

## **FINAL STATEMENT OF REASONS MANDATORY COMMERCIAL RECYCLING REGULATIONS**

### **PURPOSE OF THE REGULATION**

The purpose of the proposed regulation is to clarify certain provisions of statute (AB 341, Chesbro) and provide procedures for complying with that statute. The purpose of that statute is to reduce greenhouse gas emissions by increasing the amount of commercial waste recycled in California, specifically by requiring businesses and public entities that generate 4 cubic yards or more of solid waste per week, and multifamily residences with 5 or more units, to recycle. Increasing diversion of commercial solid waste through recycling will reduce greenhouse gas (GHG) emissions by as much as 5 million metric tons of carbon dioxide (CO<sub>2</sub>) equivalents (MMTCO<sub>2e</sub>) per year by 2020.

Increasing the amount of commercial solid waste that is recycled, reused, or composted will reduce GHG emissions primarily by: 1) reducing the energy requirements associated with the extraction, harvest, and processing of raw materials; and 2) using recyclable materials that require less energy than raw materials to manufacture finished products. Increased diversion of organic materials (green and food waste) will also reduce GHG emissions by redirecting this material to processes that use the solid waste material to produce vehicle fuels, heat, electricity, or compost.

Implementation of this statute will increase the availability of recyclable materials, provide increased feedstock for recycled-content product manufacturers, and could expand the opportunity for additional recycling manufacturing facilities and associated job creation in California. From a GHG emissions standpoint, providing incentives for expanded or new recycling manufacturing infrastructure in California makes sense because most emission reductions occur at the point of remanufacturing and not at the origin of recycling. While some materials collected in California remain in the state for remanufacturing, the majority of the recycled materials are shipped to other parts of the United States or to global markets.

The proposed regulation includes the following components:

- Requires businesses and public entities that generate 4 cubic yards or more of trash per week, and multifamily complexes of 5 or more residential units, 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 consists of 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. Jurisdictions are required to provide education/outreach/monitoring to inform businesses of their obligation to recycle. However, enforcement by local jurisdictions is not required, and jurisdictions do not need to 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 and multifamily complexes 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 either a source separated or a mixed waste processing system that diverts material from disposal.
- 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, and licenses.
- Protects the existing right of a business to sell or donate its recyclable materials.
- Allows property owners of commercial and multifamily complexes to comply with the 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.

## **NECESSITY OF THE PROPOSED REGULATION**

This portion of the Statement of Reasons provides a summary of the necessity 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 pursuant to Government Code sections 11349.1, and 11346.2(b)(1), and title 1, CCR, section 10, describes the rationale for each proposed section of the regulation. The complete text of the proposed Commercial Recycling Regulation is provided in Attachment A.

The following paragraphs provide a plain English description of each of the sections of the proposed regulation and explain the necessity of each section.

### **1. Purpose (section 18835)**

The purpose of this Chapter is to clarify and provide procedures for Mandatory Commercial Recycling pursuant to Section 42649 of the Public Resources Code. The purpose of the statute is to reduce 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.

### **2. Definitions (section 18836)**

Section 18836 is necessary to explain a number of technical and administrative terms from the Public Resources Code that appear in this Chapter that require definition to ensure regulatory consistency and clarity.

**Subsection 18836(a)**

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

**Subsection (a)(1)**

Subsection (a)(1) defines the term “Business.” This subsection is necessary to clarify which types of commercial or public entities are subject to the requirements of this Chapter, 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 and industrial facilities. This also clarifies that the threshold for businesses (not including multifamily residences) is 4 cubic yards or more of commercial solid waste per week, not 4 cubic yards of commercial solid waste and recyclables. The definition distinguishes between recyclable materials that already are separated prior to any commercial solid waste being discarded – and thus excluded from the 4 cubic yards – versus potentially recyclable materials that are not separated and instead are included in the commercial solid waste being discarded. Establishing the threshold to include only commercial solid waste should make it easier for a jurisdiction to determine which businesses are subject to the regulation; a jurisdiction does not have to conduct a waste generation study to determine if 4 cubic yards of commercial solid waste is generated. Within this definition then, the term “generates” simply refers to commercial solid waste produced and disposed, excluding previously separated recyclable materials; it does not refer to other uses of the terms “generates” or “generation” that mean the amount of commercial solid waste diverted plus the amount of solid waste disposed. “Business” also includes a multi-family residential dwelling of five units or more, regardless of the amount of commercial solid waste generated.

**Subsection (a)(2)**

Subsection (a)(2) 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 Chapter. It is also necessary to correct a drafting error in statute, which used a different definition for this term that inadvertently excluded multi-family residences. Because numerous other statutory provisions clearly include multi-family residences, this definition provides consistency and clarity that commercial solid waste from multi-family residences is subject to the statutory requirements. Also, to complement and reinforce the affected Business definition, it is necessary to clarify that commercial solid waste does not include solid waste from single family residences or

multifamily residences of less than 5 units and does not include industrial waste. This definition does not make any substantive change to statute.

**Subsection (a)(3)**

Subsection (a)(3) 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 Chapter. For purposes of these regulations, the definition for “Franchise” is limited to commercial solid waste to differentiate them from other types of franchises.

**Subsection (a)(4)**

Subsection (a)(4) 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 (a)(5)**

Subsection (a)(5) 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/or compostable materials and trash. This is necessary to provide specificity on materials management options that a business can take.

**Subsection (a)(6)**

Subsection (a)(6) 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 (a)(7)**

Subsection (a)(7) 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 18837(a) to either self-haul or subscribe to a service that hauls, or arrange for the pickup of the recyclable materials separately from the solid waste to divert them from disposal.

**3. Mandatory Recycling of Commercial Solid Waste by Businesses (section 18837)**

Section 18837 specifies the requirements a business shall meet to recycle its commercial solid waste.

**Subsection (a)**

Subsection 18837(a) specifies a business shall reuse, recycle, compost, or otherwise divert its commercial solid waste from disposal by taking at least one or any

combination of the following materials management options described in subsection 18837(a)(1) or subsection 18837(a)(2). This is necessary to define the party responsible for recycling commercial solid waste and the start date.

**Subsection (a)(1)**

Subsection (a)(1) specifies methods that a business may take to meet the requirement of this Chapter to recycle the business' commercial solid waste: by source separating recyclable and/or compostable materials, alone or in combination with other programs, activities or processes that divert recyclable and/or compostable materials, and self-hauling these separately from the solid waste to a recycling facility; and/or subscribing to a hauler that transports these source-separated recyclable materials to a recycling facility; and/or otherwise arranging for the pick-up of recyclables (e.g., by independent recyclers). 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 Chapter to recycle the business' 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. This is necessary to provide information to business owners, operators, and employees about another option to meet the requirement to recycle commercial solid waste.

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.

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 or single-stream material recovery facilities.

Additionally, businesses that choose to subscribe to a recycling service are not required by statute to determine if a mixed waste processing facility that is part of that service is yielding comparable results (e.g., they do not have to survey facilities and ask for recovery data).

As for whether or not CalRecycle should develop a quantitative standard of what constitutes “comparable to source separation” for mixed waste processing, CalRecycle has committed to working on this issue in the future. Prior to the formal rulemaking, this was the subject of considerable discussion and controversy. A working group convened by CalRecycle determined that there is not sufficient information at this time to promulgate such a standard. This is due in part because of variations in feedstock, processing technologies, residuals composition, lack of reporting, etc. However, CalRecycle recognizes that future work is needed on this issue as part of its other work on AB 341 (report on how to meet 75% diversion) and that this may lead to future rulemakings that establish performance requirements for mixed waste processing facilities.

### **Subsection (b)**

Subsection (b) clarifies that property owners of commercial or multifamily complexes may require tenants to source separate their recyclable materials. Tenants in commercial or multifamily complexes must source separate their recyclable materials if required by the property owner. This provision is necessary to ensure that owners can require those persons actually generating recyclable materials and therefore in an opportune position to source separate them, to do so.

**Subsection (c)**

Subsection (c) specifies that each business is responsible for ensuring and demonstrating compliance with the requirements of section 18837. It also specifies that the activities a business undertakes pursuant to subsection 18837(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 to determine whether or not a business is in compliance with the commercial recycling requirements of this section and for an implementing or enforcing agency to take further implementation or enforcement action as appropriate.

**Subsection (d)**

Subsection (d) specifies that 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. It is also necessary to inform businesses that they shall, at a minimum, comply with the more stringent local requirements if applicable. 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, limited, or abrogated by section 18837. 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 18837. 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 18837. 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 the right of a business to sell or donate its recyclables under existing statute cannot be limited. This is necessary to protect a business from being required to sell or exchange its recyclable materials at less than fair market value, and allow 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 Public Resources Code 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 Public Resources Code 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 Public Resources Code related to transformation that allow jurisdictions to reduce their per-capita disposal rate by no more than 10 percent. Businesses whose waste goes to a transformation facility still need to comply with the requirements in subsection 18837(a); i.e., a business would not be in compliance with the regulation if it does not use one or any combination of the actions listed in subsection 18837(a) and instead all of its waste is sent to a transformation facility.

**4. Implementation of Commercial Recycling Program by Jurisdictions (section 18838)**

Section 18838 specifies the requirements a jurisdiction shall meet to implement a commercial recycling program, which are necessary to ensure that affected businesses are aware of their requirements to recycle and are doing so.

**Subsection (a)**

Subsection (a) specifies that effective July 1, 2012, whether or not the jurisdiction has met its diversion requirements under section 41780, each jurisdiction shall implement a commercial recycling program that consists of education, outreach, and monitoring. Education and outreach consists of informing businesses of the state requirement to recycle and providing information on how businesses can recycle. Monitoring entails assessing whether businesses are recycling and, if not, informing them again of the requirement. This is necessary to define the party responsible and timeline for implementing a commercial recycling program.

**Subsection (a)(1)**

Subsection (a)(1) 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 solid 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 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 information in its annual letter to businesses for business license renewals about the requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction.

A 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 multifamily complexes depending on the jurisdictions infrastructure, mechanisms for communicating with multifamily complexes, etc. For example, recognizing that multifamily 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 multifamily complexes. For example, if multifamily 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 (a)(2)**

Subsection (a)(2) specifies that the commercial recycling program shall include identification and monitoring of businesses, to assess if businesses are complying with subsection 18837(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 larger multifamily residences.

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. 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.
- 2) An additional approach to monitoring that jurisdictions might choose is the following: 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 (b)**

Subsection (b) 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 go through either a source separated or a mixed waste processing system that diverts material from disposal. This is necessary to inform jurisdictions of optional components that may be included in a recycling program.

**Subsection (c)**

Subsection (c) 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 (c)(1)**

Subsection (c)(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. This subsection is necessary to inform jurisdictions of enforcement mechanisms that they can choose for their commercial recycling program.

This subsection 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 (c)(2)**

Subsection (c)(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 (c)(3)**

Subsection (c)(3) clarifies that as part of developing a commercial recycling program a jurisdiction may consider whether exemptions are warranted for zoning requirements; lack of markets; non-generation of recyclable materials; current implementation by a business of actions that result in recycling of a significant portion of its commercial waste; or multifamily complexes that lack sufficient space to provide additional recycling bins or where the owner is unable to get a hauler to provide recycling services to the complex. This is necessary to inform jurisdictions of types of exemptions that they may deem appropriate for their commercial recycling program.

**Subsection (c)(4)**

Subsection (c)(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 (d)**

Subsection (d) specifies that, in addition to the businesses defined in subsection 18836(a)(1), 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 enact ordinances, rules or policies to make commercial recycling applicable to other commercial entities that are sources of recyclable materials within the jurisdiction and that otherwise do not meet the definition of business.

**Subsection (e)**

Subsection (e) specifies that a jurisdiction may determine the specific material types included in its commercial recycling program and provide a non-exclusive list of the 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 (f)**

Subsection (f) specifies that if, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this Chapter, the jurisdiction will not be required to implement a new or expanded 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 Chapter, the program will need to be revised to do so. This is necessary to protect jurisdictions that already implemented suitable commercial recycling programs from being required to implement a new program.

**Subsection (g)**

Subsection (g) makes it explicit that if, in order to satisfy the requirements of this Chapter, 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 Public Resources Code section 41800 et seq. 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 (h)**

Subsection (h) specifies that each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, monitoring, by providing updates in its electronic annual report. In addition, the

jurisdiction should include in its annual report an explanation, if applicable, of enforcement efforts if the jurisdiction has implemented an enforcement program and of the rationales for any exemptions allowed by the jurisdiction in its program. This is necessary to ensure CalRecycle is provided information annually on each jurisdiction's commercial recycling program without requiring the jurisdiction to revise its Source Reduction and Recycling Element when implementing a new, or expanding an existing, commercial recycling program.

## **5. CalRecycle Review (section 18839)**

Section 18839 specifies the oversight responsibilities of CalRecycle in ensuring a jurisdiction implements a commercial recycling program in accordance with this Chapter.

### **Subsection (a)**

Subsection (a) specifies CalRecycle's responsibility to review, pursuant to section 41825 of the Public Resources Code, a jurisdiction's compliance with its requirements under this Chapter to implement a commercial recycling program that consists of education, outreach, and monitoring. Also, this subsection specifies the commencement date and mechanism for this review, which is important for providing lead time to affected jurisdictions. This is necessary to clarify the responsibilities of CalRecycle in reviewing a jurisdiction's compliance with its requirements under this Chapter to implement a commercial recycling program.

### **Subsection (b)**

Subsection (b) specifies that during its review of a jurisdiction's compliance with its requirements under this Chapter, CalRecycle is required to determine whether each jurisdiction has made a good faith effort to implement its commercial recycling 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 Public Resources Code subsection 41825(e). CalRecycle has extensive experience in applying this standard in evaluating the programs contained in jurisdictions' Source Reduction and Recycling Elements. This "good faith effort" standard as provided in this Subsection takes into account the numerous considerations and factors contained in Public Resources Code subsection 41825(e)(1) through (5), as applicable to the jurisdiction. In addition to these considerations and factors, this subsection specifies a non-exclusive list of some additional specific factors pertaining to commercial recycling, that CalRecycle may include in its evaluation of a jurisdiction's "good faith effort." This subsection 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 (b)(1)**

Subsection (b)(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 18837(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 that consists of outreach, education, and monitoring of businesses.

**Subsection (b)(2)**

Subsection (b)(2) specifies additional factors CalRecycle will consider in its evaluation of a jurisdiction’s “good faith effort.” These factors may include, but are not limited to, the extent to which material recovery facilities (including mixed waste processing facilities) utilized by the businesses exhibit recovery rates that, in combination with the entire set of programs and activities in a jurisdiction, are comparable to source separation, based on 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, the role of that facility in the jurisdiction’s overall waste diversion and recycling system, the nature and amount of feedstock processed at facilities used for waste generated in the jurisdiction, 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.

**Subsection (b)(3)**

Subsection (b)(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 outreach 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 (b)(4)**

Subsection (b)(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 (b)(5)**

Subsection (b)(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 (b)(6)**

Subsection (b)(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 (b)(7)**

Subsection (b)(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 certain type of jurisdiction is making a "good faith effort" to implement a commercial recycling program.

**Subsection (c)**

Subsection (c) 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. 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 Chapter. 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 (d)**

Subsection (d) 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 Chapter to implement a commercial recycling program.

**REGULATORY ALTERNATIVES**

With respect to all sections of this Statement of Reasons, other alternatives have been considered, including a "no-action" alternative. It has been determined that: 1) no other alternative would be as effective and less burdensome to private persons while at the same time protecting human health, safety, and the environment; 2) no other alternative would lessen adverse economic impact on small business while protecting human

health, safety and the environment; and 3) no other alternative is sufficient to satisfy the purposes of these proposed regulations which is to clarify existing law and establish administrative procedures to efficiently and effectively implement the Department's responsibilities pursuant to the mandatory commercial recycling requirements of section 42649 et seq. of the Public Resources Code. The Department has determined that minimal additional clarification and procedures included in the regulations was necessary to effectuate the statute. Unless otherwise indicated, this paragraph applies to each section in the proposed regulations.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS**

The Department relied upon Assembly Bill 341 and the Notice on AB 341 contained in Tab 12.

## **ADDITIONAL FINDINGS**

### **Determination That The Action Will Not Have A Significant Impact On Business**

The Department made a determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, will not result in the creation or elimination of jobs, or the creation of new, or the expansion or elimination of existing California businesses, and do not affect small businesses because these regulations only provide procedural clarity. The Department is not aware of any cost impacts on private persons or representative businesses as a result of these regulations.

### **Local Mandate And Fiscal Determinations**

The Department has determined that the proposed regulations do not impose: 1) a mandate on local school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

### **Duplication Or Conflicts With Code Of Federal Regulations**

No unnecessary duplication or conflict exists between the proposed regulations and federal regulations contained in the Code of Federal Regulations because federal law or regulations do not contain comparable requirements.

**Finding On Necessity of Reports (Government Code section 11346.3(c))**

The Department has found that the requirement for specific reports are necessary for the health, safety and welfare of the people of the State because it will help to ensure that the requirements of these regulations are met and adequately monitored.

**THE RESPONSES TO COMMENTS IN TAB 11 ARE INCORPORATED BY REFERENCE HEREIN.**