



## DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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### NOTICE OF PROPOSED RULEMAKING

**Title 14:** Natural Resources  
**Division 7:** Department of Resources, Recycling and Recovery  
**Chapter 9.4:** Mandatory Commercial Recycling  
**Sections:** 18835-18839

### PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (CalRecycle) proposes to amend the California Code of Regulations, Title 14, Division 7, Chapter 9.4 commencing with §18835. The proposed regulations are intended to clarify the procedures for implementing Part 3 of Division 30 of the Public Resources Code §42649 through §42649.7 regarding Recycling of Commercial Solid Waste [Chapter 12.8, Statutes of 2011, Chesbro, AB 341] (Mandatory Commercial Recycling Act).

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to CalRecycle. **The written comment period for this rulemaking closes at 5:00 p.m. on December 12, 2011.** CalRecycle will also accept written comments during the public hearing described below. Please submit your written comments to either of the following CalRecycle staff:

Marshalle Graham  
Materials Management and Local Assistance Division  
California Department of Resources Recycling and Recovery  
P.O. Box 4025  
Sacramento, CA 95812-4025  
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E-mail: [climatechange@calrecycle.ca.gov](mailto:climatechange@calrecycle.ca.gov)



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## **PUBLIC HEARING**

A public hearing to receive public comments has been scheduled for **December 13, 2011**. The hearing will be held at the:

Joe Serna Jr. Cal EPA Building  
Byron Sher Auditorium  
1001 I. Street  
Sacramento, CA 95814

**The hearing will be held at 1:30 pm on December 13, 2011**, and will conclude after all testimony is given. CalRecycle requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheel chair assessable. If you have any questions, please contact [climatechange@calrecycle.ca.gov](mailto:climatechange@calrecycle.ca.gov).

## **INFORMATIVE DIGEST**

In March 2009, CalRecycle began an informal rulemaking process to develop the proposed regulations, including conducting eight informal stakeholder workshops in collaboration with the Air Resources Board (ARB). Throughout this process CalRecycle and ARB staff met with representatives of several affected stakeholder groups in an attempt to reach consensus on outstanding issues, including:

- Definition of business
- Thresholds (e.g. multi-family)
- Transformation
- Mixed waste processing
- Rural jurisdictions and “good faith effort” evaluation
- Franchise agreements and rights of businesses

These proposed regulations explain CalRecycle’s responsibilities for oversight and implementation of the Mandatory Commercial Recycling Act, as well as the responsibilities of affected businesses and jurisdictions. This rulemaking provides clarity to the new law and contains sections on the following topics: Purpose (§18835); Definitions (§18836); Mandatory recycling of commercial solid waste by businesses (§18837); Implementation of commercial recycling programs by jurisdictions (§18838); and CalRecycle Review (§18839).

More specifically, the proposed regulations:

1. Define the following terms: “Business”, “Commercial solid waste”, “Franchise”, “Hauler”, “Mixed Waste Processing”, “Self hauler” or “Self hauling”, and “Source separating” or “Source separation”.
2. Require businesses and public entities that generate four cubic yards or more of trash per week, and multifamily complexes of five or more residential units, to recycle the solid waste that they generate by selecting one, or any of combination, of the following:
  - a) Source separating, (i.e., removing recyclable and/or compostable materials from the solid waste that they are discarding and separating them into separate containers) and either: self hauling, subscribing to a hauler, and/or otherwise arranging for the pickup of these materials to divert them from disposal;
  - b) Subscribing to a service that includes mixed waste processing (i.e. recyclables and/or compostable materials and trash) and yielding results comparable to source separation.
3. Allow property owners of affected commercial and multifamily complexes the choice to require tenants to source separate their recyclable materials and require tenants to source separate these materials if required by the property owners.
4. Make each affected business responsible for ensuring and demonstrating its compliance with the proposed regulations and with any requirements by the local jurisdiction.
5. Require each local jurisdiction to implement a commercial recycling program by July 1, 2012 that consists of providing education and outreach and monitoring to businesses subject to the Mandatory Commercial Recycling Act, to inform them of their obligation to recycle.
6. Provide jurisdictions the flexibility to conduct education and outreach that fits their existing programs, resources and infrastructure and to adopt a more comprehensive or stringent program than required by the proposed regulations.
7. Establish general criteria for the jurisdictions’ obligation to monitor and assess the participation of affected businesses and multifamily complexes in recycling services, and notify affected businesses that are not in compliance with these regulations.
8. Identify commercial recycling program options that may be used by local jurisdictions to implement the regulations including: implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the jurisdictions’ 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.

9. Do not modify or abrogate existing franchises, contracts, licenses and permits regarding the collection of solid waste or the transformation provisions of PRC §41783.
10. Require jurisdictions to include the addition or expansion of a commercial recycling program in its Annual Report required by PRC §41821.
11. Make CalRecycle responsible for evaluating and enforcing the performance of jurisdictions in implementing their commercial recycling outreach, education and monitoring programs.

## **POLICY STATEMENT OVERVIEW**

To implement the Mandatory Commercial Recycling Act, CalRecycle has responsibility to evaluate each jurisdiction's implementation of its responsibilities to provide education, outreach to and monitoring of affected businesses concerning commercial recycling opportunities available within the jurisdiction. This evaluation is conducted as part of CalRecycle's existing review process of the jurisdictions' source recycling and recycling and household hazardous waste elements pursuant to 14 California Code of Regulations (CCR) and PRC §41825.

## **PLAIN ENGLISH REQUIREMENTS**

CalRecycle staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). These proposed regulations are considered non-technical and are written to be easily understood by those parties that will use them.

## **AUTHORITY AND REFERENCE**

The California Integrated Waste Management Act (Act), Part 3 of Division 30 of the Public Resources Code (PRC) §40000 et. seq., gives CalRecycle authority to provide for the protection of public health, safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC §40502 requires CalRecycle to adopt rules and regulations to implement the Act. These proposed regulations implement, interpret and make specific the statutory provisions regarding the Mandatory Commercial Recycling Act. (PRC §42649 through §42649.7). The following is a list of references cited in these proposed regulations: PRC Sections: 41780, 41783, 41800, 41821, 41825, 42649 through 42649.7, and CCR Title 14 §18772 and §18809.4.

## **FEDERAL LAW OR REGULATIONS MANDATE**

Federal law or regulations do not contain comparable requirements.

## **MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS**

CalRecycle has determined that the proposed regulations do not impose: 1) a mandate on local agencies or 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 §§17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the State.

## **EFFECT ON HOUSING COSTS**

CalRecycle has made a determination that the proposed regulations will not have a significant effect on housing costs.

## **EFFECT ON BUSINESSES**

CalRecycle has made an initial determination that, although the proposed regulations could affect approximately 470,000 businesses in California, they would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the proposed regulations clarify existing law and impose no new requirements that would result in adverse cost impacts. The types of businesses affected include specified commercial or public entities and multi-family residential dwellings.

## **EFFECT ON SMALL BUSINESSES**

CalRecycle has made an initial determination that, although the proposed regulations could affect approximately 250,000 small businesses, they will not have a significant statewide adverse economic impact, including the ability of California businesses to compete with businesses in other states because the proposed regulations clarify existing law and impose no new requirements that would result in adverse cost impacts.

## **EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA**

No new businesses are expected to be created and no existing businesses eliminated as a result of this regulation package. The purpose of these regulations is to clarify the recently passed Mandatory Commercial Recycling Act and establish administrative procedures to efficiently and effectively implement CalRecycle's responsibilities under the new law.

## **COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

CalRecycle is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

## **CONSIDERATION OF ALTERNATIVES**

CalRecycle must determine that no reasonable alternative considered by CalRecycle or that has otherwise been identified and brought to the attention of CalRecycle would be more effective in

carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. CalRecycle invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### **CONTACT PERSONS**

Marshalle Graham  
[climatechange@calrecycle.ca.gov](mailto:climatechange@calrecycle.ca.gov).

Teri Wion  
[climatechange@calrecycle.ca.gov](mailto:climatechange@calrecycle.ca.gov).

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

CalRecycle will have the entire rulemaking file, and all information that provides the basis for the proposed regulations, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations, and the initial statement of reasons. Copies may be obtained by contacting Marshalle Graham or Teri Wion at the address or phone numbers listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access CalRecycle's Internet webpage at <http://www.calrecycle.ca.gov/Climate/Recycling/default.htm>. The Final Statement of Reasons will be also available at the above listed Internet address or you may call the contact persons named above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

CalRecycle may adopt the proposed regulations substantially as described in this notice. If CalRecycle makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text -- with changes clearly indicated -- available to the public for at least 15 days before CalRecycle adopts the regulations as revised. Requests for the modified text should be made to the contact persons named above. CalRecycle will transmit any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; and all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. CalRecycle will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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