Attachment – Proposed Draft Regulation to Require Commercial Businesses to Recycle

DRAFT PROPOSED REGULATORY TEXT

MANDATORY COMMERCIAL RECYCLING

TITLE 14.

DIVISION 7.

CHAPTER 9.4.

MANDATORY COMMERCIAL RECYCLING

§18835. Purpose.

This Chapter implements the Mandatory Commercial Recycling regulation pursuant to §42649 of the Public Resources Code. The purpose of this regulation is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

§18836. Definitions.

(a) The following definitions shall govern the provisions of this Chapter.

(1) "Business" means any commercial or public entity, that generates four cubic yards or more of commercial solid waste per week, including, but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or nonprofit entity, strip mall (e.g. property complex containing two or more commercial entities), industrial facility, school, school district, California State University, community colleges, University of California, special district or a federal, state, local, regional agency or facility. For purposes of this Chapter,

"business" also includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated.

(2) "Commercial solid waste" means all types of solid waste, including recyclable materials that are discarded from businesses as defined in subdivision (1), but does not include waste from single family residences or multifamily units of less than 5 units.

(3) "Franchise" means any agreement between a jurisdiction and a hauler for transporting commercial solid waste.

(4) "Hauler" means any person, commercial or public entity which collects, hauls, or transports solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll off truck, side-load, front-load, or rear-load garbage truck, or a trailer.

(5) "Mixed Waste Processing" means processing solid waste that contains both recyclable and/or compostable materials and trash.

(6) "Self hauler" or "self hauling" means a business that transports its own waste and/or recyclables rather than contracting with a hauler for that service.

(7) "Source separating" or "source separation" means the process of removing recyclable materials from solid waste at the place of generation, prior to collection, and placing them into separate containers that are separately designated for recyclables.

§18837. Mandatory recycling of commercial solid waste by businesses.

(a) On and after July 1, 2012, a business shall take at least one of the following actions in order to reuse, recycle, compost, or otherwise divert commercial solid waste from disposal:

(1) Source separating recyclable and/or compostable materials from the solid waste they are discarding and either self-hauling, subscribing to a hauler, and/or otherwise arranging for the pick-up of, the recyclable and/or compostable materials separately from the solid waste to divert them from disposal.

(2) Subscribing to a service that includes mixed waste processing alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials from disposal, and yielding diversion results comparable to source separation.

(b) To comply with §18837(a), property owners of commercial or multi-family complexes may require tenants to source separate their recyclable materials. Tenants must source separate their recyclable materials if required to by property owners of commercial or multi-family complexes.

(c) Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section. The activities undertaken by each business pursuant to §18837(a) shall be consistent with local requirements, including, but not limited to, a local ordinance, policy, contract or agreement applicable to the collection, handling or recycling of solid waste.

(d) Except as expressly set forth in §18837(e)(3), this Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction must comply with any local requirements that have been enacted.

(e) This Subsection does not modify or abrogate in any manner any of the following:

(1) A franchise granted or extended by a city, county, city and county, or other local government agency;

(2) A contract, license, or permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation; or

(3) The existing provisions of §41783 of the Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Materials sent to transformation facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

§18838. Implementation of commercial recycling program by jurisdictions.

(a) Effective July 1, 2012, whether or not the jurisdiction has met the requirements of Section 41780, each jurisdiction shall implement a commercial recycling program appropriate for that jurisdiction which is designed to divert commercial solid waste generated by businesses and that consists of the following components:

(1) The commercial recycling program shall include education and outreach to businesses. The jurisdiction shall determine the types of educational and

outreach programs to insure that the program targets the components of the jurisdiction's commercial waste stream.

(2) The commercial recycling program shall include identification and monitoring of businesses to assess if they are complying with §18837(a). If any businesses subject to these regulations are not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.

(b) The commercial 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.

(c) When adopting its commercial recycling ordinance, policy, or program, a jurisdiction may also, but is not required to, consider the following:

(1) Enforcement consistent with a jurisdiction's authority, including, but not limited to, a penalty or fine structure that, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution.

(2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses with the program;

(3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of sufficient space in multi-family complexes to provide additional recycling bins, 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.

(4) 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.

(d) The commercial recycling program shall apply to businesses, but may also apply to any other commercial entity identified by the jurisdiction as being a source of commercial solid waste.

(e) A jurisdiction may determine the specific material types included in its commercial recycling program, which could include, but are not limited to, paper

(including cardboard), plastics, glass, metals, organics, food waste, and non-hazardous construction and demolition.

(f) If, prior to July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets all requirements of this Chapter, as determined by CalRecycle pursuant to §18839, the jurisdiction will not be required to implement a new or expanded program.

(g) If, in order to satisfy the requirements of this Chapter, a jurisdiction must 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 Public Resources Code §41800 et seq.

(h) The jurisdiction shall include the addition or expansion of a commercial recycling program in its Annual Report required by §41821, et seq. of the Public Resources Code. Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and, if applicable, enforcement efforts, and the rationale for allowing exemptions, by providing updates in its Annual Report.

§18839. CalRecycle Review

(a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance with §18838 as part of its review of the jurisdiction's source reduction and recycling element and household hazardous waste element programs, pursuant to 14 California Code of Regulations §18772 and §41825 of the Public Resources Code.

(b) During its review pursuant to this Section, CalRecycle shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For this purpose, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program. During its review, CalRecycle may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":

(1) The extent to which the businesses have complied with §18837(a), including information on the amount of solid waste that is being diverted from disposal by the businesses, if available, and on the number of businesses that are subscribing to service;

(2) The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, the role of that facility in the jurisdiction's overall waste diversion and recycling system, and all information, methods, and calculations, and any additional performance

data, as requested and collected by CalRecycle from the material recovery facilities operators pursuant to 14 California Code of Regulations §18809.4;

(3) The extent to which the jurisdiction is conducting education and outreach to businesses);

(4) The extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of compliance;

(5) The availability of markets for collected recyclables;

(6) Budgetary constraints; and

(7) In the case of a rural jurisdiction, the small geographic size, low population density or distance to markets.

(c) 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 and meet the requirements of §18838, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. CalRecycle shall issue the compliance order within 30 days after making its finding of non-compliance.

(d) 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. CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order.