

Business Requirements for AB 341, the Statewide Commercial Recycling Mandate

What is the definition of a "business" and which businesses are required to comply?

“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 non-profit 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. The regulation does not apply to single-family dwellings, multi-family dwellings of four or fewer units, or those businesses that generate less than four cubic yards of commercial solid waste per week. Local jurisdictions can also establish other specific exemptions.

What is "commercial solid waste?"

Commercial solid waste is material generated by businesses, as defined above, that is generally disposed of in a solid waste landfill. Commercial solid waste does not include industrial waste. According to 2008 [Statewide Waste Characterization data](#), the commercial sector generates nearly three-fourths of the solid waste in California. Most of the material disposed from this sector is readily recyclable.

Are industrial facilities/sites and waste generated at industrial facilities/sites subject to the regulation?

Industrial waste, defined in Section 17225.35 of Title 14 of the California Code of Regulations, is not subject to the requirements of the proposed regulation. However, commercial solid waste generated at an industrial facility or site, for example paper, plastic, metals, cardboard, etc., could be subject to the requirements of the regulation provided the facility/site generates four cubic yards of commercial solid waste or more per week.

Are State facilities subject to the regulation?

It is important to note that many State agencies already operate under a 50% waste disposal reduction mandate under AB 75. AB 341 did not add or change the 50% diversion requirements for agencies subject to AB 75. However, it is important to note that the proposed definition in the regulation of a business includes public entities, including state agencies, schools, school districts, California State Universities, community colleges, the University of California, special districts and federal, state, local, regional agencies or facilities. Thus, any State facility that generates four or more cubic yards of solid waste per week is subject to these new recycling requirements, if they are not already recycling.

Are public housing complexes operated by local Public Housing Authorities subject to the regulation?

Complexes of 5 or more units operated by a Housing Authority would be required to provide recycling to tenants. CalRecycle is working to get the word out about Mandatory Commercial recycling to Housing Authorities.

Please clarify what is meant by a four cubic yard threshold.

The purpose of regulation is to clarify the statute for the purposes of implementation. Therefore, the definition of business in the proposed regulation includes any commercial or public entity that generates four cubic yards or more of commercial solid waste per week. This provision clarifies that the intent is that the threshold for businesses is “*four cubic yards or more,*” and not “*more than four cubic yards.*”

What activities constitute business diversion?

Businesses are required to select from any one or combination of the following activities:

- Separate recyclable materials from their solid waste stream and either self-haul, subscribe to a hauler, and/or allow the pickup of recyclables, so that the separated material is diverted from disposal to recycling, reuse, or composting activities; and/or
- Subscribe to a recycling service that includes mixed waste processing as part of a system in combination with other programs, activities, or processes that divert recyclable materials from disposal and yields diversion results comparable to source separation ([see related question](#)).

What materials do businesses need to recycle under the regulation?

The proposed regulation does not specify how much or what type of materials must be recycled by businesses, nor does it limit the types of materials that could be included in a recycling or composting program. The regulation does require that jurisdictions inform businesses about the state requirement to recycle and how they can recycle in the jurisdiction.

CalRecycle understands that each jurisdiction has its own unique set of circumstances, including different types of commercial generators, and is in a better position to determine what programs will work best to divert material from the commercial sector. The proposed regulation provides flexibility and does not dictate how a jurisdiction must implement a program or specify that a jurisdiction must implement a commercial collection program.

While the regulation does not require that jurisdictions implement a commercial collection program, every jurisdiction in the state already has some type of existing commercial recycling program. Some communities have commercial recycling programs that collect the same materials that are included in their residential single-stream program. Some communities offer organics recycling and/or construction and demolition

debris recycling programs. Other communities offer source-separated commercial recycling programs in combination with mixed waste processing of materials. Rural communities that do not have an on-site commercial collection recycling infrastructure offer drop-off programs. Finally, many businesses utilize self-haul, back-haul and independent recyclers to recycle. Some programs target specific business materials for recycling while others do not provide this level of detail. The types and sizes of businesses and industry can vary, as can the amount and types of material generated per week.

Are school districts and municipal entities required to recycle?

To the extent that public entities, including schools, school districts and other municipal entities, generate four cubic yards or more per week of commercial solid waste, then they would be required to recycle. The jurisdiction is required to provide information about the recycling requirement to schools, school districts and municipal entities. Complying with the requirement to recycle is the responsibility of the school district, municipal entity, etc. CalRecycle staff can provide assistance to the jurisdiction in working with school districts and other government agencies.

Will airports be included in the regulation, and how will air carriers be affected by the rule?

The regulatory definition of a business includes airports. Therefore, airports would be required to recycle solid waste generated on the airport's premises using one or more of the methods outlined in the regulation. In addition, airports can require airlines to handle the waste that is removed from the aircraft in California in a prescribed manner. The airlines would be required to comply with the airport's requirements, provided there is no conflict with federal requirements for solid waste handling (e.g., the USDA requirement that food waste from international flights be incinerated or sterilized). In cases of conflict, federal law preempts state, local or private regulation.

Will cruise ships be affected by the regulation?

The guidance on air carriers also applies to cruise ships (see above question).

With regards to strip malls, the proposed regulation states that “the definition includes strip malls containing two or more commercial entities.” Does this mean that the strip mall complex that a business resides in is required to recycle at a minimum level, even if many of the businesses within that complex share recycling services?

If the strip mall complex as a whole generates four cubic yards or more per week of commercial solid waste, then the individual businesses in the strip mall are required to recycle. Additionally, the regulation allows the property owner of the strip mall complex to require tenants to recycle and the regulation requires tenants to comply.

Is there an exact minimum amount of recycling that is required of a business or complex with shared services? For example, if a complex just needs to recycle, would the smallest recycling container offered by a jurisdiction be adequate for the

entire complex? Would the complex be compliant by recycling only cardboard while disposing all other materials?

AB 341 and the regulation do not specify a minimum amount of recycling. Each business will determine the level of service and materials to be diverted, subject to local requirements. Additionally, a local jurisdiction may implement more prescriptive requirements through ordinances or policies, but this is not required by law.

If there is a business that has an extensive recycling program located in a strip mall, would that business be held liable if the other tenants in the strip mall are not recycling?

No, the business would not be held liable if the other tenants in the strip mall are not recycling. However, as part of its monitoring program, the local jurisdiction would notify the businesses in the strip mall that are not recycling of the state requirement to recycle and how they can recycle.

Our agency has several work sites that do not typically generate four cubic yards of waste per week. However, the sites periodically have special events, for example construction projects, that would generate more than four cubic yards for that week. Are these sites subject to the regulation?

During the time period that a site generates and subscribes to four cubic yards of waste service, then the business will need to recycle. In addition, if each site has individual waste collection, then each site operated by a business or agency would be considered separately in determining whether the regulation is applicable.

I own a business that usually generates 3 cubic yards of refuse per week, but occasionally uses a 6 cubic yard container to collect its own street sweepings. The host jurisdiction does not have a program for recycling or composting street sweepings. Would my business be expected to recycle this material?

The proposed regulation does not address all waste streams, but it does allow flexibility to businesses and jurisdictions to address issues such as street sweepings in their individual programs. The diversion of street sweepings will depend on if there are diversion programs the business can utilize, such as a taking the material to a compost facility. The business should work with its hauler and the jurisdiction to determine if viable diversion opportunities for any specialized materials are available.

What is meant by subscribing to a service that includes mixed waste processing that diverts recyclable materials from disposal and that yields diversion results comparable to source separation?

Subsection 18837(a)(2) specifies a method that a business may take to meet the requirement to recycle the business's commercial solid waste: by subscribing to a recycling service that may include mixed waste processing that diverts recyclable and/or compostable materials from disposal, yielding diversion results comparable to source separation.

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.

The regulation states that self-hauling recyclables would be enough for a business to be considered recycling. Does self-hauling include taking recyclables from a business to an employee's or owner's residence to recycle?

In general, self-haul refers to hauling done outside of a franchise agreement. There may be local restrictions that would pertain to this particular scenario. This level of detail would need to be addressed locally, as it is not specified in the proposed regulation. Current examples of self-haul requirements implemented by California jurisdictions include:

- Sacramento County addresses self-haul requirements in its [ordinance information booklet](#) (see p.9) (PDF, 500 KB). Although it does not address the specific detail in question, it is a good demonstration of how such details could be addressed.
- Santa Barbara County provides another example of how to address the self-haul issue by requiring specific documentation and following-up with a site visit. Information about this program can be found at the county's [recycling resources website](#).

Can a business donate or sell its recyclables and still be in compliance

It is an existing right of businesses to donate or sell their recyclable material.

What information will businesses need to provide and who will it be provided to in order to demonstrate compliance?

AB 341 and the proposed regulation do not require businesses to keep numerical data about recycled materials, but local jurisdictions may choose to enact more stringent requirements to track recycling activities. Thus, independent of this regulation, information about recycling efforts may be requested from the jurisdiction, or by haulers or other agencies assigned to work with businesses on behalf of the jurisdiction. The information requested will assist the jurisdiction in determining the effectiveness of its education, outreach, and monitoring efforts. The jurisdiction may want to know more about what types of materials the business generates and the materials that are being recycled or otherwise diverted from disposal.

We are a major recycling company in California. We process waste generated on site as well. The remainder of the waste that has no economic value or use is treated and shipped to landfills to be used as ground cover. In essence everything we

process is recycled. How do we document our efforts for the jurisdiction? Would we be exempt from the regulation?

There is no formal exemption process at the state level. The jurisdiction in which the business is located makes the determination as to whether to allow exemptions. Additionally, for this example, an exemption would not appear to be necessary as the business already is recycling and therefore would be meeting the requirements of the law.

Jurisdiction Requirements

Will my city/county need to adopt a mandatory commercial recycling ordinance?

No. Some communities may choose to adopt a mandatory commercial recycling ordinance; however, an ordinance is not required. Approaches to enforcement might include: 1) requiring businesses to participate in the recycling services that are already available in the city or county, 2) requiring businesses to use a mixed waste processing facility, or 3) implementing a mandatory commercial recycling program using an ordinance.

A number of communities, such as Sacramento, Rancho Cordova, and Chula Vista, have implemented a mandatory commercial recycling ordinance. Please visit the Institute for Local Government's [commercial recycling website](#) to view sample ordinances, case studies, and sample outreach, education, and enforcement examples and review information provided by a number of jurisdictions that have implemented mandatory commercial recycling programs.

What are the jurisdiction's requirements in terms of providing education, outreach, and monitoring to businesses?

The regulation requires jurisdictions to implement education, outreach, and monitoring programs to inform businesses of the state requirement to recycle and how they can recycle in the jurisdiction. Jurisdictions should choose methods to provide education and outreach that maximize existing resources including using existing websites, brochures, on-site meetings, etc. For example, if the hauler already sends out a sales representative to work with businesses that are not recycling, then the hauler's sales representative could inform the business of the state requirement, and then assist the business in determining the best approach to recycle. Other options include using the jurisdiction's own staff, community groups, or independent recyclers to inform the businesses of the state requirement and how the businesses can recycle in the jurisdiction. If the jurisdiction already sends out letters to businesses regarding recycling opportunities, the letter could include information about the state requirement.

The requirement for jurisdictions to monitor means identifying and notifying businesses that are not recycling and informing them about the state law and the various ways that they could recycle. The methods for monitoring can differ greatly depending upon a jurisdiction's resources, hauler arrangement, etc. Some jurisdictions may choose to phase in monitoring by targeting the largest businesses the first year and bringing in other businesses in subsequent years. The jurisdiction may choose to utilize the hauler to

monitor and notify businesses that are not recycling. The jurisdiction's Local Assistance and Market Development representative can help assess if the monitoring approach seems reasonable.

CalRecycle also recommends that jurisdictions view the Institute for Local Government [webinar](#) titled *Understanding California's Proposed Commercial Recycling Regulations: What Local Agencies Need to Know About the Education, Outreach and Monitoring Requirements*. This webinar, the fifth in a series, helps local officials understand the proposed new regulation, emphasizing what they need to do to be in compliance with the education, outreach and monitoring requirements. The webinar also includes information about new tools available to help local agencies meet these challenges.

Would a jurisdiction be able to phase in education, outreach, and monitoring to different generator types, areas of the jurisdiction, etc., using a phased-in approach, or do jurisdictions need to ensure that education, outreach, and monitoring efforts to address all businesses in the jurisdiction are in place by July 1, 2012?

Yes, the jurisdiction can phase in education, outreach, and monitoring efforts. For example, a jurisdiction may want to educate and monitor in the first year the multi-family complexes that have 16 units or greater because, by law, they have an on-site manager available to coordinate with. Jurisdictions also have the flexibility to decide how they develop and implement education and outreach. For example, if multi-family complexes have owners that are located in other areas of the state or live outside California, 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.

Another approach in larger jurisdictions might be to target the largest businesses—say the 20 percent largest businesses based upon the amount of solid waste that they dispose—and then the next year move to the next largest group of businesses, and so on. The jurisdiction should communicate with its Local Assistance and Market Development representative to discuss the jurisdiction's plans for a reasonable time period to phase in its program.

If a jurisdiction opts to phase-in education, outreach and/or monitoring, what would be an acceptable timeline for the phase-in period?

The timeline for phasing in education, outreach, and/or monitoring efforts would be determined on a case by case basis in discussion with the jurisdiction's Local Assistance and Market Development representative.

Is there a rural exemption in the current regulatory language? What are the general provisions that may be or are available to rural jurisdictions under the proposed regulation?

No, neither AB 341 nor the proposed regulation includes a rural exemption. The regulation is designed to provide flexibility to jurisdictions to design programs that fit their needs. The proposed regulation in Section 18838 does state that CalRecycle may consider factors for rural jurisdictions in its evaluation of a jurisdiction's good-faith

effort to implement diversion programs. Factors for rural jurisdictions include small geographic size, low population density, and/or distance to markets. The [Initial Statement of Reasons](#) (PDF, 221 KB) also provides guidance to rural jurisdictions on commercial recycling education, outreach, and monitoring programs. In terms of providing education and outreach, rural jurisdictions could include information (i.e., about the state requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction) using an annual letter to businesses for business license renewals. For jurisdictions that do not have staff and/or a hauler to ascertain which businesses are not recycling, then an annual letter would suffice. The letter could be sent electronically or by hard copy depending upon the rural jurisdiction's situation.

Do we need to have a franchise agreement for recycling collection services to comply with the regulation?

No, a franchise agreement is not required to comply with the regulation.

Will existing franchises need to be amended to comply with this regulation?

It will be up to the local jurisdiction to make such a determination. For example, jurisdictions may find that the education, outreach, and/or monitoring programs in their current contracts can meet their needs. Thus, jurisdictions may not need to amend the franchise agreement.

Local jurisdictions may have franchise agreements that do not require commercial recycling, but include a voluntary commercial recycling program. Under the proposed regulation, would these businesses be required to subscribe to the recycling service?

The proposed regulation provides flexibility to businesses and requires that businesses choose one or any combination of the following activities:

- Separating recyclable materials from their solid waste stream and either self-hauling, subscribing to a hauler, and/or allowing the pickup of recyclables, so that the separated material is diverted from disposal to recycling/reuse/composting activities; and/or
- Subscribing to a recycling service that includes mixed waste processing as part of a system in combination with other programs, activities or processes that diverts recyclable materials from disposal and yields diversion results comparable to source separation.

If a jurisdiction has additional specific requirements for businesses, they would inform the businesses of those requirements.

My franchise agreement already requires commercial recycling service be provided to any business that requests it, but my hauler has indicated that it will need a significant rate increase to comply with the regulation. What additional requirements will be placed on the hauler that would result in cost increases?

The regulations are not directed towards haulers. Businesses are required to recycle, and jurisdictions are required to provide education, outreach, and monitoring to the businesses. Jurisdictions will determine how best to implement their education, outreach, and monitoring programs and whether they must place additional requirements upon the haulers and/or businesses in order to comply with the regulations. The proposed regulations provide flexibility and do not dictate how a jurisdiction must implement a program.

Our franchised hauler has indicated that all of its trucks currently have full routes. Therefore, to add a recycling route for commercial customers would mean the purchase of additional equipment and containers for recycling service. Will there be any financial assistance available to help offset the costs associated with implementing the regulations?

There is some limited financial assistance available through CalRecycle. This financial assistance includes existing grant programs, such as CalRecycle's City/County Beverage Container Block Grant and the Beverage Container Recycling Grants (Competitive) programs, to assist with offsetting costs for implementing recycling programs that include diversion of beverage containers. Please [see our website for additional details](#).

Additionally, the regulations allow for phased-in implementation to help in reducing costs. Thus, if the jurisdiction and hauler find that there are a large number of businesses that are not currently recycling, the jurisdiction and hauler could target a certain number of businesses and bring them into the program using a phased-in approach.

Is there anything in the regulatory language that includes a stipulation that the jurisdiction would be required to provide a curbside program? What are the specific requirements on jurisdictions to comply with the regulation?

No, a curbside program is not required. Jurisdictions are not required to provide any specified type of commercial collection program. Section 18837 of the draft regulations requires jurisdictions to provide education, outreach, and monitoring to affected businesses to inform them of the state requirement to recycle and to tell businesses how they can recycle in the jurisdiction. Regarding informing and educating businesses about recycling opportunities in the jurisdiction, the types and combinations of commercial recycling programs vary by jurisdiction and can include curbside collection, drop-offs, and utilizing mixed waste processing. Additionally, businesses may choose to self-haul material to a drop-off or recycling center, back-haul recyclables to a distribution center, arrange for the pick-up of recyclables, etc.

Many restaurant patrons enjoy their food and beverages at work, home and in locations other than point of purchase. We have found residential and commercial recycling programs can be incongruent. How or will the rulemaking process address these issues?

The regulation is focused on diverting the recyclable material disposed of by the business or at the business location. However, jurisdictions may want to consider current programs in place that serve residents and interface with commercial waste. There is a

nexus between the material generated at business locations, for example product packaging, carry out bags and take out boxes, that may become waste at another business location (i.e., place of work) or at the customer's residence. An opportunity may exist in the development of education and outreach methodologies, depending on existing infrastructure and resources, to assist customers in making better decisions about managing materials that leave a business location.

Do we need to develop a specific type of program (e.g., commercial food waste collection, on-site recycling collection, construction and demolition debris recycling) to comply with the regulations?

Jurisdictions are required to conduct education, outreach, and monitoring programs to inform businesses of the state requirement to recycle and provide information about the recycling opportunities that are available within the jurisdiction. However, a jurisdiction does not need to implement a specific type of collection program to comply with these requirements. The proposed regulations do not require specific programs, how much must be recycled, or what type of materials must be recycled by businesses. The regulations also do not limit the types of materials that could be included in a recycling program. By not specifying which materials must be recycled, jurisdictions, businesses, and service providers have greater flexibility in determining the most cost-effective approach(es) to commercial recycling.

Do the regulations change the provisions of transformation as provided for in Public Resources Code section 41783?

Subsection (e)(3) of the proposed regulations clarifies that 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.

How does a jurisdiction determine the amount of solid waste a business generates? Is it what the business subscribes to, i.e. a four cubic yard solid waste bin, even if it only fills the bin half full?

The determination of whether a business meets the four cubic yard threshold is based upon the level of service to which the business subscribes and not if they fill the bin every week. For example, a business would meet the threshold if they subscribe to having one four cubic yard refuse container picked up each week, or, conversely, a single one cubic yard refuse container serviced four times per week, etc. The regulation also distinguishes 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 (within this definition the term "generates" refers to commercial solid waste produced and disposed, excluding

previously separated recyclable materials, and not the amount of solid waste diverted plus the amount of solid waste disposed). For example, if a business has refuse service for a 3 cubic yard bin serviced once per week and also has a 2 cubic yard recycling bin serviced once per week, this business would be generating less than 4 cubic yards of trash per week and would not meet the threshold that would require it to recycle under the regulation (Note: In this scenario the business is also already recycling). Requiring the threshold to only include solid waste should make it easier for a jurisdiction to determine which businesses are required to comply with the regulation. A jurisdiction does not have to conduct a waste generation study to determine if four cubic yards of commercial solid waste or more is generated; instead, a jurisdiction can, for example, review waste subscription service.

How should a jurisdiction determine the businesses that are subject to the legislation and regulations?

Jurisdictions can utilize hauler records to determine which businesses dispose of four cubic yards or more of solid waste per week. Some jurisdictions, for example those in rural areas, might find it challenging to determine which businesses generate four cubic yards or more of commercial solid waste per week, so they may choose to provide education and outreach to all of the businesses in the community and inform them of the state requirement. In large jurisdictions, or ones serviced by multiple haulers, a more customized approach may be necessary. Local Assistance and Market Development staff can assist in developing a strategy for identifying businesses subject to the regulations.

Are there any exemptions for temporary waste generating activities, such as filming locations, special events, seasonal store sites, etc.?

There are no exemptions for temporary activities such as filming locations, special events, seasonal store sites, etc. Businesses engaged in temporary activities such as these should contact the local jurisdiction to determine how best to proceed with diverting recyclables.

Temporary waste-generating activities may already be tracked by the jurisdiction. Special event licenses and filming permits, for example, may be required for operations of this type. Temporary retail sites may also be tracked through the jurisdiction's Business License or Tax Collection office. The jurisdiction contact(s) tasked with implementing education, outreach, and monitoring efforts in relation to the mandatory commercial recycling program can work with other departments to determine the best way to provide education and outreach to temporary commercial waste generators, including identifying recycling opportunities, and monitoring the results of these efforts. It should be noted that some temporary uses, such as filming locations, may currently have contracts to handle their recyclable material through the permanent studio site. Additional guidance regarding recycling at special events and location film shooting can be found on the CalRecycle website.

Please clarify what is meant by authorizing a local agency to charge and collect a fee from a commercial waste generator to recover the local agency's costs incurred in complying with the commercial solid waste recycling program requirements.

AB 341's fee provision is separate from authorization for jurisdictions to charge a fee for implementing its recycling programs under The Integrated Waste Management Act of 1989 (Chapter 1095, Statutes of 1989 [Sher, AB 939]). AB 341 provides that if a jurisdiction already has a commercial recycling program in place that meets the education, outreach, and monitoring requirements, it is not required to implement an additional program. If, however, the jurisdiction needs to implement a new commercial recycling program in order to comply with AB 341, then it is authorized to charge a new program fee to cover the costs of the new program. Similarly, if a jurisdiction has to make additions to an existing commercial recycling program in order to comply with the mandatory recycling regulations, it is authorized to charge a program fee for the costs of implementing the additional program features. In such as instance, depending on the nature and extent of the additional features, it may be advisable for a jurisdiction to create a new program and charge a fee for the implementation costs. For additional guidance on when this would be the most feasible cause of action, please contact your LAMD representative.

Is a webpage with information about the mandatory commercial recycling requirement enough?

The jurisdiction should demonstrate a real effort to develop and implement an effective outreach program. Information should be placed on the jurisdiction's website (and the franchise hauler's website, if applicable) that informs businesses of the state requirement to recycle and explains how businesses can recycle in the jurisdiction. For example, information placed on the website might include contact information for the franchise hauler for service information, locations to self haul recyclables to, recyclers that will collect specific materials, information about mixed waste processing options versus source separated recycling options, etc. In addition to a webpage, the jurisdiction may consider sending out emails to its business listings. Some jurisdictions are using Twitter, Facebook, and other social media outlets to communicate with businesses. A jurisdiction might also collaborate with local business organizations to help send out emails to their members, place information in their newsletters, or place information on their websites. The California Chamber of Commerce has also offered to assist CalRecycle inform businesses by utilizing its [electronic Alert Newsletter](#).

For any type of outreach methodology, the jurisdiction will need to assess the tool(s) needed to convey the message to businesses and reach the businesses in their communities. As part of the Electronic Annual Report review ([see related question](#)), CalRecycle will be looking to make sure the education, outreach, and monitoring programs are being implemented, but also taking into account the jurisdiction's specific circumstances.

How frequently should outreach information be provided to businesses?

The jurisdiction has the flexibility to determine the frequency that outreach should be provided based upon what will work best for the jurisdiction. Providing outreach once per year would be typical. The jurisdiction should communicate with its Local Assistance and Market Development representative about the jurisdiction's outreach plans to allow

staff the opportunity to provide early guidance on whether the approach seems reasonable.

Some examples of outreach include utilizing existing print pieces and, when updating an existing brochure, letter, or newsletter that is sent out to businesses, adding information about the state requirement to recycle and the recycling opportunities available to recycle in the jurisdiction. Print information could be sent annually to account for turnover, etc., but it could be done more frequently or less frequently depending on what works best for the jurisdiction.

If information is already sent out annually to businesses, then information about the state requirement for businesses to recycle could be incorporated. Or, if a jurisdiction's budget does not allow for sending out a printed material to all businesses annually, then perhaps a phased-in approach would work better. For example, a certain number of printed materials can be sent to a specified group of businesses each year, or a jurisdiction may find that it is most effective to provide a brochure on site visits, etc. Rural jurisdictions might include information in the annual letter to businesses for business license renewals about the state requirement for businesses to recycle and how businesses can recycle in the rural jurisdiction (e.g., drop-off programs, on-site collection, etc.). The jurisdiction may also choose to coordinate with the local Chamber of Commerce and Apartment Associations to assist in disseminating information. The Institute for Local Government has developed [sample brochures and outreach materials](#) for jurisdictions to use.

I have been unsuccessful in the past in making contact with the commercial sector. Are there any recommendations for making contact with businesses?

Direct contact with the business community will ensure that the businesses are informed of the requirement to recycle. CalRecycle encourages jurisdictions to include information about the state requirement to recycle as part of any of the activities where the jurisdiction, hauler(s), and/or community organizations make direct contact with businesses.

Examples of direct contact include presenting at business forums, such as the Chamber of Commerce, having the hauler talk to the business, and/or providing technical assistance through waste assessments to explain the state requirement and how businesses can recycle in the jurisdiction.

Always provide a contact person that businesses can call to ask follow up questions. Community groups such as Heal the Bay and others may be able to assist with making direct contact with businesses. Community groups frequently engage in outreach to small businesses. They might be able to contact businesses in a particular area and meet one on one with businesses to explain how they can recycle in the community and inform the businesses of the state requirement to recycle.

The jurisdiction's hauler or haulers may already contact businesses directly through their sales staff or staff that conduct waste assessments for businesses. The hauler can also assist to inform the businesses that are not currently recycling about the state requirement to recycle and explain how they can recycle. The hauler can then report back to the

jurisdiction on those businesses that are not currently recycling. In some jurisdictions the hauler may already be providing this type of information to the jurisdiction.

Another approach is to determine if the jurisdiction's staff may already be working with businesses and can provide information to businesses on the state requirement to recycle. For example, some communities may utilize their health and/or building inspectors to inform businesses as they are working with them on inspecting an establishment, or the local recycling coordinator may conduct waste assessments and can include information about the state requirement to recycle.

Is it a jurisdiction's responsibility to provide outreach, education, and monitoring regarding the regulation to individual tenants of an apartment complex?

It is the jurisdiction's responsibility to provide education and outreach to the apartment owners and to monitor the recycling activities at each complex. The property owner, management company, hauler, or jurisdiction can prepare and provide information about the recycling program to the tenants, for example including a flyer as part of the welcome package, so that tenants know the opportunity is available. The jurisdiction can assess if the information the property owner or management company, for example signage, lease language, welcome package flyer, etc. is sufficient to inform residents about the program. The jurisdiction and/or hauler can provide property owners and/or management companies with sample outreach materials, for example [those found on the ILG website](#), that may assist in getting the word out to tenants of a multifamily complex. Jurisdictions may also want to use the phased in approach [mentioned previously](#) to initially work with complexes with 16 or more units, which by law are required to have an on-site manager, to provide education and outreach and set up monitoring efforts. The phased in approach can assist if limited resources are available initially to provide education, outreach and monitoring to smaller complexes.

What are some suggestions on how a jurisdiction should handle businesses that are recalcitrant in providing information on self-hauling and other recycling activities not provided by the jurisdiction's franchised/permitted hauler?

If a jurisdiction is having difficulty collecting information from businesses, the jurisdiction could develop requirements for businesses that self-haul such as requiring these businesses to complete and retain at their place of business a form certifying that they are recycling. Some businesses already track this information to demonstrate compliance with internal environmental procedures or as part of other state programs.

Reporting

Will businesses and/or jurisdictions need to report diverted tonnages?

Although they are not required to do so, jurisdictions may provide diverted tonnages in the Electronic Annual Report, if available. Jurisdictions will report in the Electronic Annual Report on how they are implementing education, outreach, and monitoring activities. The reported information should include a description of activities implemented, how many and/or which types of businesses were contacted, how the

jurisdiction tracked businesses that are not currently recycling and informed them of the recycling requirement, etc. More information about what information jurisdictions should provide in the Electronic Annual Report will be provided later in 2012/early 2013 prior to the release of the 2012 report cycle. Jurisdictions may also implement additional requirements on businesses for reporting purposes.

Additionally, CalRecycle will be measuring if the state as a whole is meeting the goal of reducing approximately 2-3 million tons of solid waste from the commercial waste stream by conducting statewide waste characterization studies in 2014 and 2019.

Does a jurisdiction need to report on its education, outreach and monitoring efforts if it is meeting its per capita disposal target?

Nothing in statute or the proposed regulation relieves a jurisdiction of its obligations once it exceeds a certain level of diversion. The jurisdiction is still required to implement a program that includes education, outreach, and monitoring, and report on the efforts in each of those areas in its Electronic Annual Report in addition to reporting on other AB 939 programs.

When will jurisdictions need to start reporting on their implementation efforts and what should be reported?

Jurisdictions will be required to report in the Electronic Annual Report starting with the 2012 report (due August 2013) on how they are implementing education, outreach, and monitoring activities.

For the 2012 Electronic Annual Report, jurisdictions will only be reporting on what they have done with regards to education, outreach, and monitoring in the last six months of 2012. Note: The 2012 Electronic Annual Report will be reviewed, but will not be part of the next Jurisdiction Review cycle commencing in late 2012, which will cover annual reports from years 2007 through 2011.

How should I report multi-family recycling for complexes that are serviced under the residential program?

If multifamily complexes, such as condominiums, townhomes, and mobile homes, including subdivisions operated under homeowners associations, are considered residential properties by the jurisdiction, e.g., they are on the curbside recycling collection route, then they would not be subject to the regulation as they are already provided recycling service as a part of the residential program. The jurisdiction would report this information on its AB 939 residential recycling program in the Electronic Annual Report.

How should I report multi-family recycling for complexes that are subject to the regulation?

The regulation requires that jurisdictions report in the Electronic Annual Report on how they are implementing education, outreach, and monitoring. Guidance will be provided to jurisdictions prior to submittal of the 2012 Electronic Annual Report. The proposed

reporting is not intended to be significantly time-consuming. To further illustrate, here is an example of what could be reported to CalRecycle in the Electronic Annual Report regarding a jurisdiction's efforts to provide education, outreach, and monitoring to the multi-family sector: Annual outreach is provided to all multi-family units via a letter or bill insert or a site visit by a representative for the hauler. The hauler confirms that all multi-family units of five or more units have subscribed to recycling services, or, the hauler confirms X number are subscribing to recycling services and that Y number are not subscribing to recycling services. In addition, a representative for the hauler met with the on-site manager of all complexes not subscribing to recycling services to inform them of the requirement.

Compliance

How will CalRecycle determine compliance with the Mandatory Commercial Recycling regulation?

CalRecycle will continue to follow its historical process of reviewing jurisdictions' AB 939 compliance by focusing on program implementation. CalRecycle's Local Assistance and Market Development staff will continue to review the implementation of the local programs that the jurisdiction has chosen to implement, to determine if the jurisdiction has met the requirements. Additionally, CalRecycle will continue to rely on Electronic Annual Reports, annual staff jurisdiction site visits, and other information that the jurisdiction deems relevant.

If my jurisdiction already offers recycling to commercial and multi-family customers at no additional charge and we monitor participation rates, are we in compliance?

If a jurisdiction already has a commercial recycling program that targets affected businesses and addresses the education, outreach, and monitoring components of the regulation, the jurisdiction would not be required to implement a new or expanded program. However, most jurisdictions will need to ensure that their program informs public entities and multi-family complexes about the state requirement to recycle under AB 341. In addition, depending on the program that the jurisdiction has for monitoring participation rates, the jurisdiction may need to add a component of informing those entities that are not recycling of the state requirement to recycle and how they can recycle in the jurisdiction.

Will a generation study be required to demonstrate compliance with the regulation?

No, a generation study is not required to demonstrate compliance with the regulation.

How will jurisdictions and CalRecycle be able to evaluate the effectiveness of a program without data?

CalRecycle will be measuring if the state as a whole is meeting the goal of reducing approximately 2-3 million tons of solid waste from the commercial waste stream by conducting statewide waste characterization studies in 2014 and 2019.

Regarding jurisdictions' compliance with the law, CalRecycle will take into consideration the reasons that a jurisdiction cannot provide data. However, jurisdictions should have some data to provide to CalRecycle in the Electronic Annual Report to demonstrate that they have conducted education, outreach, and monitoring activities. For example, jurisdictions should know (or have an estimate if the jurisdiction does not have a franchise system) how many businesses are located in the jurisdiction, and how many meet the threshold. The jurisdiction should also be able to determine or estimate the number of businesses that are recycling. The jurisdiction should also be able to report on how many businesses received outreach, education, and monitoring. If jurisdictions are making a good-faith effort to provide education, outreach, and monitoring and there are things outside of their ability to control, e.g., a hauler will not provide data on businesses that meet the threshold, then CalRecycle would take this into consideration. Just as is required in the AB939 review regarding implementing the Source Reduction and Recycling Element and Household Hazardous Waste Element programs, whether or not a jurisdiction has made a good-faith effort in complying with the commercial recycling requirement will be determined on a case-by-case basis.

How should jurisdictions collect information from businesses to determine compliance with the regulation?

Typically, jurisdictions will utilize hauler information to assess if businesses are recycling. Jurisdictions also have the ability to place additional requirements on businesses. Jurisdictions will want to discuss approaches with their Local Assistance and Market Development contact in advance and report in the Electronic Annual Report their efforts at monitoring. It is important to note that the jurisdiction is not held accountable if a business chooses not to recycle, although the jurisdiction still needs to have outreach, education, and monitoring in place. The monitoring of businesses that are and are not recycling is not intended to be onerous for the jurisdiction. However, Local Assistance and Market Development staff will want to know if there are businesses that are not recycling so that CalRecycle staff can assist—as you may have heard in past webinars there are a lot of ways to get businesses, public entities, and multi-family complexes to recycle—and Local Assistance and Market Development staff would like to see how we can assist you in working with key businesses that are not recycling. Discuss your ideas with your Local Assistance and Market Development representative to get additional feedback and consider coordinating with any other neighboring jurisdictions for consistency.

Will CalRecycle issue a “Compliance Order” if my jurisdiction cannot demonstrate compliance with Mandatory Commercial Recycling requirements?

Jurisdictions are required to implement outreach, education, and monitoring. CalRecycle will review each jurisdiction's compliance as a part of its review authorized under AB 939 pursuant to PRC 41825. As part of that AB 939 program review, a good faith effort determination can be reached based on the parameters identified in PRC 41850 and PRC 42649.3 (i), namely that all reasonable and feasible efforts have been made to implement its commercial recycling program.

If CalRecycle finds that a jurisdiction has failed to make a good-faith effort to implement a commercial recycling program, CalRecycle would initiate the compliance order process, just as is currently done as a part of the AB 939 review. CalRecycle will evaluate the jurisdiction's implementation of its outreach, education, and monitoring programs during its AB 939 review of the jurisdiction's Source Reduction and Recycling Element and Household Hazardous Waste Element. If the jurisdiction is found to not have made a good-faith effort in implementing its programs, possibly including its mandatory commercial recycling program, CalRecycle can place the jurisdiction on a compliance order, as part of the AB 939 review. If the jurisdiction fails to adequately meet the conditions of the compliance order, then CalRecycle could consider a penalty hearing, etc.

The jurisdiction has a number of privately owned and operated transfer stations where self-haulers deliver commercial waste. Is it the responsibility of the facility owner/operator to ensure compliance with the regulation? Or does the jurisdiction need to establish an ordinance or landfill ban?

The requirement is on businesses to ensure that they are complying with the law. Jurisdictions shall implement a program that includes education, outreach, and monitoring to targeted businesses. Jurisdictions also have discretion to implement landfill bans, ordinances, or other means to regulate commercial recycling consistent with their legal authority.

All waste materials generated by the commercial sector in my jurisdiction are sent to a mixed waste processing facility (a.k.a. 'dirty MRF') whereupon materials are separated from general garbage for recycling. Is that system alone sufficient to comply with the regulation?

No, the system alone is not sufficient, because the jurisdiction is still responsible for conducting education, outreach, and monitoring. Education, outreach, and monitoring ensure that businesses know about the state requirement to recycle and how they can recycle in the jurisdiction. Most communities that have a mixed waste processing system also offer source-separated collection for particular material types, and there is likely associated education. Additional options that may be available to businesses based on the jurisdiction include use of third party recyclers, self-haul, back-haul, and/or donation of recyclables. These communities would need to educate businesses about the state requirement to recycle and how they can recycle in the jurisdiction, e.g. using source-separated collection, mixed waste processing, or a combination of both. Monitoring efforts could include verification as to how the material is being processed at the materials recovery facility. For more information about mixed waste processing in relation to AB 341, please review the [Initial Statement of Reasons](#) (PDF, 221 KB).

Do we need to send commercial and/or multi-family waste to a mixed waste processing facility prior to landfilling to comply with the regulation?

CalRecycle understands that each jurisdiction has its own unique set of circumstances and generators and is in a better position to determine what will work best to divert material from the commercial sector. The proposed regulation provides flexibility and

does not dictate how a jurisdiction must implement a program or that the material must be sent to a mixed waste processing facility prior to it being landfilled.

Will CalRecycle consider availability of composting facilities and markets in its review?

CalRecycle will consider availability of markets for collected recyclables, as well as availability of markets for organics.

Enforcement

Is there a requirement for local jurisdictions to enforce the regulation?

No, the regulation does not require jurisdiction enforcement. The objective is to reduce greenhouse gas emissions by 5 million metric tons of carbon dioxide equivalent (MMTCO₂E), which equates to roughly an additional 2 to 3 million tons of currently disposed commercial solid waste being recycled by 2020 and thereafter. This is considered a modest goal based on current recycling trends. It is anticipated that with the built-in flexibility, enough businesses, including multi-family dwellings, will start new recycling programs and/or expand upon existing programs to meet the greenhouse gas emission reduction goal.

Jurisdictions can choose to implement some type of local mandatory commercial recycling program to enforce business compliance. Approaches might include: 1) requiring businesses to participate in the recycling services that are already available in their city or county, 2) requiring businesses to use a mixed waste processing facility, or 3) implementing a mandatory commercial recycling ordinance or policy. In terms of overall policy and program design, mandatory commercial recycling programs can vary substantially. For example, the types and sizes of businesses and industry can vary, as can the amount and types of material generated per week, etc. Those regulated may include the hauler, business generators, or both. Some programs target specific business materials for recycling while others do not specify. The methods for monitoring and determining compliance and enforcing the ordinance can differ greatly depending upon a jurisdiction's resources, hauler arrangement, etc. The regulation is designed to offer as much flexibility as possible while still keeping on target to meet the greenhouse gas emission reduction goal.

Is there an enforcement component for any entity in the regulation?

CalRecycle will evaluate the jurisdiction's implementation of its outreach, education, and monitoring programs during its AB 939 review of the jurisdiction's Source Reduction and Recycling Element and Household Hazardous Waste Element. If the jurisdiction is found to not have made a good-faith effort in implementing its program, CalRecycle can place the jurisdiction on a compliance order.

If a business or school generates over four cubic yards per week of commercial solid waste and refuses to subscribe to recycling service, do we need to take some

enforcement action against the business (e.g. fine, notice of violation, etc.) to maintain the jurisdiction's compliance with the regulation?

The proposed regulation does not require enforcement. Jurisdictions are required to inform the business or public entity of the state requirement to recycle and how to recycle in the jurisdiction. However, a jurisdiction may choose to implement an enforcement program. Enforcement options that would be consistent with a jurisdiction's authority include, but are not limited to, a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution.

Will local jurisdictions be required to fine customers for not participating in the program?

No. Enforcement, including fines, is not a requirement. However, jurisdictions may choose, at their discretion and consistent with their legal authority, to use fines or other enforcement mechanisms.

If haulers are not a regulated party, how can jurisdictions and businesses be held accountable if the haulers are not required to provide services and/or report out to the jurisdictions?

The legislation was developed to place the requirement on businesses to use any combination of recycling options, including subscribing to a recycling service, self-hauling recyclables, using a mixed waste processing facility, and/or allowing for the pickup of recyclables. It seems unlikely that a community would have no options for businesses to recycle. Additionally, the jurisdictions may establish their own requirements on haulers. Finally, as each jurisdiction's situation is unique, the assigned Local Assistance and Market Development representative will work with jurisdictions to assess their particular situation.

If my jurisdiction offers recycling through a franchised hauler and a multi-family property owner subscribes to the service, but the tenants do not participate in it, does the tenant, property owner, or jurisdiction receive the enforcement action?

In order to answer this question, it is important to distinguish between different types of enforcement. Under AB 341, it is up to jurisdictions to have a commercial recycling program that consists of education, outreach, and monitoring. CalRecycle will evaluate each jurisdiction's education, outreach, and monitoring compliance using the same good-faith effort standard as used when reviewing the jurisdiction's AB 939 Source Reduction and Recycling Element and Household Hazardous Waste Element programs. CalRecycle will not be enforcing directly on businesses, so how the situation described above will be handled will depend upon the program that the jurisdiction has in place. For example, if the jurisdiction requires property owner participation, then it would be taking enforcement action against the property owner and be leaving it up to the property owner to deal with the tenant—most likely through a rental agreement provision.

The jurisdiction's Local Assistance and Market Development contact can assist the jurisdiction in developing effective education and outreach tools to maximize compliance by property owners and tenants. Also, please visit the Institute for Local Government's

[commercial recycling website](#) for sample flyers and outreach materials that property owners can utilize to educate tenants.