



Sustainable Packaging for the State of California Act of 2018

Proposed Regulations
Second Draft

The following denotes changes to the proposed text:

~~Strikethrough~~ = deletions from the First Draft of the Proposed Regulations

Double Underline = additions to the First Draft of the Proposed Regulations

1 **Second Draft**

2 **Proposed Regulations**

3 **Sustainable Packaging for the State of California Act of 2018**

4
5 **TITLE 14: NATURAL RESOURCES**

6 **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

7 **CHAPTER 4 RESOURCE CONSERVATION PROGRAMS**

8 **ARTICLE 8. SUSTAINABLE PACKAGING FOR THE STATE OF CALIFORNIA**

9
10 **§ 17989. Definitions.**

11 (a) The definitions of this Article supplement and are governed by the definitions set forth
12 in Chapter 6 (commencing with Section 42370), Part 3, Division 30 of the Public
13 Resources Code (PRC).

14 (1) “Accept” means a compost facility knowingly incorporates a food service
15 packaging item into its routine daily operations for processing at the end of the
16 item’s intended purpose. A food service packaging item is not considered
17 “accepted” under this Article if the compost facility that received the item does not
18 compost the item or identifies the item as a physical contaminant. “Physical
19 contaminant” has the same meaning as defined in the California Code of
20 Regulations Title 14, Division 7, Chapter 3.1, Article 1, Section 17852, subsection
21 (a)(32).

22 (2) “Aesthetic change” means a change in the coloration and/or treatment of a food
23 service packaging item using inks, dyes, pigments, decals, or other methods that
24 does not affect the material composition, or construction of an approved food
25 service packaging item in a manner that impacts its ability to meet all applicable
26 requirements of Sections 17989.2-17989.5.

27 (3) “Collect” means that a food service packaging item is picked up and delivered to a
28 recycling or composting facility after being used to serve or transport food or
29 beverages.

30 (4) “Composting” has the same meaning as defined in PRC Section 40116.1.

31 ~~(4)~~ (5) “Compost facility” has the same meaning as “compostable materials handling
32 operation” or “facility” as defined in Division 7, Chapter 3.1, Article 1, Section

33 ~~17852, subsection (a)(12) or “large volume in vessel digestion operation,”~~
34 ~~“medium volume in vessel digestion facility,” or “limited volume in vessel digestion~~
35 ~~operation” as defined in Division 7, Chapter 3.2, Article 1, Section 17896.2,~~
36 ~~subsection (a).~~

37 ~~(5)~~ (6) “Cooking or food preparation technique” includes, but is not limited to, the
38 following:

39 (A) Cooking techniques, such as steaming, microwaving, simmering, boiling,
40 broiling, grilling, frying, or roasting.

41 (B) Beverage preparation techniques, such as blending, brewing, steeping,
42 juicing, diluting, or pouring.

43 (C) Food preparation techniques, such as defrosting, rinsing, washing, diluting,
44 cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing,
45 or icing.

46 ~~(6)~~ (7) “Department” means the Department of Resources Recycling and Recovery
47 (CalRecycle).

48 ~~(7)~~ (8) “Food service facility” means an operation or business that stores, prepares,
49 packages, serves, vends, or otherwise provides prepared food and is also one of
50 the following:

51 (A) An operation or business that is located in a state-owned facility, including
52 but not limited to: cafeterias, restaurants, catering companies, shops,
53 markets, delis, Department of Corrections and Rehabilitation commissaries,
54 University of California and California State University food courts and
55 dormitories, fairs, expositions and Legislative offices.

56 (B) An operation or business operating on or acting as a concessionaire on State
57 property.

58 (C) An operation or business under contract to provide food service to a State
59 agency.

60 ~~(8)~~ (9) “Food service packaging item” means a specific combination of the food service
61 packaging type (e.g., plate, cup, bowl) and the material(s) the type of food service
62 packaging is made of (e.g., polyethylene terephthalate (PET), polylactic acid
63 (PLA)-lined paperboard).

64 ~~(9)~~ (10) “Food service packaging manufacturer” means a person that makes the food
65 service packaging item(s).

66 ~~(10)~~ (11) (A) “Food service packaging type” or “type of food service packaging” means
67 a product used for serving or transporting prepared, ready-to-consume food or
68 beverages that meets one or more of the following conditions:

69 (i) Comes into direct contact with the prepared food or beverage;
70 (ii) Keeps the prepared food or beverage contained while transporting it on or
71 off a food service facility’s premises; or
72 (ii) Aids in the consumption of the prepared food or beverage.

73 (B) “Food service packaging type” does not include beverage containers or single-
74 use disposable items, such as straws, cup lids, plastic bags, and utensils, or
75 single-use disposable packaging for unprepared foods.

76 ~~(11)~~ (12) “Group of food service packaging items” or “group of items” means food
77 service packaging items made by one or more food service packaging
78 manufacturer(s) submitted under one application to meet the requirements of this
79 Article.

80 ~~(12)~~ (13) “Hauler” has the same meaning as defined in Division 7, Chapter 9, Article
81 9.25, Section 18815.2, subsection (a)(32).

82 ~~(13)~~ (14) “Jurisdiction” has the same meaning as defined in PRC Section 40145.

83 (15) “Large Volume Transfer/Processing Facility” has the same meaning as defined
84 in Division 7, Chapter 3, Article 6.0, Section 17402, subsection (a)(8).

85 ~~(14)~~ (16) “List of Approved Food Service Packaging” or “List” means the published list
86 of the food service packaging items approved by the department for use at food
87 service facilities.

88 ~~(15)~~ (17) “Mass produced” means that a food or beverage product is manufactured
89 and/or packaged by a third-party not affiliated with a food service facility and is
90 intended to be sold or distributed to the general marketplace including, but not
91 limited to, food service facilities without the use of any cooking or food preparation
92 techniques.

93 ~~(16)~~ (18) “Material” means the type of feedstock used to make a food service
94 packaging item including, but not limited to, glass, ceramic, metal, fiber (i.e.,

95 derived from cellulose), or plastic and may include other characteristics such as
96 the material form. Material is inclusive of any coatings or other ingredients used to
97 make a food service packaging item. A plastic material may be identified solely by,
98 or by a combination of, either the name of the plastic resin (#1-6 in accordance
99 with PRC Sections 18013-18015), or by the name of the plastic polymer (e.g.,
100 polylactic acid), or the form (e.g., bottle, thermaform).

101 (19) "Mixed Material" has the same meaning as defined in Division 7, Chapter 3.1,
102 Article 1, Section 17852, subsection (a)(26).

103 ~~(17) "On site" means the location of the food service facility where the food is served~~
104 ~~and does not include centralized facilities that store food service packaging items~~
105 ~~for distribution to multiple food service facilities.~~

106 (20) "Organic waste" has the same meaning as defined in PRC Section 42649.8,
107 subsection (d).

108 ~~(18) (21) "Person" has the same meaning as defined in PRC Section 40170.~~

109 ~~(19) (22) "Per- and polyfluoroalkyl substance (PFAS)" means a chemical that contains~~
110 ~~at least one fully fluorinated carbon atom.~~

111 ~~(20) (23) "Plastic bag" means an open-top carryout style plastic bag with handles that~~
112 ~~cannot be closed or sealed, by design.~~

113 ~~(21) (24) "Proposition 65 list" means the list of chemicals known to the State of~~
114 ~~California to cause cancer, birth defects, or other reproductive harm pursuant to~~
115 ~~the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety~~
116 ~~Code Sections 25249.5-25249.14.~~

117 ~~(22) (25) "Recycling" has the same meaning as defined in PRC Section 40180.~~

118 ~~(23) (26) "Recycling facility" means an entity that meets the definition of~~
119 ~~meaning as "recycling center" in Division 7, Chapter 3, Article 6.0, Section~~
120 ~~17402.5, subsection (d).~~

121 ~~(24) (27) "Recycling program" means a diversion program, as defined in PRC Section~~
122 ~~40127, that is established by a California jurisdiction for the purpose of providing~~
123 ~~recycling or organics waste collection services to residents or businesses. A~~
124 ~~recycling program must include services provided by a hauler that is authorized~~
125 ~~under a contract, an agreement, a permit, or other authorization with a jurisdiction~~

126 to regularly collect materials, as defined in subsection 17989 (a)(18)(16), within
127 the jurisdiction for recycling. “Recycling program” does not include a takeback
128 program, as defined in subsection 17989 (a)(30)(27).

129 ~~(25)~~ (28) “Safe and timely manner” means a food service packaging item achieves 90
130 percent biodegradation within 60 days in the active compost process, as defined
131 in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(1), and is
132 verified by a third-party certification entity to meet the requirements of one of the
133 following standards, as applicable:

134 (A) ASTM D6400 – 19: Standard Specification for Labeling of Plastics Designed
135 to be Aerobically Composted in Municipal or Industrial Facilities, or

136 (1) ASTM D6400 – 19 sections 6.2 and 6.3 shall be achieved within 60
137 consecutive days after the test is initiated.

138 (B) ASTM D6868 – 19: Standard Specification for Labeling of End Items that
139 Incorporate Plastics and Polymers as Coatings or Additives with Paper and
140 Other Substrates Designed to be Aerobically Composted in Municipal or
141 Industrial Facilities.

142 (1) ASTM D6868 – 19 sections 6.2 and 6.3 shall be achieved within 60
143 consecutive days after the test is initiated.

144 ~~(26)~~ (29) “Sort” means to manually and/or mechanically separate food service
145 packaging items and similar constituent materials into streams for aggregation.

146 ~~(27)~~ (30) “Takeback program” means a program that collects food service packaging
147 items for reuse or recycling. A takeback program shall include convenient options
148 for customers to return the food service packaging items subject to the takeback
149 program. A takeback program may require a customer to pay a deposit or may
150 include incentives offered by a food service packaging manufacturer or food
151 service facility to ensure the food service packaging items are collected for reuse
152 or recycling.

153 ~~(28)~~ (31) “Third-party certification entity” means either of the following:

154 (A) ~~an~~ An independent laboratory that is ISO/IEC 17025 accredited by an
155 International Laboratory Accreditation Cooperation Mutual Recognition
156 Arrangement (ILAC MRA) signatory, and performs applicable testing

157 methods to certify a food service packaging item. "ISO/IEC 17025" means
158 the International Organization for Standardization/International Electro-
159 technical Commission general requirements for the competence of testing
160 and calibration laboratories, or

161 (B) An entity (e.g., Biodegradable Products Institute) that has executed a
162 contract with an ISO/IEC 17025 accredited laboratory to perform testing
163 methods to certify a food service packaging item.

164 ~~(29) "Transfer/processor" has the same meaning as in Division 7, Chapter 9, Article~~
165 ~~9.25, Section 18815.2, subsection (a)(62).~~

166
167 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
168 Sections 42370.1, 42370.2, and 42370.3, Public Resources Code.

169 **§17989.1. List of Approved Food Service Packaging.**

170 (a) The List of Approved Food Service Packaging (List) published on the department's
171 website shall include, at a minimum, the following information for each food service
172 packaging item:

173 (1) An indication that the food service packaging item is determined by the
174 department to be reusable, recyclable, or compostable, and meets all
175 applicable requirements of Sections 17989.2-17989.5.

176 (2) A description of the ~~type of~~ food service packaging item, including the food
177 service packaging type(s) (e.g., plate, cup, bowl, tray), item name(s), and
178 size(s) (e.g., dimensions, diameter, volume).

179 (3) The material(s) used to manufacture the food service packaging item (e.g.,
180 polyethylene terephthalate (PET), polylactic acid (PLA)-lined fiberboard).

181 ~~(4) The applicable sizes, in ounces or diameter, of the food service packaging~~
182 ~~item.~~

183 ~~(5) (4) The name of the food service packaging manufacturer.~~

184 ~~(6) (5) As applicable, the~~ The names of chemicals contained in the food service
185 packaging item, and their Chemical Abstract Service Registry Numbers
186 (CASRN), that are included on the Proposition 65 list.

187 (b) The List shall also include a section that identifies materials which the department
188 determines have met the requirements of subsection 17989.4(a)(3)(A) and
189 subsections 17989.5(a)(1) and (2). The department shall consider the materials
190 included in this section when making recyclability and compostability determinations
191 for food service packaging items. Food service packaging manufacturers may
192 reference the materials identified in this section when submitting applications pursuant
193 to subsections 17989.6(d)(4) and (e)(1) and (2).

194 ~~(b)~~ (c) The department shall establish the initial List required by subsection 42370.3(a) of
195 the PRC, as follows:

196 (1) A food service packaging manufacturer, or person acting on its behalf, who
197 ~~wishes~~ seeks to have items included on the List, shall submit an application
198 to the department pursuant to Section 17989.6 within 30 days of the date
199 these regulations become effective.

200 (2) The department shall evaluate each application in the order it is received to
201 determine if a food service packaging item meets the applicable criteria of
202 this Article and will be added to the List.

203 ~~(e)~~ (d) Following publication of the initial List, the department shall evaluate applications
204 and update the List with additional food service packaging items on an ongoing basis.

205 ~~(d) The department shall notify the Department of General Services and the Public within~~
206 ~~30 days of making any changes to the List.~~

207 ~~(e) A food service packaging manufacturer, or person acting on its behalf, shall submit a~~
208 ~~new application to the department for evaluation within 30 days when non-aesthetic~~
209 ~~changes are made to an approved food service packaging item. The department shall~~
210 ~~notify the manufacturer and remove the food service packaging item from the List if~~
211 ~~the item no longer meets the applicable criteria.~~

212 ~~(f)~~ (e) If the department determines that an approved food service packaging item or
213 material on the published List does not no longer meets the requirements of this Article,
214 the department shall notify the manufacturer and remove the food service packaging
215 item from the List:

216 (1) Notify the food service packaging manufacturer, or person acting on its
217 behalf, of the reason(s) for the proposed removal of their food service

218 packaging item and allow them no fewer than 30 days to submit written
219 comments.

220 (2) Notify the public of the reason(s) for the proposed removal of a food service
221 packaging material and allow no fewer than 30 days to submit written
222 comments.

223 (3) Evaluate the comments received pursuant to subsections 17989.1 (e)(1)
224 and (2) prior to issuing its final determination.

225 (4) Remove the food service packaging item and/or material from the List or
226 make no changes to the List.

227 (f) The department shall notify a food service packaging manufacturer, or person acting
228 on its behalf, when a chemical that may be used in food service packaging is identified
229 pursuant to subsections 17989.2(a)(1), (2), or (4).

230 (1) The food service packaging manufacturer, or person acting on its behalf,
231 shall provide information to the department within 60 days of the date of the
232 notification and indicate whether the identified chemical is present in the
233 food service packaging item(s). If this information is not received within 60
234 days of the date of the notification, the department shall consider removing
235 the food service packaging item(s) from the List.

236 (g) Pursuant to subsection 42370.2(a) of the PRC, the department shall evaluate the List
237 no less than once every five years.

238 (1) The department shall notify a~~A food service packaging manufacturer, or~~
239 ~~person acting on its behalf, that it is evaluating the List~~~~shall submit a new~~
240 ~~application to the department within 180 days of being notified by the~~
241 ~~department that it is evaluating the List to determine whether each of the~~
242 ~~approved food service packaging items is reusable, recyclable, or~~
243 ~~compostable. If a new application is not received within 180 days the food~~
244 ~~service packaging item may be removed from the List.~~

245 (2) The food service packaging manufacturer, or person acting on its behalf,
246 shall submit a new application to the department within 180 days of the date
247 of the notification. If a new application is not received within 180 days of the

248 date of the notification, the department shall consider removing the item
249 from the List.

250 (h) The department shall notify the Department of General Services and the public within
251 30 days of making any changes to the List.

252
253 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
254 Sections 42370.2 and 42370.3, Public Resources Code.

255 **§17989.2. Public Health and Litter Impacts Criteria.**

256 (a) Food service packaging items included on the List shall meet the following criteria to
257 minimize public health and litter impacts:

258 (1) A food service packaging item that is subject to the Toxics in Packaging
259 Prevention Act (Health and Safety Code Sections 25214.11-25214.26) shall
260 not contain lead, mercury, cadmium, or hexavalent chromium in an amount
261 that may pose a threat to public health or that exceeds 100 parts per million
262 by weight of the sum of these metals.

263 (2) A manufacturer, or person acting on its behalf, shall disclose the names of any
264 chemical(s) included on the Proposition 65 list that are used in the
265 manufacturing of a food service packaging item.

266 (3) A food service packaging item made from plastic or fiber and that is recyclable
267 or compostable shall not contain PFASs, as measured by total fluorine at
268 concentrations above 100 parts per million.

269 (4) If a food service packaging item is identified by ~~another state agency, or~~
270 ~~another state or federal government agency or non-governmental organization~~
271 ~~as having to have the potential to contribute to an adverse public health impact~~
272 ~~(e.g., through publications or reports provided by the Office of Environmental~~
273 ~~Health Hazard Assessment's Prop 65 program or the Department of Toxic~~
274 ~~Substances Control's Safer Consumer Products Program) the department~~
275 ~~may not include or remove the food service packaging item from the list, the~~
276 department shall:

277 (A) Evaluate publications, reports, and any other information provided by
278 a state agency, federal government agency, or non-governmental
279 organization to determine if it is applicable to PRC subsection
280 42370.2(g).

281 (B) Consult with the Office of Environmental Health Hazard Assessment
282 and the Department of Toxic Substances Control.

283 (C) Follow the process described in subsection 17989.1(e) to determine
284 if an item or material should be removed from the List.

285 (5) If a food service packaging material is subject to a ban, fee for distribution
286 (e.g., a fee for a single use disposable cup at point of sale), or other
287 restrictions, at least in part due to litter or ocean debris concerns, in city or
288 county ordinances, the department ~~may not include or remove food service~~
289 ~~packaging items made from that material from the List shall:~~

290 (A) Evaluate the ordinance(s) to determine if it is applicable to PRC
291 subsection 42370.2(g).

292 (B) Follow the process described in subsection 17989.1(e) to determine
293 if an item or material should be removed from the List.

294
295 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
296 Sections 42370.2 and 42370.3, Public Resources Code.

297 **§17989.3. Reusable Food Service Packaging Criteria.**

298 (a) A food service packaging item is “reusable” and shall be included on the List if the
299 department determines it meets the requirements of Section 17989.2 and it either:

300 (1) Maintains its shape, structure, and function after ~~780~~ ~~425~~ cycles in a
301 cleaning and sanitizing process as defined in California Health and Safety
302 Code Section 114101 and 114099.7, respectively, as demonstrated by a
303 third-party certification entity; or

304 (2) The manufacturer of the food service packaging item provides an express
305 warranty that the food service packaging item can be reused for its intended

306 purpose for a minimum of one-year or the manufacturer will take back and
307 replace the item at the manufacturer's expense.

308
309 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
310 Sections 42370.2 and 42370.3, Public Resources Code.

311 **§17989.4. Recyclable Food Service Packaging Criteria.**

312 (a) A food service packaging item is "recyclable" and shall be included on the List if
313 the department determines it meets the requirements of Section 17989.2 and all
314 the following criteria:

315 (1) The food service packaging item shall be a minimum of two (2) inches
316 measured in two dimensions (i.e., a minimum surface area of four inches).

317 (2) The food service packaging item shall not contain additives that initiate or
318 accelerate fragmentation.

319 (3) The food service packaging item is regularly collected and recycled as
320 follows:

321 (A) ~~The~~ Prior to December 31, 2025, the food service packaging material
322 is collected by at least ~~75-60~~ percent of recycling programs statewide
323 and ~~are~~ sorted and aggregated into a single named material bale
324 by at least ~~7560~~ percent of large volume transfer/~~processors,~~
325 processing facilities in the state. Effective January 1, 2026, the food
326 service packaging material is collected by at least 75 percent of
327 recycling programs and is sorted and aggregated into a single named
328 material bale by at least 75 percent of large volume transfer
329 processing facilities in the state; or

330 (B) ~~The~~ Prior to December 31, 2025, the food service packaging item is
331 included in a takeback program that collects at least ~~75-60~~ percent
332 of the food service packaging items for reuse or recycling. Effective
333 January 1, 2026, the food service packaging item is included in a
334 takeback program that collects at least 75 percent of the food service
335 packaging items for reuse or recycling.

336 (i) Takeback programs that include reuse shall indicate the
337 number of times the food service packaging item may can be
338 reused prior to being recycled.

339 (ii) ~~Takeback programs shall collect at least 75 percent of the food~~
340 ~~service packaging items, and a~~All food service items collected by
341 the takeback program shall be transported to a transfer/
342 ~~processor~~processing or recycling facility for aggregation into a
343 single named material bale.

344 (C) For purposes of this Article, mixed paper bales are considered a
345 single named material bale.

346
347 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
348 Sections 42370.2 and 42370.3, Public Resources Code.

349 **§17989.5. Compostable Food Service Packaging Criteria.**

350 (a) A food service packaging item is “compostable” and shall be included on the List
351 if the department determines it meets the requirements of Section 17989.2 and all
352 the following criteria:

353 (1) ~~The~~ Prior to December 31, 2025, the food service packaging material is
354 regularly collected for composting by a ~~minimum of 75~~ at least 50 percent of
355 organics recycling programs statewide. Effective January 1, 2026, the food
356 service packaging material is regularly collected for composting by at least
357 75 percent of organics recycling programs statewide.

358 (2) ~~The~~ Prior to December 31, 2025, the food service packaging item material
359 is accepted by at least ~~75~~ 50 percent of the compost facilities ~~permitted to in~~
360 the state that accept mixed materials. Effective January 1, 2026, the food
361 service packaging material is accepted by at least 75 percent of the
362 compost facilities in the state that accept mixed materials.

363 (3) The food service packaging item ~~composts~~ biodegrades in a safe and timely
364 manner.

365 (4) Products labeled “compostable” shall meet the applicable requirements
366 specified in Chapter 5.7 (Sections 42355-42358.5), Part 3, Division 30 of
367 the PRC and Section 17580.5(a) of the Business and Professions Code.
368 ~~The food service packaging item complies with the Federal Trade~~
369 ~~Commission Guides for the Use of Environmental Marketing Claims (part~~
370 ~~260 commencing with Section 260.1 of Subchapter B of Chapter I of Title~~
371 ~~16 of the Code of Federal Regulations).~~

372
373 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
374 Sections 42370.2 and 42370.3, Public Resources Code.

375 **§17989.6. Application Requirements and Submittal Process.**

376 (a) ~~If a food service packaging manufacturer, or person acting on its behalf, seeks~~
377 ~~to add a food service packaging item to the List, an application shall be submitted~~
378 ~~to the department for each food service packaging item or group of food service~~
379 ~~packaging items that meet the applicable requirements of Sections 17989.2-17989.5.~~
380 The application shall contain the following and be submitted electronically:

381 (1) Contact information

382 (A) Name and title of the person submitting the application

383 (B) Company or organization name

384 (C) Company or organization mailing and physical address

385 (D) Phone number

386 (E) Email address

387 (F) Name of the manufacturer(s) of the food service packaging item or
388 group of items

389 (2) A statement that the application is being submitted to be considered for
390 determining if the food service packaging item or group of items is reusable,
391 recyclable, or compostable.

392 (3) A description of the food service packaging item or group of items, including
393 the food service packaging type(s), item name(s), and size(s) (e.g.,
394 dimensions, diameter, volume).

- 395 (4) ~~As applicable, a~~ A description of the material(s) used to manufacture the
396 food service packaging item or group of items.
- 397 (5) ~~As applicable, documentation~~ Documentation that a food service packaging
398 item or group of items meets the requirements of subsection 17989.2(a)(1),
399 as applicable.
- 400 (6) ~~As applicable, the~~ The chemical name(s) and CASRN(s) to demonstrate
401 compliance with subsection 17989.2(a)(2). Disclose whether a Proposition
402 65 warning is required for exposure(s) to the chemical(s) resulting from the
403 use of the food service packaging item or group of items.
- 404 (7) ~~As applicable, the~~ The accreditation number(s) of the ISO/IEC 17025
405 laboratory(ies) used to demonstrate compliance, as applicable.
- 406 (8) A declaration signed under penalty of perjury by the food service packaging
407 manufacturer, or person acting on its behalf, stating that all information and
408 data submitted as part of the application is true and correct.
- 409 (b) A food service packaging manufacturer, or person acting on its behalf, shall label any
410 portions of the application it believes are confidential or proprietary that it wants the
411 department to maintain as confidential pursuant to ~~Section~~ subsection 17989.6(f)(3).
412 Applications submitted to the department shall not contain redactions. Any portion(s)
413 of an application that are not labeled or identified as confidential shall be deemed a
414 public document.
- 415 (c) In addition to the items submitted under subdivision (a), an application for a reusable
416 food service packaging item or group of items shall include test results from a third-
417 party certification entity that demonstrate compliance with subsection 17989.3(a)(1)
418 or the manufacturer's warranty as required by subsection 17989.3(a)(2).
- 419 (d) In addition to the items submitted under subdivision (a), an application for a
420 recyclable food service packaging item or group of items shall include information to
421 demonstrate compliance with Section 17989.4. Applications shall include:
- 422 (1) The measurement of two dimensions, in inches, of the food service
423 packaging item or each item in a group of food service packaging items.
- 424 (2) A statement that the food service packaging item or group of items do not
425 contain additives to initiate or accelerate fragmentation.

426 (3) ~~As applicable, test~~ Test results from a third-party certification entity that
427 demonstrate compliance with subsection 17989.2(a)(3), as applicable.
428 Tests shall be ~~conducted~~ completed within six (6) months of the application
429 submittal date.

430 (A) If an applicant submits test results for a group of food service
431 packaging items, the applicant must explain how the test results are
432 representative of the group of food service packaging items.

433 (4) ~~As applicable, information~~ Information demonstrating that the food service
434 packaging item is regularly collected and recycled~~for recycling~~ as required
435 by subsection 17989.4(a)(3).

436 (e) In addition to the items submitted under subdivision (a), an application for a
437 compostable food service packaging item or group of items shall include information
438 to demonstrate compliance with Section 17989.5. Applications shall include:

439 (1) Information demonstrating that the food service packaging material is
440 regularly collected as required by subsection 17989.5(a)(1) ~~for composting~~
441 ~~by a minimum of 75 percent of organics recycling programs.~~

442 (2) Information demonstrating that the food service packaging item ~~material or~~
443 ~~group of items are~~ accepted as required by subsection 17989.5(a)(2) ~~by~~
444 ~~at least 75 percent of compost facilities permitted to accept mixed~~
445 ~~materials, as defined in Division 7, Chapter 3.1, Article 1, Section 17852,~~
446 ~~subsection (a)(26), and that the material is not screened out for disposal~~
447 ~~prior to or after active composting.~~

448 (3) Test results from a third-party certification entity that demonstrates the
449 food service packaging item or group of items ~~biodegrades~~ composts in a
450 safe and timely manner. Tests shall be completed within six (6) months of
451 the application submittal date.

452 (A) If an applicant submits test results for a group of food service
453 packaging items, the applicant must explain how the test results are
454 representative of the group of food service packaging items.

455 (4) ~~As applicable, test~~ Test results from a third-party certification entity that
456 demonstrate compliance with subsection 17989.2(a)(3), as applicable.

457 Tests shall be completed~~conducted~~ within six (6) months of the application
458 submittal date.

459 (A) If an applicant submits test results for a group of food service
460 packaging items, the applicant must explain how the test results are
461 representative of the group of food service packaging items.

462 (5) A statement that the food service packaging item or group of items
463 complies with the applicable labeling requirements of Section 17580.5 of
464 the Business and Professions Code ~~Federal Trade Commission Guides~~
465 for the Use of Environmental Marketing Claims (part 260 commencing with
466 Section 260.1 of Subchapter B of Chapter I of Title 15 of the Code of
467 Federal Regulations).

468 (f) The department shall review submitted applications in the order in which they are
469 received and as follows:

470 (1) The department shall review each application to determine if it is complete.
471 For purposes of this review, “complete” means that all documentation
472 required by this section has been submitted.

473 (A) ~~The~~ Within 30 days of receipt, the department shall notify a food
474 service packaging manufacturer, or person acting on its behalf, if the
475 application is complete.

476 (B) If the department determines that an application is incomplete, the
477 department shall notify a food service packaging manufacturer, or
478 person acting on its behalf, of this determination and shall specify the
479 basis for the determination and the number of days allotted to provide
480 the supporting documentation.

481 (2) The department shall evaluate each complete application to determine if a
482 food service packaging item or group of items meets the applicable criteria
483 required by this Article.

484 (A) Upon approval, the department shall add the food service packaging
485 item or group of items to the List and notify the food service
486 packaging manufacturer, or person acting on its behalf.

487 (B) If the department determines that a food service packaging item or
488 group of items does not meet the applicable requirements ~~to~~in this
489 Article, the food service packaging manufacturer, or person acting
490 on its behalf shall be notified of the basis for the determination.

491 (i) The food service packaging manufacturer, or person acting
492 on its behalf, may provide additional documentation or
493 information to supplement its application. The department
494 shall consider the supplemental information prior to finalizing
495 the determination.

496 (3) The department shall maintain the confidentiality of information submitted
497 in each application as required by the California Public Records Act
498 (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the
499 Government Code), Section 40062 of the PRC, and Article 4 of Chapter 1
500 of this Division (commencing with Section 17041).

501 (g) A food service packaging manufacturer, or person acting on its behalf, shall submit a
502 new application to the department for evaluation within 30 days if a non-aesthetic
503 change is made to an approved food service packaging item.

504
505 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
506 Sections 42370.2, 42370.3, 42370.4, and 42370.5, Public Resources Code.

507 **§17989.7. Noncompliant Food Service Packaging Inventories.**

508 ~~(a) Upon the removal of a food service packaging item or group of food service packaging~~
509 ~~items from the List pursuant to subsection 17989.1(f), a~~ A food service facility may use
510 ~~its remaining a food service packaging item inventory that is not on the List published~~
511 ~~by the department pursuant to Section 42370.3 of the PRC under the following~~
512 ~~conditions:~~

513 (1) The food service facility possessed that specific inventory of food service
514 packaging item(s) before the date the List was published ~~or subsequently~~
515 updated.

516 (2) The food service facility possessed that specific inventory of food service
517 packaging item(s) before the List maintained pursuant to Section 42370.3
518 of the PRC was updated to remove the food service packaging item and the
519 food service packaging item was on the List when the food service facility
520 took possession of the food service packaging item.

521 (3) The food service facility acquired that specific inventory of food service
522 packaging items pursuant to a contract entered into before the date the List
523 was published or subsequently updated.

524 (4) The food service facility acquired that specific inventory of food service
525 packaging item(s) pursuant to a contract entered into before the List
526 maintained pursuant to Section 42370.3 of the PRC was updated to remove
527 the food service packaging item and the food service packaging item was
528 on the list when the food service facility entered into the contract.

529 (b) For a contract that is subject to this section and that is entered into, renewed, or
530 updated after the date the List was published or subsequently updated, the food
531 service facility shall be responsible for ensuring that the food service packaging items
532 it purchased are on the List.

533
534 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
535 Sections 42370.2, 42370.3, and 42370.4, Public Resources Code.

536 **§17989.8. Records.**

537 (a) A food service facility shall provide the department with reasonable and timely access
538 to its food service packaging item purchasing records by submitting the following
539 information within 60 days of a written request:

540 (1) For reusable food service packaging items, pursuant to Section 17989.3:
541 invoice(s) or purchase order(s), which includes, the date(s) the food service
542 packaging item(s) were purchased, the food service packaging material, the
543 type of food service packaging purchased, the manufacturer of the food
544 service packaging item(s), and the number of food service packaging items
545 purchased.

546 (2) For recyclable and compostable food service packaging items, pursuant to
547 Sections 17989.4 and 17989.5 respectively: invoice(s) or purchase
548 order(s), which includes, the date(s) the food service packaging item(s)
549 were purchased, the food service packaging material, the type of food
550 service packaging purchased, the manufacturer of the food service
551 packaging item(s), and the number of food service packaging items
552 purchased.

553

554 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
555 Sections 42370.5 Public Resources Code.