

## **General SB 1383 Questions:**

### **Q: Why is SB 1383 important?**

**A:** California sends 11.2 billion pounds of food to landfills each year. In 2018, 4.3 million Californians (10.8% of population) didn't have enough to eat. By May 2020, that number doubles to 9.2 million (23% of population). SB 1383 looks to solve this problem by redirecting food to food insecure individuals and families that would otherwise be landfilled and contribute to greenhouse gas emissions. Benefits of SB 1383 include GHG emissions reduction, reducing food insecure population rates, strengthening relationships between generators and recovery organizations, and developing sustainable funding for food recovery.

### **Q: What are the target goals & implementation dates of SB 1383?**

**A:** SB 1383 was signed into law in September 2016 by Governor Brown to set methane emission reduction targets in California. It establishes a target that not less than 20 percent of currently disposed edible food is recovered for human consumption by 2025. Compliance for Tier 1 edible food generators begins January 1st, 2022, and compliance for Tier 2 edible food generators begins January 1st, 2024.

### **Q: Please clarify the 20% edible food recovery goal. Do individual jurisdictions or individual generators have to arrange for 20% of their edible food to be recovered for human consumption?**

**A:** SB 1383 requires the state, by 2025, to recover 20 percent of edible food for human consumption that would otherwise be disposed of. This is a statewide goal that California must collectively achieve. It is not a goal for individual jurisdictions to achieve. To achieve this statewide goal, SB 1383's regulations require commercial edible food generators to donate the maximum amount of their edible food that would otherwise be disposed of (not 20 percent of it). The regulations also require jurisdictions to implement edible food recovery programs to help increase food recovery throughout the state.

### **Q: What happens if I don't comply?**

**A:** We are currently in the beginning stages of implementation, and repercussions for non-enforcement are being developed. However, it is in your best interest to follow SB 1383. You are able to save in waste disposal costs and improve your social branding and image as a business by donating edible food to food insecure individuals and families.

### **Q: What is the turnaround time for getting the info for capacity expansion and approval for the application process?**

**A:** We are currently in the beginning stages of implementation of SB 1383. Jurisdictions are researching and gathering information on food recovery organizations and edible food generators to understand what the current food recovery capacity levels are at. Once we understand the needs of all organizations and businesses, we will move towards providing additional resources for capacity building if needed. Until funding sources are made available, we will have internet hubs for agencies and businesses to use to connect to one another.

**Q: What is considered edible food?**

**A:** Edible food is food that would otherwise go to waste from places such as restaurants, grocery stores, produce markets, or dining facilities. The food is edible, but often not sellable. Products that are at or past their “sell by” dates or are imperfect in any way, such as a bruised apple or day-old bread are donated by grocery stores, food vendors, restaurants, and farmers’ markets. Other times, the food is unblemished, but restaurants may have made or ordered too much or may have good pieces of food (such as scraps of fish or meat) that are byproducts of the process of preparing foods to cook and serve. Food manufacturers also may donate products that marginally fail quality control, or that have become short-dated.

**Q: Does edible food have to be recovered for human consumption?**

**A:** Yes, edible food must be recovered for human consumption. SB 1383 requires CalRecycle to adopt regulations that include requirements intended to meet the goal that no less than 20 percent of edible food that is currently disposed be recovered for human consumption by 2025.

**Q: Does edible food have to meet all food safety requirements for it to be recovered for human consumption?**

**A:** Yes. All food that is recovered for human consumption must meet the food safety requirements of the California Retail Food Code. SB 1383’s regulations specify in the definition of ‘edible food’ that “Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.” Please note, CalRecycle does not monitor or enforce food safety. Food safety is monitored and enforced by local environmental health departments and the California Department of Public Health.

**Q: Do SB 1383’s food recovery requirements differentiate between healthy food eligible for donation, and “junk food” that do not meet the minimum nutrition standards for many food pantries and banks?**

**A:** SB 1383’s statute requires CalRecycle to adopt regulations that include requirements intended to meet the goal that not less than 20 percent of edible food that is currently disposed of is recovered for human consumption by 2025. The statute does not state that 20 percent of healthy or nutritious food must be recovered. As a result, SB 1383’s regulations do not include requirements that differentiate between healthy and unhealthy food. CalRecycle recognizes that a core value of many food recovery organizations and services is to reduce food insecurity in their communities by rescuing and distributing healthy and nutritious food to help feed people in need, and that some organizations have nutrition standards for the food they are willing to accept. As a result, CalRecycle included language in Section 18990.2 that states, “(d) Nothing in this chapter prohibits an edible food recovery service or organization from refusing to accept edible food from a generator.”

**Q: How is diverting food waste from the landfills reducing greenhouse gas emissions?**

**A:** Organic waste, like food scraps, yard trimmings, paper and cardboard, make up half of what Californians dump in landfills and a significant contributor to methane emissions. In fact, organic waste emits 20% of the state’s methane, a climate super pollutant 84 times

more potent than carbon dioxide. This contributes to climate change in the forms of hotter summers, devastating fire seasons, droughts, and rising sea levels that erode our communities. Reducing Short-Lived Climate Super Pollutants like organic waste will have the fastest impact on the climate crisis.

**Q: What exactly are short lived climate pollutants and why is it focusing on this?**

**A:** "Short-lived climate pollutants are powerful climate forcers that remain in the atmosphere for a much shorter period of time than carbon dioxide (CO<sub>2</sub>), yet their potential to warm the atmosphere can be many times greater. Certain short-lived climate pollutants are also dangerous air pollutants that have harmful effects for people, ecosystems and agricultural productivity" (Climate and Clean Air Coalition).

**Q: Doesn't SB 1383 promote donation dumping?**

**A:** No. SB 1383 requires EFGs to enter written agreements or contracts with FROs and FRSSs. In these agreements, both parties decide what the donation drop off days and times are and what type of food will be donated.

CalRecycle recognizes that donation dumping occurs and included policies in the regulations to help prevent this activity. The regulations require commercial edible food generators to have a contract or written agreement with a food recovery organization or service. If a food recovery organization or service is concerned that donation dumping could occur, then they should include language in their contract or written agreement to protect themselves against donation dumping. If a commercial edible food generator repeatedly donation dumps, there is nothing in SB 1383's regulations prohibiting a food recovery organization or food recovery service from terminating their relationship with that particular generator.

CalRecycle developed a model food recovery agreement that can be customized and used by food recovery organizations, food recovery services, and commercial edible food generators. The model food recovery agreement does include a section for self-hauled edible food, which also includes designated delivery and drop off days and times to establish as well as language to protect food recovery organizations and services from donation dumping and unexpected donations. The model food recovery agreement is a template and is intended to be customized based on the needs of food recovery entities and commercial edible food generators

## **Food Recovery Organizations FAQs:**

### **Q: What is the difference between a FRO and FRS?**

**A:** A Food Recovery Organization, or FRO, is an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities. A Food Recovery Service, or FRS, is a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food recovery. An entity can be both an FRO and FRS if they participate in both transportation and distribution of recovered food.

### **Q: Are FROs and FRSs required to enter contracts with EFGs?**

**A:** No. It is up to your discretion to enter a written agreement or contract with an EFG. However, if you do choose to enter a contract, you must comply with SB 1383 reporting requirements.

### **Q: Are FROs required to accept an EFG's edible food donations?**

**A:** No. Food recovery organizations and food recovery services are not required to accept a commercial edible food generator's edible food. Section 18990.2 of the regulations specifies that, "(d) Nothing in this chapter prohibits an edible food recovery service or organization from refusing to accept edible food from a generator."

### **Q: What are FROs required to record?**

**A:** The name, address and contact information for each commercial edible food generator that the organization receives edible food from; The quantity in pounds of edible food received directly from each commercial edible food generator per month; And the name, address and contact information for each food recovery service that the organization receives edible food from for food recovery.

### **Q: What are FROs required to report, and at what rate?**

**A:** Total pounds collected in the previous calendar year from the commercial edible food generators that they contract with or have written agreements. Details on how to do so will be shared in the future.

### **Q: What are FRSs required to record?**

**A:** The name, address and contact information for each commercial edible food generator that the service collects edible food from; The quantity in pounds of edible food collected directly from each commercial edible food generator per month; The quantity in pounds of edible food transported to each food recovery organization per month; The name, address and contact information for each food recovery organization that the service transports edible food to for food recovery

### **Q: What are FRSs required to report, and at what rate?**

**A:** Total pounds collected to jurisdiction in the previous calendar year (annually) from the commercial edible food generators that they contract with or have written agreements. Details on how to do so will be shared in the future.

**Q: Are FROs and FRSs required to report to multiple jurisdictions or only one?**

**A:** Only food recovery organizations and food recovery services that contract with or have written agreements with commercial edible food generators pursuant to Section 18991.3 (b) are required to report information to the jurisdiction. Specifically, they are required to report to one jurisdiction the total pounds collected (from commercial edible food generators) in the previous calendar year. They should report to the jurisdiction where their primary address is physically located. They are not required to report to multiple jurisdictions.

For example, if a food recovery organization is recovering food in multiple jurisdictions, the food recovery organization is only required to report the total pounds collected (from commercial edible food generators) in the previous calendar year to the jurisdiction that they are physically located in.

**Q: What if double counting of pounds occurs since FROs and FRSs are both reporting recovery numbers?**

**A:** The regulations are structured to ensure that double counting of pounds recovered will not occur. Double counting should not occur because the requirement is for food recovery organizations and food recovery services to only report the pounds they collect or receive directly from commercial edible food generators.

For example, if a food recovery service collects food directly from a commercial edible food generator, then the food recovery service is responsible for maintaining a record of those pounds collected and also responsible for reporting those pounds to one jurisdiction (the jurisdiction the food recovery service's primary address is physically located).

If a food recovery organization receives food from a food recovery service, that food recovery organization is not responsible for reporting those pounds of food to the jurisdiction because the food was not collected or received directly from a commercial edible food generator.

**Q: Are FROs and FRSs required to report only the total pounds collected from EFGs or from all food donors?**

**A:** Any food recovery organization or food recovery service that has a contract or written agreement with one or more commercial edible food generators is required to report the total pounds of edible food that were collected or received directly from the commercial edible food generators that they contract with or have written agreements with. Food recovery organizations and services are not required to report the pounds of edible food recovered from entities that are not commercial edible food generators, nor are they required to track or report residual food waste, as such a requirement could be overly burdensome and infeasible to comply with.

Food recovery organizations and services should have the data on pounds recovered from tier one and tier two commercial edible food generators because Section 18991.5 requires

them to maintain a record of the quantity in pounds of edible food collected and received from each commercial edible food generator that they contract with or have a written agreement with pursuant to Section 18991.3(b). If food recovery organizations and food recovery services are in compliance with this section, then they will have the information that is necessary to comply with the requirement to report the total pounds collected from tier one and tier two commercial edible food generators in the previous calendar year to the jurisdiction.

**Q: What grant opportunities are available?**

**A:** CalRecycle and private entities offer various grants and loans to food recovery agencies, and a list of some can be found [here](#). The County of Los Angeles and City of Los Angeles are also figuring out their funding sources and means to distribute it and will update FROs and FRSs that require additional funding for capacity expansion in the future.

**Q: What happens if I am already in a contract/agreement with an EFG?**

**A:** You may need to update your agreement so that it complies with new requirements set by SB 1383. [CalRecycle](#) has created a model food recovery agreement that has expectations of record keeping and reporting in place.

**Q: What needs to be established in the contract?**

**A:** HF&H Consultants, LLC created a model food recovery agreement for CalRecycle that is available to the public. That can be found on [CalRecycle's website](#) at the bottom of the page under 'resources.'

**Q: Why does a capacity assessment need to be done / why am I asked to fill out this survey?**

**A:** In order to meet the target that not less than 20 percent of currently disposed edible food is recovered for human consumption by 2025, jurisdictions must be sure that food recovery agencies within them are able to meet the expected increase in food donations by edible food generators. The information you input is valuable for us to understand how much food you can currently accept, what hindrances you face to increasing your food recovery, and to connect you to edible food generators that are looking to create contracts or written agreements with new FROs/FRSs.

**Q: I'm currently not active due to COVID-19. Should I still complete the survey?**

**A:** Yes. If you believe your agency will resume activity when the pandemic ends, the information you provide will still help us to connect you to edible food generating businesses and understand what your food recovery capacity will be.

**Q: Do food recovery organizations need to be formally recognized as non-profits? Would a group of people (without being formally incorporated) be included in the definition? What about for-profits?**

**A:** Food recovery organizations do not need to be registered as non-profits. A for-profit business could also be a food recovery organization. Recognizing that many different types of food recovery organizations exist, a broad definition of food recovery organization was developed to ensure that the definition would be inclusive of these non-traditional food recovery groups. The definition of "food recovery organization" is below:

(25) "Food recovery organization" means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities, including, but not limited to:

(A) A food bank as defined in Section 113783 of the Health and Safety Code;

(B) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

(C) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

## **Edible Food Generator FAQs:**

### **Q: What is a Tier 1 EFG?**

**A: Wholesale food vendor** - means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination.

**Food Service Provider** - means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations.'

**Food Distributor** - means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores.

**Grocery Store** - means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments.

**Supermarket** - " means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items.

### **Q: What is a Tier 2 EFG?**

**A: Restaurant** with 250 or more seats or a total facility size equal to or greater than 5,000 sq.ft.

**Hotel** with on-site food facility and 200 or more rooms

**Large venue** - means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event at a location that includes but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event

**Large event** - means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For the purpose of this chapter, a venue facility includes but is not limited to a public, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater or other public attraction facility. For the purposes of this chapter, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues on the site is a single large venue

**A state agency with a cafeteria** with 250 or more seats or a total cafeteria facility size equal to or greater than 5,000sq. Ft.

**A local education agency** with on-site food facility

### **Q: Please clarify the term "on-site food facility."**

**A:** The term "on-site food facility" is only used in the thresholds for the following tier two commercial edible food generators: local education agencies, hotels, and health facilities.



The regulations specify that "food facility" has the same meaning as in Section 113789 of the California Health and Safety Code.

As found in California Retail Food Code excerpt from the California Health and Safety Code, Article 2, Section 113789:

"Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

- i. An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.
- ii. Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

"Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- i. Public and private school cafeterias
- ii. Restricted food service facilities
- iii. Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).
- iv. Commissaries
- v. Mobile food facilities
- vi. Mobile support units
- vii. Temporary food facilities
- viii. Vending Machines
- ix. Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
- x. Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.
- xi. Fishermen's markets.
- xii. Microenterprise home kitchen operations.
- xiii. Catering operation.
- xiv. Host facility.

For additional information on the entities that 'food facility' does not include, please refer to Section 113789 subdivision (c) of the California Retail Food Code.

CalRecycle also provided information in the [Final Statement of Purpose and Necessity](#) to help clarify the term "food facility" beyond the definition that is provided in the California Health and Safety Code.

**Q: Is a privately-owned business within a grocery store part of the definition of "grocery store?" If they are not a part of the definition, are those businesses subject to the commercial edible food generator requirements?**

**A:** If a privately owned business within a grocery store meets any of the commercial edible food generator definitions and their associated thresholds, then the business would be required to comply with the commercial edible food generator requirements specified in

Section 18991.3 of the regulations. If the privately owned business does not independently meet the commercial edible food generator definitions or thresholds, it is not subject to the commercial edible food generator requirements of SB 1383.

**Q: Please clarify the definition of a restaurant, more specifically a fast food restaurant.**

**A:** A fast food business must comply with the commercial edible food generator requirements specified in Section 18991.3 of the regulations if:

- The business is primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, and
- The facility is equal to or greater than 5,000 square feet or has 250 or more seats.

**Q: What if I'm already donating to a food recovery organization?**

**A:** Fantastic! If you are already donating to a food recovery organization or using a service you will need to have a written agreement or contract with them to submit once SB 1383 is implemented. There are model agreements on CalRecycle if you need help in creating a contract,

**Q: I don't have any excess food, do I still need to enter a contract?**

**A:** Make sure that they understand food that expired can still be donated and is not necessarily always waste

**Q: Are EFGs able to donate their edible food to clients, co-workers or even take them home themselves? Or are they required to donate it to a FRO/FRS?**

**A:** Only edible food that would otherwise be disposed must be recovered. Nothing in SB 1383's edible food recovery regulations prohibits a commercial edible food generator from giving their surplus food to clients or employees. However, if the food would otherwise be disposed, then it must be recovered by a food recovery organization or a food recovery service.

**Q: Would an arrangement for food recovery that is not a contract or written agreement be acceptable for compliance?**

**A:** SB 1383's regulations require commercial edible food generators to establish a contract or written agreement with a food recovery organization or a food recovery service for food recovery. Requiring a contract or written agreement with supporting documentation of the contract or written agreement is critical to ensure that edible food is recovered in a safe, professional, and reliable manner.

Contracts and written agreements add a layer of food safety, professionalism, and reliability into food recovery and can also serve as a mechanism to help protect food recovery organizations and services from donation dumping. CalRecycle developed a model food recovery agreement that can be customized by food recovery organizations, food recovery services, and commercial edible food generators.

Although a contract or written agreement for food recovery must be established, it is at the discretion of food recovery organizations, food recovery services, and commercial edible food generators to determine the exact provisions to include in their contracts or written

agreements. For example, some food recovery organizations may include provisions in their contracts to protect their operation from receiving food that they are not able or willing to accept. Other food recovery organizations or food recovery services could include cost-sharing provisions as part of their contracts or written agreements with commercial edible food generators. Nothing in SB 1383's regulations prohibits a food recovery organization or a food recovery service from negotiating cost sharing as part of their contracts or written agreements with commercial edible food generators.

Contracts and written agreements are also critical for enforcement purposes. Jurisdictions will be able to monitor commercial edible food generator compliance by verifying that a contract or written agreement has been established. To further help jurisdictions monitor compliance, the regulations include record keeping requirements for commercial edible food generators and for food recovery organizations and services. A jurisdiction could use the record to verify that a commercial edible food generator has established a contract or written agreement with a food recovery organization or service by requesting to see their records.

**Q: Will Schools with vending machines be required to comply?**

**A:** Some vending machines, such as vending machines with temperature control units, are required to have a food facility permit and be inspected as a food facility. If a vending machine at a local education agency does meet the California Health and Safety Code definition of "food facility," or the local education agency has any other food facility on-site, then the local education agency will be required to comply with the commercial edible food generator requirements of SB 1383 and to recover the maximum amount of edible food that would otherwise be disposed. This extends beyond donating surplus food from vending machines.

**Q: Are commercial edible food generators required to report information to the jurisdiction?**

**A:** No. Commercial edible food generators are not required to report information to the jurisdiction. However, commercial edible food generators are required to comply with record keeping requirements, and jurisdictions can request to see a generator's records to verify that the generator is in compliance with SB 1383's commercial edible food generator requirements.

**Q: Are food sales at large events and venues that are not a part of the venue's direct concession services exempt from the food donation requirements? Examples include food trucks located in/at large venues and events, non-regulated food vendors, and persons serving food outside of the event or venue (such as tailgating).**

**A:** Food vendors operating at large events and venues are not exempt from the edible food recovery regulations. Large event and venue operators must make arrangements to ensure that the food vendors operating at their event or venue are recovering the maximum amount of their edible food that would otherwise be disposed. In a situation where the food vendors at a large venue or event are not in compliance with Section 18991.3 of the regulations, the operator of the large event or venue would be responsible for compliance. SB 1383 does not regulate the activities of tailgaters.

**Q: Will commercial edible food generators be penalized if local food recovery organizations or services do not have the capacity to accept the edible food that the business generates?**

**A:** Section 18991.3 specifies that a commercial edible food generator shall comply unless the commercial edible food generator can demonstrate extraordinary circumstances beyond its control that make such compliance impracticable. One of the extraordinary circumstances specified is a failure by the jurisdiction to increase edible food recovery capacity as required by Section 18992.2, Edible Food Recovery Capacity.

Therefore, if a jurisdiction has failed to increase edible food recovery capacity then commercial edible food generators located in that jurisdiction are not required to comply with the requirements of Section 18991.3 as long as they can demonstrate that the jurisdiction has failed to comply with SB 1383's edible food recovery capacity planning requirements. However, the regulations also specify that the burden of proof shall be upon the commercial edible food generator to demonstrate extraordinary circumstances.

SB 1383 requires jurisdictions to implement edible food recovery programs, which includes the requirement that a jurisdiction shall increase edible food recovery capacity if it is determined that they do not have sufficient capacity to meet their edible food recovery needs. Jurisdictions are required to begin edible food recovery capacity planning in 2022.

**Q: If an EFG doesn't have any food waste, but still counts as a Tier 1 or Tier 2, how will they have to report that or track it?**

**A:** If they do not have any food waste, they would not have to report anything or make a contract. The city would still have to note that but they would most likely need to get an organics service.

**Q: Do farmers markets count as Tier 2 generators? Would they fall under the large events category with over 2000 attendees?**

**A:** Review guidance sheet provided by CalRecycle. They would only count as an EFG if they charge admission, are run by a public agency, and have over 2000 attendees.

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