



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

**Second Draft**  
**Proposed Regulations**  
**Sustainable Packaging for the State of California Act of 2018**

**TITLE 14: NATURAL RESOURCES**  
**DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**  
**CHAPTER 4 RESOURCE CONSERVATION PROGRAMS**  
**ARTICLE 8. SUSTAINABLE PACKAGING FOR THE STATE OF CALIFORNIA**

**§ 17989. Definitions.**

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

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

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

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

[start second draft addition]

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

[end second draft addition]

[start second draft deletion]

~~(4)~~ [end second draft deletion] [start second draft addition] (5) [end second draft addition] “Compost facility” has the same meaning as “compostable materials handling operation” or “facility” as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(12) [start second draft deletion] or “large volume in-vessel digestion operation,” “medium volume in-vessel digestion facility,” or “limited volume in-vessel digestion operation” as defined in Division 7, Chapter 3.2, Article 1, Section 17896.2, subsection (a) [end second draft deletion].

[start second draft deletion]

~~(5)~~ [end second draft deletion] [start second draft addition] (6) [end second draft addition] “Cooking or food preparation technique” includes, but is not limited to, the following:

- (A) Cooking techniques, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.
- (B) Beverage preparation techniques, such as blending, brewing, steeping, juicing, diluting, or pouring.
- (C) Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, or icing.

[start second draft deletion]

~~(6)~~ [end second draft deletion] [start second draft addition] (7) [end second draft addition] “Department” means the Department of Resources Recycling and Recovery (CalRecycle).

[start second draft deletion]

~~(7)~~ [end second draft deletion] [start second draft addition] (8) [end second draft addition] “Food service facility” means an operation or business that stores, prepares, packages, serves, vends, or otherwise provides prepared food and is also one of the following:

- (A) An operation or business that is located in a state-owned facility, including but not limited to: cafeterias, restaurants, catering companies, shops, markets, delis, Department of Corrections and Rehabilitation commissaries,

University of California [start second draft addition] and California State University [end second draft addition] food courts and dormitories [start second draft addition], fairs, expositions [end second draft addition] and Legislative offices.

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

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

[start second draft deletion]

~~(8)~~ [end second draft deletion] [start second draft addition] (9) [end second draft addition] “Food service packaging item” means a specific combination of the food service packaging type (e.g., plate, cup, bowl) and the material(s) the type of food service packaging is made of (e.g., polyethylene terephthalate (PET), polylactic acid (PLA)-lined paperboard).

[start second draft deletion]

~~(9)~~ [end second draft deletion] [start second draft addition] (10) [end second draft addition] “Food service packaging manufacturer” means a person that makes the food service packaging item(s).

[start second draft deletion]

~~(10)~~ [end second draft deletion] [start second draft addition] (11) [end second draft addition] (A) “Food service packaging type” or “type of food service packaging” means a product used for serving or transporting prepared, ready-to-consume food or beverages that meets one or more of the following conditions:

(i) Comes into direct contact with the prepared food or beverage;

(ii) Keeps the prepared food or beverage contained while transporting it on or off a food service facility’s premises; or

(ii) Aids in the consumption of the prepared food or beverage.

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

[start second draft deletion]

~~(11)~~ [end second draft deletion] [start second draft addition] (12) [end second draft addition] “Group of food service packaging items” or “group of items” means food service packaging items made by one or more food service packaging manufacturer(s) submitted under one application to meet the requirements of this Article.

[start second draft deletion]

~~(12)~~ [end second draft deletion] [start second draft addition] (13) [end second draft addition] “Hauler” has the same meaning as defined in Division 7, Chapter 9, Article 9.25, Section 18815.2, subsection (a)(32).

[start second draft deletion]

~~(13)~~ [end second draft deletion] [start second draft addition] (14) [end second draft addition] “Jurisdiction” has the same meaning as defined in PRC Section 40145.

[start second draft addition]

(15) “Large Volume Transfer/Processing Facility” has the same meaning as defined in Division 7, Chapter 3, Article 6.0, Section 17402, subsection (a)(8). [end second draft addition]

[start second draft deletion]

~~(14)~~ [end second draft deletion] [start second draft addition] (16) [end second draft addition] “List of Approved Food Service Packaging” or “List” means the published list of the food service packaging items approved by the department for use at food service facilities.

[start second draft deletion]

~~(15)~~ [end second draft deletion] [start second draft addition] (17) [end second draft addition] “Mass produced” means that a food or beverage product is manufactured and/or packaged by a third-party not affiliated with a food service facility and is intended to be sold or distributed to the general marketplace including, but not limited to, food service facilities without the use of any cooking or food preparation techniques.

[start second draft deletion]

~~(16)~~ [end second draft deletion] [start second draft addition] (18) [end second draft addition] “Material” means the type of feedstock used to make a food service

packaging item including, but not limited to, glass, ceramic, metal, fiber (i.e., derived from cellulose), or plastic [start second draft addition] and may include other characteristics such as the material form [end second draft addition]. Material is inclusive of any coatings or other ingredients used to make a food service packaging item. A plastic material may be identified [start second draft addition] solely [end second draft addition] by [start second draft addition], or by a combination of, [end second draft addition] [start second draft deletion] either [end second draft deletion] the name of the plastic resin (#1-6 in accordance with PRC Sections 18013-18015) [start second draft deletion], or by [end second draft deletion] the name of the plastic polymer (e.g., polylactic acid) [start second draft addition], or the form (e.g., bottle, thermaform) [end second draft addition].

[start second draft addition]

(19) "Mixed Material" has the same meaning as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(26). [end second draft addition]

[start second draft deletion]

~~(17) "On-site" means the location of the food service facility where the food is served and does not include centralized facilities that store food service packaging items for distribution to multiple food service facilities. [end second draft deletion]~~

[start second draft addition]

(20) "Organic waste" has the same meaning as defined in PRC Section 42649.8, subsection (d). [end second draft addition]

[start second draft deletion]

~~(18) [end second draft deletion] [start second draft addition] (21) [end second draft addition] "Person" has the same meaning as defined in PRC Section 40170.~~

[start second draft deletion]

~~(19) [end second draft deletion] [start second draft addition] (22) [end second draft addition] "Per- and polyfluoroalkyl substance (PFAS)" means a chemical that contains at least one fully fluorinated carbon atom.~~

[start second draft deletion]

~~(20)~~ [end second draft deletion] [start second draft addition] (23) [end second draft addition] “Plastic bag” means an open-top carryout style plastic bag with handles that cannot be closed or sealed, by design.

[start second draft deletion]

~~(21)~~ [end second draft deletion] [start second draft addition] (24) [end second draft addition] “Proposition 65 list” means the list of chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5-25249.14.

[start second draft deletion]

~~(22)~~ [end second draft deletion] [start second draft addition] (25) [end second draft addition] “Recycling” has the same meaning as defined in PRC Section 40180.

[start second draft deletion]

~~(23)~~ [end second draft deletion] [start second draft addition] (26) [end second draft addition] “Recycling facility” [start second draft deletion] ~~means an entity that meets the definition of~~ [end second draft deletion] [start second draft addition] has the same meaning as [end second draft addition] “recycling center” in Division 7, Chapter 3, Article 6.0, Section 17402.5, subsection (d).

[start second draft deletion]

~~(24)~~ [end second draft deletion] [start second draft addition] (27) [end second draft addition] “Recycling program” means a diversion program, as defined in PRC Section 40127, that is established by a California jurisdiction for the purpose of providing recycling or [start second draft deletion] ~~organics~~ [end second draft deletion] [start second draft addition] organic [end second draft addition] waste collection services to residents or businesses. A recycling program must include services provided by a hauler that is authorized under a contract, an agreement, a permit, or other authorization with a jurisdiction to regularly collect materials, as defined in subsection 17989 (a)[start second draft addition] (18) [end second draft addition] [start second draft deletion] ~~(16)~~ [end second draft deletion], within the jurisdiction for recycling. “Recycling program” does not include a takeback

program, as defined in subsection 17989 (a) [start second draft addition] (30) [end second draft addition] [start second draft deletion] (~~27~~) [end second draft deletion].  
[start second draft deletion]

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

(A) ASTM D6400 – 19: Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities [start second draft deletion] ~~or~~ [end second draft deletion] [start second draft addition]

(1) ASTM D6400 – 19 sections 6.2 and 6.3 shall be achieved within 60 consecutive days after the test is initiated. [end second draft addition]

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

[start second draft addition]

(1) ASTM D6868 – 19 sections 6.2 and 6.3 shall be achieved within 60 consecutive days after the test is initiated. [end second draft addition]

[start second draft deletion]

~~(26)~~ [end second draft deletion] [start second draft addition] (29) [end second draft addition] “Sort” means to manually and/or mechanically separate food service packaging items and similar constituent materials into streams for aggregation.

[start second draft deletion]

~~(27)~~ [end second draft deletion] [start second draft addition] (30) [end second draft addition] “Takeback program” means a program that collects food service packaging items for reuse or recycling. A takeback program shall include



convenient options for customers to return the food service packaging items subject to the takeback program. A takeback program may require a customer to pay a deposit or may include incentives offered by a food service packaging manufacturer or food service facility to ensure the food service packaging items are collected for reuse or recycling.

[start second draft deletion]

~~(28)~~ [end second draft deletion] [start second draft addition] (31) [end second draft addition] “Third-party certification entity” means [start second draft addition] either of the following:

- (A) [end second draft addition] [start second draft deletion] ~~an~~ [end second draft deletion] [start second draft addition] An [end second draft addition] independent laboratory that is ISO/IEC 17025 accredited by an International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA) signatory, and performs applicable testing methods to certify a food service packaging item. “ISO/IEC 17025” means the International Organization for Standardization/International Electro-technical Commission general requirements for the competence of testing and calibration laboratories [start second draft addition], or
- (B) An entity (e.g., Biodegradable Products Institute) that has executed a contract with an ISO/IEC 17025 accredited laboratory to perform testing methods to certify a food service packaging item [end second draft addition].

[start second draft deletion]

~~(29) “Transfer/processor” has the same meaning as in Division 7, Chapter 9, Article 9.25, Section 18815.2, subsection (a)(62).~~ [end second draft deletion]

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

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

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

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

(2) A description of the [start second draft deletion] ~~type of~~ [end second draft deletion] food service packaging [start second draft addition] item, including the food service packaging type(s) [end second draft addition] (e.g., plate, cup, bowl, tray) [start second draft addition], item name(s), and size(s) (e.g., dimensions, diameter, volume). [end second draft addition]

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

[start second draft deletion]

~~(4) The applicable sizes, in ounces or diameter, of the food service packaging item. [end second draft deletion]~~

[start second draft deletion]

~~(5) [end second draft deletion] [start second draft addition] (4) [end second draft addition] The name of the food service packaging manufacturer.~~

[start second draft deletion]

~~(6) [end second draft deletion] [start second draft addition] (5) [end second draft addition] [start second draft deletion] ~~As applicable, the~~ [end second draft deletion] [start second draft addition] The [end second draft addition] names of chemicals contained in the food service packaging item, and their Chemical Abstract Service Registry Numbers (CASRN), that are included on the Proposition 65 list.~~

(b) [start second draft addition] The List shall also include a section that identifies materials which the department determines have met the requirements of subsection 17989.4(a)(3)(A) and subsections 17989.5(a)(1) and (2). The department shall consider the materials included in this section when making recyclability and

compostability determinations for food service packaging items. Food service packaging manufacturers may reference the materials identified in this section when submitting applications pursuant to subsections 17989.6(d)(4) and (e)(1) and (2). [end second draft addition]

[start second draft deletion]

~~(b)~~ [end second draft deletion] [start second draft addition] (c) [end second draft addition]

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

(1) A food service packaging manufacturer, or person acting on its behalf, who [start second draft deletion] ~~wishes~~ [end second draft deletion] [start second draft addition] seeks [end second draft addition] to have items included on the List, shall submit an application to the department pursuant to Section 17989.6 within 30 days of the date these regulations become effective.

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

[start second draft deletion]

~~(e)~~ [end second draft deletion] [start second draft addition] (d) [end second draft addition]

Following publication of the initial List, the department shall evaluate applications and update the List with additional food service packaging items on an ongoing basis.

[start second draft deletion]

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

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

[start second draft deletion]

~~(f)~~ [end second draft deletion] [start second draft addition] (e) [end second draft addition]

If the department determines that an approved food service packaging item [start

second draft addition] or material on the published List [end second draft addition] [start second draft deletion] ~~does not~~ [end second draft deletion] [start second draft addition] no longer [end second draft addition] meet [start second draft addition] s [end second draft addition] the requirements of this Article, the department shall [start second draft deletion] ~~notify the manufacturer and remove the food service packaging item from the List~~ [end second draft deletion] [start second draft addition];

(1) Notify the food service packaging manufacturer, or person acting on its behalf, of the reason(s) for the proposed removal of their food service packaging item and allow them no fewer than 30 days to submit written comments.

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

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

(4) Remove the food service packaging item and/or material from the List or make no changes to the List. [end second draft addition]

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

(1) The food service packaging manufacturer, or person acting on its behalf, shall provide information to the department within 60 days of the date of the notification and indicate whether the identified chemical is present in the food service packaging item(s). If this information is not received within 60 days of the date of the notification, the department shall consider removing the food service packaging item(s) from the List. [end second draft addition]

(g) [start second draft addition] Pursuant to subsection 42370.2(a) of the PRC, the department shall evaluate the List no less than once every five years.

(1) The department shall notify a [end second draft addition] [start second draft deletion] ~~A~~ [end second draft deletion] food service packaging manufacturer, or person acting on its behalf, [start second draft addition]

~~that it is evaluating the List [end second draft addition] [start second draft deletion] shall submit a new application to the department within 180 days of being notified by the department that it is evaluating the List [end second draft deletion] to determine whether each of the approved food service packaging items is reusable, recyclable, or compostable [start second draft deletion]. If a new application is not received within 180 days the food service packaging item may be removed from the List [end second draft deletion].~~

[start second draft addition]

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

(h) The department shall notify the Department of General Services and the public within 30 days of making any changes to the List. [end second draft addition]

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

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

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

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

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

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

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

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

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

(C) Follow the process described in subsection 17989.1(e) to determine if an item or material should be removed from the List. [end second draft addition]

(5) If a food service packaging material is subject to a ban, fee for distribution (e.g., a fee for a single use disposable cup at point of sale), or other restrictions, at least in part due to litter or ocean debris concerns, in city or county ordinances, the department [start second draft deletion] may not include or remove food service packaging items made from that material from the List [end second draft deletion] [start second draft addition] shall:

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

(B) Follow the process described in subsection 17989.1(e) to determine if an item or material should be removed from the List. [end second draft addition]

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

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

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

(1) Maintains its shape, structure, and function after [start second draft addition] 780 [end second draft addition] [start second draft deletion] ~~425~~ [end second draft deletion] cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section 114101 and 114099.7, respectively, as demonstrated by a third-party certification entity; or

(2) The manufacturer of the food service packaging item provides an express warranty that the food service packaging item can be reused for its intended purpose for a minimum of one-year or the manufacturer will take back and replace the item at the manufacturer’s expense.

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

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

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

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

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

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

(A) [start second draft deletion] ~~The~~ [end second draft deletion] [start second draft addition] Prior to December 31, 2025, the [end second draft addition] food service packaging material is collected by [start second draft addition] at least [end second draft addition] [start second draft deletion] ~~75~~ [end second draft deletion] [start second draft addition] 60 [end second draft addition] percent of recycling programs [start second draft addition] statewide [end second draft addition] and [start second draft deletion] ~~are~~ [end second draft deletion] [start second draft addition] is [end second draft addition] sorted and aggregated into a single named material bale by at least [start second draft deletion] ~~75~~ [end second draft deletion] [start second draft addition] 60 [end second draft addition] percent of [start second draft addition] large volume [end second draft addition] transfer/ [start second draft deletion] ~~processors,~~ [end second draft deletion] [start second draft addition] processing facilities in the state. Effective January 1, 2026, the food service packaging material is collected by at least 75 percent of recycling programs and is sorted and aggregated into a single named material bale by at least 75 percent of large volume transfer processing facilities in the state. [end second draft addition] or

(B) [start second draft deletion] ~~The~~ [end second draft deletion] [start second draft addition] Prior to December 31, 2025, the [end second draft addition] food service packaging item is included in a takeback program that collects at least [start second draft deletion] ~~75~~ [end second draft deletion] [start second draft addition] 60 [end second draft addition] percent of the food service packaging items for reuse or recycling. [start second draft addition] Effective January 1, 2026,



the food service packaging item is included in a takeback program that collects at least 75 percent of the food service packaging items for reuse or recycling [end second draft addition].

(i) Takeback programs that include reuse shall indicate the number of times the food service packaging item [start second draft deletion] ~~may~~ [end second draft deletion] [start second draft addition] can [end second draft addition] be reused prior to being recycled.

(ii) [start second draft deletion] ~~Takeback programs shall collect at least 75 percent of the food service packaging items, and all~~ [end second draft deletion] [start second draft addition] All [end second draft addition] food service items collected by the takeback program shall be transported to a transfer/ [start second draft deletion] ~~processor~~ [end second draft deletion] [start second draft addition] processing [end second draft addition] or recycling facility for aggregation into a single named material bale.

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

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

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

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

(1) [start second draft deletion] ~~The~~ [end second draft deletion] [start second draft addition] Prior to December 31, 2025, the [end second draft addition] food service packaging material is regularly collected for composting by [start second draft deletion] ~~a minimum of 75~~ [end second draft deletion] [start second draft addition] at least 50 [end second draft addition] percent

of organics recycling programs [start second draft addition] statewide. Effective January 1, 2026, the food service packaging material is regularly collected for composting by at least 75 percent of organics recycling programs statewide [end second draft addition].

(2) ~~The~~ Prior to December 31, 2025, the ~~food service packaging item~~ material ~~is~~ accepted by at least ~~75~~ 50 ~~percent~~ of ~~the~~ compost facilities ~~permitted to~~ in the state that ~~accept mixed materials.~~ Effective January 1, 2026, the food service packaging material is accepted by at least 75 percent of the compost facilities in the state that accept mixed materials. [end second draft addition]

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

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

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

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

(a) If a food service packaging manufacturer, or person acting on its behalf, [start second draft addition] seeks [end second draft addition] [start second draft deletion] would like [end second draft deletion] to add a food service packaging item to the List, an application shall be submitted to the department for each food service packaging item or group of food service packaging items that meet the applicable requirements of Sections 17989.2-17989.5. The application shall contain the following and be submitted electronically:

(1) Contact information

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

(B) Company or organization name

(C) Company or organization mailing and physical address

(D) Phone number

(E) Email address

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

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

(3) A description of the food service packaging item or group of items [start second draft addition], including the food service packaging type(s), item name(s), and size(s) (e.g., dimensions, diameter, volume) [end second draft addition].

(4) [start second draft deletion] ~~As applicable, a~~ [end second draft deletion] [start second draft addition] A [end second draft addition] description of the material(s) used to manufacture the food service packaging item or group of items.

(5) [start second draft deletion] ~~As applicable, documentation~~ [end second draft deletion] [start second draft addition] Documentation [end second draft addition] that a food service packaging item or group of items meets the

requirements of subsection 17989.2(a)(1) [start second draft addition], as applicable [end second draft addition].

(6) [start second draft deletion] ~~As applicable, the~~ [end second draft deletion] [start second draft addition] The [end second draft addition] chemical name(s) and CASRN(s) to demonstrate compliance with subsection 17989.2(a)(2). Disclose whether a Proposition 65 warning is required for exposure(s) to the chemical(s) resulting from the use of the food service packaging item or group of items.

(7) [start second draft deletion] ~~As applicable, the~~ [end second draft deletion] [start second draft addition] The [end second draft addition] accreditation number(s) of the ISO/IEC 17025 laboratory(ies) used to demonstrate compliance [start second draft addition], as applicable [end second draft addition].

(8) A declaration signed under penalty of perjury by the food service packaging manufacturer, or person acting on its behalf, stating that all information and data submitted as part of the application is true and correct.

(b) A food service packaging manufacturer, or person acting on its behalf, shall label any portions of the application it believes are confidential or proprietary that it wants the department to maintain as confidential pursuant to [start second draft deletion] ~~Section~~ [end second draft deletion] [start second draft addition] subsection [end second draft addition] 17989.6(f)(3). Applications submitted to the department shall not contain redactions. Any portion(s) of an application that are not labeled or identified as confidential shall be deemed a public document.

(c) In addition to the items submitted under subdivision (a), an application for a reusable food service packaging item or group of items shall include test results from a third-party certification entity that demonstrate compliance with subsection 17989.3(a)(1) or the manufacturer's warranty as required by subsection 17989.3(a)(2).

(d) In addition to the items submitted under subdivision (a), an application for a recyclable food service packaging item or group of items shall include information to demonstrate compliance with Section 17989.4. Applications shall include:

- (1) The measurement of two dimensions, in inches, of the food service packaging item or each item in a group of food service packaging items.
- (2) A statement that the food service packaging item or group of items do not contain additives to initiate or accelerate fragmentation.
- (3) [start second draft deletion] ~~As applicable, test~~ [end second draft deletion] [start second draft addition] Test [end second draft addition] results from a third-party certification entity that demonstrate compliance with subsection 17989.2(a)(3) [start second draft addition], as applicable [end second draft addition]. Tests shall be [start second draft deletion] ~~conducted~~ [end second draft deletion] [start second draft addition] completed [end second draft addition] within six (6) months of the application submittal date.

[start second draft addition]

- (A) If an applicant submits test results for a group of food service packaging items, the applicant must explain how the test results are representative of the group of food service packaging items. [end second draft addition]

- (4) [start second draft deletion] ~~As applicable, information~~ [end second draft deletion] [start second draft addition] Information [end second draft addition] demonstrating that the food service packaging item is regularly collected [start second draft addition] and recycled [end second draft addition] [start second draft deletion] ~~for recycling~~ [end second draft deletion] as required by subsection 17989.4(a)(3).

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

- (1) Information demonstrating that the food service packaging material is regularly collected as required by subsection 17989.5(a)(1) [start second draft deletion] ~~for composting by a minimum of 75 percent of organic recycling programs~~ [end second draft deletion].
- (2) Information demonstrating that the food service packaging [start second draft deletion] ~~item~~ [end second draft deletion] [start second draft addition]

material [end second draft addition] [start second draft deletion] ~~or group of items are~~ [end second draft deletion] [start second draft addition] is [end second draft addition] accepted [start second draft addition] as required by subsection 17989.5(a)(2) [end second draft addition] [start second draft deletion] ~~by at least 75 percent of compost facilities permitted to accept mixed materials, as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(26),~~ [end second draft deletion] and that the material is not screened out for disposal prior to or after active composting.

(3) Test results from a third-party certification entity that demonstrates the food service packaging item or group of items [start second draft deletion] ~~biodegrades~~ [end second draft deletion] [start second draft addition] composts [end second draft addition] in a safe and timely manner. [start second draft addition] Tests shall be completed within six (6) months of the application submittal date.

(A) If an applicant submits test results for a group of food service packaging items, the applicant must explain how the test results are representative of the group of food service packaging items. [end second draft addition]

(4) [start second draft deletion] ~~As applicable, test~~ [end second draft deletion] [start second draft addition] Test [end second draft addition] results from a third-party certification entity that demonstrate compliance with subsection 17989.2(a)(3) [start second draft addition], as applicable [end second draft addition]. Tests shall be [start second draft addition] completed [end second draft addition] [start second draft deletion] ~~conducted~~ [end second draft deletion] within six (6) months of the application submittal date.

[start second draft addition]

(A) If an applicant submits test results for a group of food service packaging items, the applicant must explain how the test results are representative of the group of food service packaging items. [end second draft addition]

(5) A statement that the food service packaging item or group of items complies with the [start second draft addition] applicable labeling requirements of Section 17580.5 of the Business and Professions Code [end second draft addition] [start second draft deletion] Federal Trade Commission Guides for the Use of Environmental Marketing Claims (part 260 commencing with Section 260.1 of Subchapter B of Chapter I of Title 15 of the Code of Federal Regulations) [end second draft deletion].

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

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

(A) [start second draft deletion] The [end second draft deletion] [start second draft addition] Within 30 days of receipt, the [end second draft addition] department shall notify a food service packaging manufacturer, or person acting on its behalf, if the application is complete.

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

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

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

(B) If the department determines that a food service packaging item or group of items does not meet the applicable requirements [start second draft deletion] ~~to~~ [end second draft deletion] [start second

draft addition] in [end second draft addition] this Article, the food service packaging manufacturer, or person acting on its behalf shall be notified [start second draft addition] of the basis for the determination [end second draft addition].

[start second draft addition]

(i) The food service packaging manufacturer, or person acting on its behalf, may provide additional documentation or information to supplement its application. The department shall consider the supplemental information prior to finalizing the determination. [end second draft addition]

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

[start second draft addition]

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

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

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

(a) [start second draft deletion] Upon the removal of a food service packaging item or group of food service packaging items from the List pursuant to subsection 17989.1(f), a [end second draft deletion] [start second draft addition] A [end second draft addition] food service facility may use [start second draft deletion] its remaining [end second draft deletion] [start second draft addition] a [end second draft addition] food service packaging item [start second draft deletion] inventory [end second draft deletion] [start



second draft addition] that is not on the List published by the department pursuant to Section 42370.3 of the PRC [end second draft addition] under the following conditions:

- (1) The food service facility possessed that specific inventory of food service packaging item(s) before the date the List was published [start second draft deletion] ~~or subsequently updated~~ [end second draft deletion].
  - (2) The food service facility possessed that specific inventory of food service packaging item(s) before the List maintained pursuant to Section 42370.3 of the PRC was updated to remove the food service packaging item and the food service packaging item was on the List when the food service facility took possession of the food service packaging item.
  - (3) The food service facility acquired that specific inventory of food service packaging items pursuant to a contract entered into before the date the List was published [start second draft deletion] ~~or subsequently updated~~ [end second draft deletion].
  - (4) The food service facility acquired that specific inventory of food service packaging item(s) pursuant to a contract entered into before the List maintained pursuant to Section 42370.3 of the PRC was updated to remove the food service packaging item and the food service packaging item was on the list when the food service facility entered into the contract.
- (b) For a contract that is subject to this section and that is entered into, renewed, or updated after the date the List was published or subsequently updated, the food service facility shall be responsible for ensuring that the food service packaging items it purchased are on the List.

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

#### **§17989.8. Records.**

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

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

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

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