

SB 1383 Model Food Recovery Agreement

CalRecycle Statewide Webinar
Presented by HF&H Consultants,
Diversion Strategies, and
CalRecycle
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Disclaimer

- This Model Tool is for informational and example purposes only. It should not merely be duplicated without consideration of an individual food recovery organization's or service's or edible food generator's particular needs or circumstances. It is not intended to cover each and every situation, nor can it anticipate specific needs.
- In developing this Model Tool, CalRecycle and its consultants (HF&H Consultants in conjunction with Diversion Strategies) have attempted to ensure that the language herein aligns with the SB 1383 regulations; however, in the event of any conflict, the language in the regulations shall prevail over language in the Model Tool and determination of regulatory intent and interpretation should be appropriately guided by the regulatory language and the official rulemaking record of which this Model Tool is not a component.
- CalRecycle and its consultants make no representation that use of this Model Tool will ensure compliance with regulatory requirements.
- This Model Tool does not constitute legal advice. Parties entering into food recovery agreements are encouraged to seek legal counsel appropriate to their particular circumstances regarding compliance with regulatory requirements.

Outline

- SB 1383 overview
 - Key edible food recovery dates
 - Food recovery requirements
 - Commercial edible food generators
 - Food recovery organizations/services
 - Jurisdictions
- Model objectives
- Model structure and considerations
- Model highlights
- Q & A



SB 1383 Requirements

2020

50% REDUCTION IN LANDFILLED ORGANIC WASTE
(11.5 Million Tons Allowed Organic Waste Disposal)

2022

REGULATIONS TAKE EFFECT

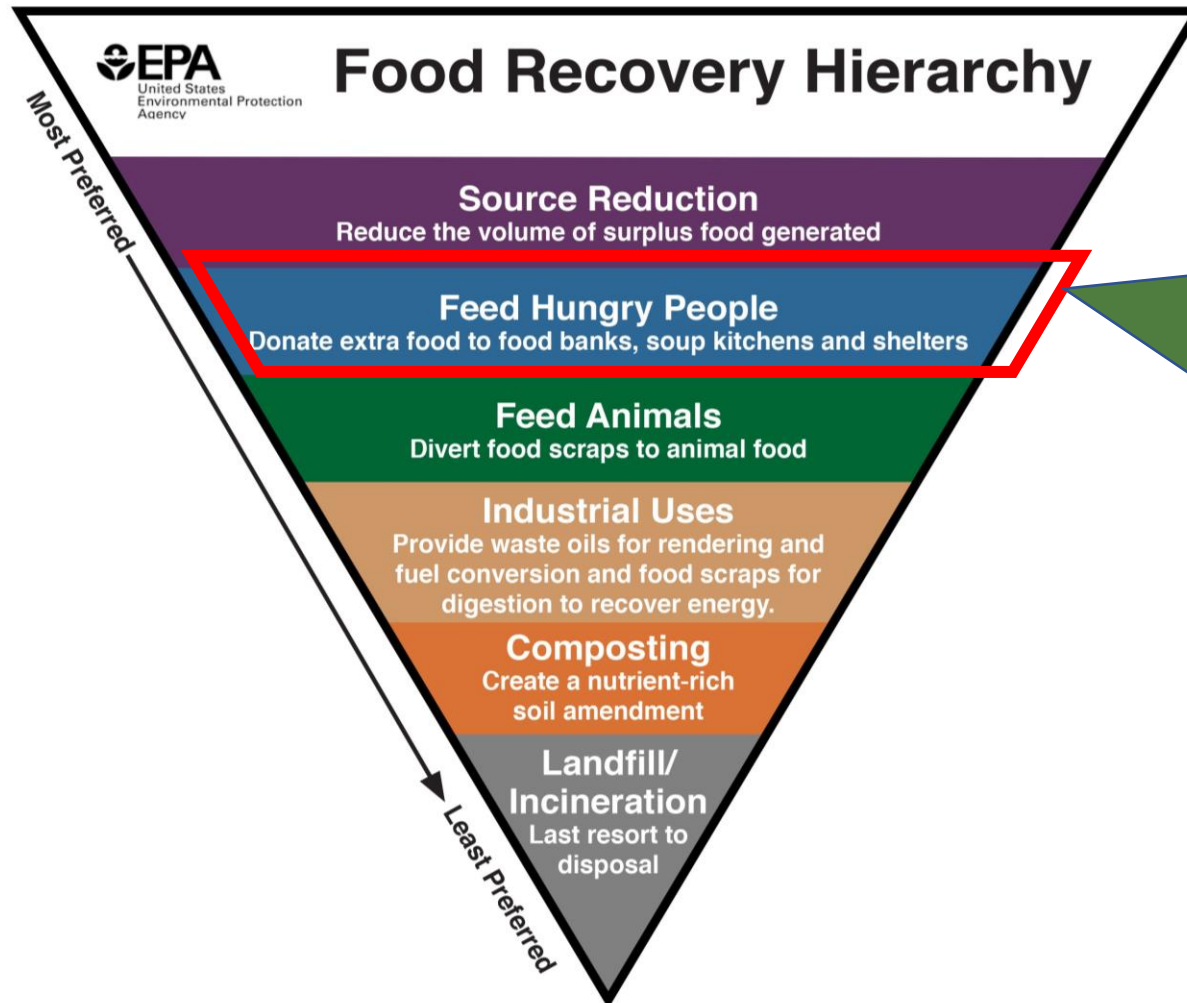
2025

75% REDUCTION IN LANDFILLED ORGANIC WASTE
(5.7 Million Tons Allowed Organic Waste Disposal)

2025

**20% RECOVERY OF CURRENTLY DISPOSED EDIBLE
FOOD FOR HUMAN CONSUMPTION**

Food Recovery Hierarchy



- Focus of SB 1383's 20% edible food recovery goal
- Focus of Model Food Recovery Agreement

SB 1383 Key Edible Food Recovery Dates

2022



Jurisdictions establish edible food recovery program



Tier 1 commercial edible food generators must be compliant



Jurisdictions begin food recovery capacity planning



Jurisdictions begin food recovery education (annually)



Jurisdictions begin inspections of Tier 1 generators and food recovery orgs/services

2024



Tier 2 commercial edible food generators must be compliant



Jurisdictions begin inspections of Tier 2 commercial edible food generators



Jurisdictions take enforcement action for non-compliant entities

Jurisdiction Edible Food Recovery Requirements

**Establish Edible Food
Recovery Program**



**Plan for Capacity
and Expansion (if needed)**



**Enforceable Mechanisms
and Monitor Compliance**



**Ensure Generators Have
Access to Organizations/
Services**



Provide Education



**Report Program
Information**



Food Recovery Capacity Planning



Estimate amount of edible food disposed



Identify existing food recovery capacity and proposed or potential new or expanded capacity



Consult with food recovery organizations and services



Create a plan to expand capacity, if needed

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FOOD RECOVERY EDUCATION, OUTREACH, AND RESOURCES



JURISDICTION REQUIREMENTS

Develop List of Food Recovery Orgs. & Services



- Maintain on website and update annually
- Include name, address, contact, collection service area, and types of food accepted for each

Educate Commercial Edible Food Generators



Information on:

- Food recovery program
- Generator requirements
- Food recovery orgs. and services in jurisdiction
- Actions to prevent creation of food waste

Perform Other Requirements



- Language requirements
- Maintain copies of materials
- Frequency of material distribution
- Format options

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EDIBLE FOOD RECOVERY REPORTING



JURISDICTION RECORDKEEPING AND REPORTING REQUIREMENTS



Edible Food
Recovery
Program



Education &
Outreach



Commercial
Edible Food
Generators



Jurisdiction
Inspection &
Enforcement

Commercial Edible Food Generator Tiers

Tier 1

By January 1, 2022



- Supermarket
- Grocery store (10,000+ sq. ft.)
- Food service provider
- Food distributor
- Wholesale food vendor

Tier 2

By January 1, 2024



- Restaurant (\geq 250 seats or 5,000 sq. ft.)
- Hotel with onsite food facility & \geq 200 rooms
- Health facility with onsite food facility & \geq 100 beds
- Large events and venues
- State agency with cafeteria (\geq 250 seats or 5,000 sq. ft.)
- Local education agency with on-site food facility

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COMMERCIAL EDIBLE FOOD GENERATORS



Recover maximum amount of edible food that would otherwise be disposed



Arrange food recovery through a **contract or written agreement** with:

Purpose of
Model
Agreement



Food recovery organizations or services that will **collect** edible food for food recovery



Food recovery organizations that will accept food that the generator **self hauls**

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COMMERCIAL EDIBLE FOOD GENERATORS



Maintain records related to edible food recovery

- List of each food recovery organization or service that collect or receives the generator's food
- Copies of contracts and written agreements
- List the following information for each organization or service:
 - Name, address, and contact information
 - Types of food collected or self-hauled
 - Established frequency of food collected or self-hauled
 - Quantity of food recovered (pounds per month)

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FOOD RECOVERY ORGANIZATIONS AND SERVICES



Maintain records related to edible food recovery

- Name, address, and contact information of involved parties (commercial edible food generators, food recovery services, and/or food recovery organizations)
- Quantity of food collected, transported, and/or received per month (in pounds)



Report quantities of food recovered to jurisdictions annually



Cooperate with **capacity planning** efforts

Model Food Recovery Agreement



Model Food Recovery Agreement

OBJECTIVES OF THE MODEL



- ✓ Assist commercial edible food generators with compliance
- ✓ Ensure edible food is recovered in a safe and effective manner
- ✓ Protect food recovery organizations and services from “donation dumping”
- ✓ Identify potential food recovery arrangements and cost models
- ✓ Support jurisdictions with developing food recovery programs
- ✓ Increase understanding of regulations and compliance strategies
- ✓ Provide resources and guidance to regulated entities
- ✓ Present example food recovery agreement provisions

Model Food Recovery Agreement

OVERVIEW OF THE MODEL



- General agreement framework
 - Provide base of example resources
 - Develop provisions with options to customize
 - Include main body and exhibits
- Optional provisions address different conditions and arrangements
- Guidance notes
 - Embedded within document
- Highlight key sections

Guidance, Customization, and SB 1383 Content

General guidance notes

Guidance: The SB 1383 regulations do not require Commercial Edible Food Generators to provide this documentation; however, in some cases it may be appropriate to delegate the responsibility of documentation to the Commercial Edible Food Generator based on the logistical arrangements between the Parties.

Specific customization notes

Commercial Edible Food Generator will provide the following information to the FRO/FRS for food provided by Commercial Edible Food Generator: <donation type and description, weight (in pounds), types of food that were recovered, established frequency that the food is recovered, time, date, signature/confirmation, etc.>.

SB 1383-specific content

Food Distributor

"Food Distributor" means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

Adaptability of the Model

- Provisions within the Model are intended to apply and be adapted to multiple programs
 - Collection vs. self hauled delivery
 - Donation vs. fee for service vs. other payment type
- Sample provisions may be modified or deleted based on the agreed upon arrangement
- Not a “one size fits all” approach



Agreement Structure Streamlining



- Two options are available for handling contract details
 - Details inserted into the Agreement itself
 - Details incorporated by reference as an attachment
- Options are indicated in guidance notes where applicable
- Structure preferences are up to both parties' discretion

Organization of the Model Food Recovery Agreement

- 1 Allowable Foods
- 2 Food Safety Requirements and Protocols
- 3 Collection, Transportation, and Storage
- 4 Equipment Protocols
- 5 Documentation and Reporting
- 6 Commercial Edible Food Generator Service Fees or Financial Donations
- * Attachments

Section 1: Allowable Foods



1.1 Foods Accepted and/or Preferred for Donation or Collection

1.2 Foods Not Accepted for Donation or Collection

Focus

- Details the non-perishable and perishable foods accepted and/or preferred and foods not accepted between the generator and the food recovery organization
 - Specify food types, goods, conditions, or conditional acceptance guidelines

Guidance and Customization

- Provides agreement detail options:
 - List acceptable, preferred, and/or not acceptable foods in body text of agreement; or list in Attachment A of agreement

Section 1: Allowable Foods

1.3 Conditions for Donation Refusal



Focus

- Specifies the food recovery organization/food recovery service's right to refuse donations; and, if desired, outline notification procedures

Guidance and Customization

- Specify criteria for donation refusal (e.g., food safety, improper storage, lack of storage or transportation capacity, etc.)
- Outline notification procedures (if desired)
 - Notify donating party of rejection
 - Provide reason for rejection
 - Explain how to handle rejected food

Section 2: Food Safety Requirements and Protocols



Focus

- Highlights important standards are met that ensure safe and effective food recovery processes (not required by SB 1383)

Guidance and Customization

- Requires food recovery organization and generators to be in compliance with all federal, state, and local regulations
- Allows parties to specify additional protocols
- Includes references to food safety resources and guidelines in guidance notes

Section 3: Collection, Transportation, and Storage

3.1 Transportation

Focus

- Establishes responsibility between parties
- Provides instructions for transportation and collection

Guidance and Customization

- Determine the party or parties responsible for the transportation of food
- Outline specific instructions or protocols for transportation



Section 3: Collection, Transportation, and Storage



3.2 Missed or Delayed Pick-Ups

Focus

- Establishes protocol for responding to missed or delayed pick-ups/deliveries

Guidance and Customization

- Determine party responsible for retaining possession of food for missed or delayed pick-ups
- Establish notification process in the event of a pick-up or delivery change
- Include associate charges, if desired
- Clarify potential for termination of agreement for multiple instances

Section 3: Collection, Transportation and Storage

3.3 Donation Dumping

Focus

- Specifies clearly that donation dumping is prohibited

Guidance and Customization

- Requires generator to not knowingly donate unusable or unsuitable food; force donation after capacity; or deliver outside of agreed time windows
- Allows for compensation to food recovery organization for costs incurred
- Permits potential reporting to local jurisdiction and/or termination of agreement





Section 4: Equipment Protocols

Focus

- Provides standards regarding loaned equipment, if applicable (not required by SB 1383)

Guidance and Customization

- Establishes protocols for use, maintenance, storage, sanitization, and return of equipment borrowed between parties
- Includes list of equipment and details in Attachment C (optional)

Section 5: Documentation and Reporting



Focus

- Ensure clear delineation of documentation responsibilities, if any; which may assist with meeting SB 1383 recordkeeping and reporting requirements.

Guidance and Customization

- Provides options for documentation by generator and/or food recovery organization
- Offers document information examples
 - Donation type and description
 - Donation time
 - Donation weight
 - Signature or confirmation of donation
- Includes frequency that information must be provided
- Specifies format of documentation and duration of record retention.

Section 6: Service Fees or Financial Donations



Focus

- Provides funding structure for the required edible food recovery programs

Guidance and Customization

- Select fee structure, if any, depending on financial model of food recovery organization or service
 - Fee for service (fee per pick up, fee per pound, flat fee per time interval (e.g., week, month, etc.))
 - Donation by generator
 - Other financial donation by generator to organization, in-lieu or in-kind payment, etc.
- Specify if payment through other mechanisms (franchise agreement, third party, etc.)

Section 7: Terms and Conditions



Focus

- Define various terms and conditions for execution of agreement (not required by SB 1383)

Guidance and Customization

- Determine amendment and approval processes
- Determine effective date, term, and termination options
 - Effective until terminated
 - Extend with fulfillment of terms and conditions
 - Renew automatically with notice of termination, or
 - Defined term
- Provide a contact for administration of the agreement
- Insert non-performance criteria
- Include additional liability language



Customization Option: Attachments

- **Attachment A:** Acceptable and/or Preferred Foods, Unacceptable Foods, and Packaging and Labeling Requirements
 - Expanded details to support Section 1
- **Attachment B:** Collection, Transportation, and Storage
 - Expanded details to support Section 3
- **Attachment C:** Equipment Use and Storage
 - Expanded details to support Section 4
- **Attachment D:** Definitions
- **Attachment E:** Contacts for Agreement



Attachment D: Definitions

Focus

- Includes variety of definitions (including SB 1383 regulatory definitions and other example definitions)

Guidance and Customization

- Review carefully definitions in existing programs and SB 1383 definitions for consistency
- Modify and/or integrate new definitions based on current conditions, programs, and contractual arrangements

Attachment E: Contacts for Agreement



Focus

- Provides point of contact for each party for future communication

Guidance and Customization

- List the person who will interact most with donations and collections (optional)
- List legal or management person in addition to the day-to-day contact (optional)

Customization Tips

- Modify language, particularly defined terms
 - Delete guidance notes and unused options upon completion
 - Blend existing provisions with the Model provisions
 - Customize style and design
 - Seek legal counsel
 - Review food recovery case studies
 - Fresno Metro Ministry
 - France's Edible Food Law
- www.calrecycle.ca.gov/organics/slcp/education

Thank You

Link to Model Tools

www.calrecycle.ca.gov/organics/slcp/education

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