurisdiction has failed to implement its compliance order and meet the requirements of section 95623, CalRecycle shall take additional enforcement action pursuant to an ARB/CalRecycle Enforcement Agreement, or, if an Enforcement Agreement does not exist, CalRecycle shall, within 60 days document its determination that the jurisdiction remains out of

compliance, forward that documentation and make recommendations to the ARB for further enforcement action pursuant to Part 6, Division 25.5 (section 38500 of the HSC).

6. ARB Oversight (section 95625)

Section 95625 is necessary to explain ARB's role and function of responsibility and authority for oversight in implementation and, if necessary, enforcing the proposed regulation. AB 32 contains provisions in California HSC sections 38510 and 38530 that designate ARB as the state agency to monitor and regulate GHG emissions, and that require ARB to adopt regulations requiring reporting and verification of GHGs, the program for which ARB is to monitor and enforce (section 38580). Although CalRecycle will implement the regulations and investigate potential violations thereof, ARB retains the oversight authority to enforce and subject violators to penalties for non-compliance as stated in HSC sections. In the unlikely event that CalRecycle's enforcement efforts do not sufficiently achieve the goals of the program and ARB enforcement action is needed, then ARB may take steps as provided for in its existing statutes. A violation of the proposed requirements may result in civil and criminal penalties. The extent of the penalty would depend on the willfulness of the violation, the length of time of the noncompliance, the magnitude of the noncompliance, and other pertinent factors, consistent with the provisions outlined in HSC section 38580.

C. Regulatory Alternatives

California Government Code subsection 11346.2 requires ARB to consider and evaluate reasonable alternatives to the proposed regulation. Staff evaluated two key alternatives to the proposed regulation to implement mandatory commercial recycling. As presented to and recommended by CalRecycle, ARB has made a preliminary determination that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as or less burdensome to affected private persons than the proposed regulation.

1. No Action

A "no action" alternative would forego adoption of the proposed regulation. This alternative was rejected as it would result in failure to reduce GHG emissions from waste generated by businesses that is currently disposed in landfills. ARB is mandated to adopt standards to achieve the maximum technologically feasible and cost-effective reductions in GHG emissions.

2. Voluntary Commercial Recycling Measure

In developing the Commercial Recycling Regulation, staff discussed whether to propose a mandatory or voluntary approach. Staff initially proposed a voluntary approach, but subsequently a mandatory recycling approach was required because ARB and CalRecycle staff concluded that the volume of material needed to be recycled to meet the GHG reductions goal for commercial recycling could not be achieved by voluntary

measures. Support for this conclusion includes review of existing local recycling programs, data from statewide waste characterization studies, local studies of commercial recycling activities, and stakeholder feedback from the workshops.