



Sustainable Packaging for the State of California Act of 2018

Proposed Regulation Third Draft

The following denotes changes to the proposed text:

Underline = First Draft of the Proposed Regulation

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1 Third 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).~~The following definitions shall apply to the regulations
14 contained in this Article:

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

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

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

31 (4) ~~“Composting” has the same meaning as defined in PRC Public Resources Code~~
32 ~~Section 40116.1.~~

33 ~~(4)~~ (5) “Compost facility” has the same meaning as “compostable materials handling
34 operation” or “facility” as defined in Division 7, Chapter 3.1, Article 1, Section
35 17852, subsection (a)(12) or “large volume in vessel digestion operation,”
36 “medium volume in vessel digestion facility,” or “limited volume in vessel digestion
37 operation” as defined in Division 7, Chapter 3.2, Article 1, Section 17896.2,
38 subsection (a).

39 ~~(5)~~ (6) “Cooking or food preparation technique” includes, but is not limited to, the
40 following:

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

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

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

48 ~~(6)~~ (7) “Department” means the Department of Resources Recycling and Recovery
49 (CalRecycle).

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

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

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

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

62 ~~(8)~~ (9) “Food service packaging item” means a specific combination of the food service
63 packaging type (e.g., plate, cup, bowl) and the material(s) materials the type of

64 food service packaging is made of (e.g., polyethylene terephthalate (PET),
65 polylactic acid (PLA)-lined paperboard).

66 ~~(9)~~ (10) “Food service packaging manufacturer” or “manufacturer” means a person
67 that makes the food service packaging item(s)-items, and includes persons acting
68 on the food service packaging manufacturer’s behalf.

69 ~~(10)~~ (11) (A) “Food service packaging type” or “type of food service packaging” means
70 a product that is used for serving or transporting prepared, ready-to-consume food
71 or beverages and that meets one or more of the following conditions/criteria:

72 (i) ~~Comes~~ It comes into direct contact with the prepared food or beverage;

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

75 (iii)(iii) It aids ~~Aids~~ in the consumption of the prepared food or beverage.

76 (B) “Food service packaging type” does not include beverage containers (as
77 defined in Public Resources Code section 42370.1(a)) or single-use
78 disposable items, such as straws, cup lids, plastic bags, and utensils, or
79 single-use disposable packaging for unprepared foods.

80 ~~(11)~~ (12) “Group of food service packaging items” or “group of items” means food
81 service packaging items made by one or more food service packaging
82 manufacturer(s)-manufacturers and submitted under one application to meet the
83 requirements of this Article.

84 ~~(12)~~ (13) “Hauler” has the same meaning as defined in Division 7, Chapter 9, Article
85 9.25, Section 18815.2, subsection (a)(32).

86 ~~(13)~~ (14) “Jurisdiction” has the same meaning as defined in ~~PRC~~ Public Resources
87 Code Section 40145.

88 ~~(14)~~ (15) “Large Volume Transfer/Processing Facility” “Large volume transfer/processing
89 facility” has the same meaning as defined in Division 7, Chapter 3, Article 6.0,
90 Section 17402, subsection (a)(8).

91 ~~(14)~~ (16) “List of Approved Food Service Packaging” or “List” means the published list,
92 published by the department pursuant to Public Resources Code Section 42370.3,
93 of the following:

94 (A) Food food-service packaging items approved by the department for use at
95 food service facilities; and

96 (B) Materials that the department determines satisfy the criteria stated in
97 subsection 17989.4(a)(3)(A) or 17989.5(a)(1)(A).

98 ~~(15)~~ (17) "Mass produced" means that a food or beverage product is manufactured
99 and/or packaged by a third-party not affiliated with a food service facility and is
100 intended to be sold or distributed to the general marketplace including, but not
101 limited to, food service facilities without the use of any cooking or food preparation
102 techniques.

103 ~~(16)~~ (18) "Material" means the particular ingredient or combination of ingredients, such
104 as a feedstock, coating, layer, or other tangible constituent matter, that partially or
105 wholly constitute a food service packaging item. A material shall be described by
106 its identifying characteristics, such as its form (e.g., thermoform) and combination
107 or integration of ingredients (e.g., PLA-lined paperboard), when consideration of
108 those characteristics is necessary to determine compliance with this Article~~the type~~
109 ~~of feedstock used to make a food service packaging item including, but not limited~~
110 ~~to, glass, ceramic, metal, fiber (i.e., derived from cellulose), or plastic and may~~
111 ~~include other characteristics such as the material form. Material is inclusive of any~~
112 ~~coatings of other ingredients used to make a food service packaging item. A plastic~~
113 ~~material shall may be identified solely by, or by a combination of, either the name~~
114 ~~of the plastic resin (#1-6 in accordance with PRC Public Resources Code Sections~~
115 ~~18013 through -18015), or by the name of the plastic polymer (e.g., polylactic~~
116 ~~acid), or both (e.g., PET #1)~~the form (e.g., bottle, thermaform).

117 (19) "Mixed Material material" has the same meaning as defined in Division 7, Chapter
118 3.1, Article 1, Section 17852, subsection (a)(26).

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

122 (20) "Organic waste" has the same meaning as defined in PRC Public Resources
123 Code Section 42649.8, subsection (d).

124 ~~(18)~~(21) "Person" has the same meaning as defined in PRC Public Resources Code
125 Section 40170.

126 ~~(19)~~(22) "Per- and polyfluoroalkyl substance (PFAS)" means a chemical that contains
127 at least one fully fluorinated carbon atom.

128 ~~(20)~~(23) "Plastic bag" means an open-top, carryout-style plastic bag ~~with~~ that has
129 handles and is designed not to be closeable or sealable~~that cannot be closed or~~
130 sealed, by design.

131 (24) "Prepared food" means a food or beverage prepared for consumption on or off a
132 food service facility's premises, using any cooking or food preparation technique.
133 "Prepared food" does not include prepackaged, sealed food that is mass
134 produced by a third party off the premises of the food service facility.

135 ~~(21)~~(24)(25) "Proposition 65 list" means the list published in the California Code of
136 Regulations Title 27, Division 4, Chapter 1, Article 9, Section 27001 ~~of chemicals~~
137 ~~known to the State of California to cause cancer, birth defects, or other~~
138 ~~reproductive harm~~ pursuant to the Safe Drinking Water and Toxic Enforcement
139 Act of 1986, Health and Safety Code Sections 25249.5- through 25249.14, of
140 chemicals known to the State of California to cause cancer or reproductive
141 toxicity.

142 ~~(22)~~(25)(26) "Recycling" has the same meaning as defined in PRC Public Resources
143 Code Section 40180.

144 ~~(23)~~(26)(27) "Recycling facility" ~~means an entity that meets the definition of~~
145 same meaning as "recycling center" in Division 7, Chapter 3, Article 6.0, Section
146 17402.5, subsection (d).

147 ~~(24)~~(27)(28) "Recycling program" means a diversion program, as defined in PRC
148 Public Resources Code Section 40127, that is established by a California
149 jurisdiction for the purpose of providing recycling or ~~organics~~ organic waste
150 collection services to residents or businesses. A recycling program must include
151 services provided by a hauler that is authorized by a State or local government
152 entity pursuant to ~~under~~ a contract, an agreement, a permit, or other authorization
153 with a jurisdiction to regularly collect materials, as defined in subsection 17989
154 (a)(18)(16), within the government entity's jurisdiction for recycling. "Recycling

155 program” does not include a takeback program, as defined in this subsection
156 17989 (a)(30)(27).

157 ~~(25)~~ ~~(28)~~ “Safe and timely manner” means a food service packaging item achieves 90
158 percent biodegradation within 60 days in the active compost process, as defined
159 in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(1), and is
160 verified by a third party certification entity to meet the requirements of one of the
161 following standards, as applicable:

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

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

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

170 (1) ASTM D6868-19 sections 6.2 and 6.3 shall be achieved within 60
171 consecutive days after the test is initiated.

172 ~~(26)~~ ~~(29)~~ “Sort” means to manually and/or mechanically separate food service
173 packaging items and similar constituent materials into streams for aggregation.

174 ~~(27)~~ ~~(30)~~ ~~(29)~~ “Takeback program” means a program that collects-recovers certain food
175 service packaging items for reuse, or recycling, or composting. A takeback
176 program shall include and includes convenient options for customers to return the
177 food service packaging items subject to the takeback program. A takeback
178 program may, without limitation, require a customer to pay a deposit, or utilize
179 other may include incentives offered by a food service packaging manufacturer or
180 food service facility to ensure the food service packaging items are recovered
181 collected for reuse, or recycling, or composting.

182 ~~(28)~~ ~~(31)~~ “Third party certification entity” means either of the following:

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

186 ~~methods to certify a food service packaging item. “ISO/IEC 17025” means~~
187 ~~the International Organization for Standardization/International Electro-~~
188 ~~technical Commission general requirements for the competence of testing~~
189 ~~and calibration laboratories, or~~

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

193 ~~(29) “Transfer/processor” has the same meaning as in Division 7, Chapter 9, Article~~
194 ~~9.25, Section 18815.2, subsection (a)(62).”~~

195 (b) When used in this Article, the following publications are incorporated by reference in
196 their entirety:

197 (1) ASTM D5338-15, “Standard Test Method for Determining Aerobic Biodegradation
198 of Plastic Materials Under Controlled Composting Conditions, Incorporating
199 Thermophilic Temperatures,” ASTM International, June 2015.

200 (2) ASTM D6400-19, “Standard Specification for Labeling of Plastics Designed to be
201 Aerobically Composted in Municipal or Industrial Facilities,” ASTM International,
202 May 2019.

203 (3) ASTM D6868-19, “Standard Specification for Labeling of End Items that
204 Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other
205 Substrates Designed to be Aerobically Composted in Municipal or Industrial
206 Facilities,” ASTM International, October 2019.

207 (4) ISO 14855-1:2012, “Determination of the ultimate aerobic biodegradability of
208 plastic materials under controlled composting conditions – Method by analysis of
209 evolved carbon dioxide – Part 1: General method,” International Organization for
210 Standardization, December 2012.

211 (5) ISO 14855-2:2018, “Determination of the ultimate aerobic biodegradability of
212 plastic materials under controlled composting conditions – Method by analysis of
213 evolved carbon dioxide – Part 2: Gravimetric measurement of carbon dioxide
214 evolved in a laboratory-scale test,” International Organization for Standardization,
215 July 2018.

216 (6) ISO/IEC 17025:2017, "General requirements for the competence of testing and
217 calibration laboratories," International Organization for Standardization/
218 International Electrotechnical Commission, November 2017.

219

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

222 **§17989.1. List of Approved Food Service Packaging.**

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

226 (1) An indication that the department has determined the food service packaging
227 item is determined by the department to be reusable, recyclable, or
228 compostable, and to meet meets all applicable requirements of Sections
229 17989.2- through 17989.5.

230 (2) A description of the ~~type of~~ food service packaging item, including the food
231 service packaging ~~type(s)~~ types (e.g., plate, cup, bowl, tray), item
232 ~~name(s)~~ names, and ~~size(s)~~ sizes (e.g., dimensions, diameter, volume).

233 (3) The ~~material(s)~~ materials used to manufacture the food service packaging item
234 (e.g., polyethylene terephthalate (PET), ~~polylactic acid (PLA)~~ lined
235 paperboard~~fiberboard~~).

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

238 ~~(5)~~ (4) The name of the food service packaging manufacturer.

239 ~~(6)~~ (5) ~~As applicable, the~~ The names of chemicals contained in the food service
240 packaging item, and their Chemical Abstract Service Registry Numbers
241 (CASRN), that are included on the Proposition 65 list.

242 (b) The List shall also include a section that identifies materials which the department
243 determines have met the requirements of subsection 17989.4(a)(3)(A) ~~and~~ or
244 17989.5(a)(1)(A) ~~subsections 17989.5(a)(1) and (2).~~ Food service packaging
245 manufacturers may identify the materials specified on the List pursuant to subsection

246 17989(a)(16)(B) in the application submitted pursuant to Section 17989.6. The
247 department shall consider the whether materials are identified on the List included in
248 this section when making recyclability and compostability determinations for food
249 service packaging items. Food service packaging manufacturers may reference the
250 materials identified in this section when submitting applications pursuant to
251 subsections 17989.6(d)(4) and (e)(1) and (2).

252 ~~(b)~~ (c) The department shall establish the initial List required by subsection 42370.3(a) of
253 the PRCPublic Resources Code, as follows:

254 (1) A food service packaging manufacturer, or person acting on its behalf, who
255 that wishes seeks to have items included on the List shall submit an
256 application to the department pursuant to Section 17989.6 within 30 days
257 of the department posting of the date these regulations on its website after
258 approval by the Office of Administrative Law become effective.

259 (2) The department shall evaluate each application in the order it is received to
260 determine if a food service packaging item or group of items meets the
261 applicable criteria pursuant to of this Article for inclusion on and will be
262 added to the List.

263 ~~(e)~~ (d) Following publication of the initial List, the department shall evaluate applications
264 on an ongoing basis and update the List with additional food service packaging items
265 that it determines to be reusable, recyclable, or compostable pursuant to this Article
266 on an ongoing basis.

267 ~~(d)~~ The department shall notify the Department of General Services and the Public within
268 30 days of making any changes to the List.

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

274 ~~(f)~~ (e) Except as otherwise provided in this Article, before removing a food service
275 packaging item from the List, the department shall make a preliminary determination
276 if the department determines that a an approved food service packaging item or

277 ~~material on the published List does not~~ no longer meets ~~meets~~ the requirements of
278 this Article, and the department shall ~~notify the manufacturer and remove the food~~
279 ~~service packaging item from the List:~~

280 (1) With regard to the potential removal of a food service packaging item from
281 the List, notify ~~Notify~~ the food service packaging manufacturer, ~~or person~~
282 ~~acting on its behalf,~~ of the ~~reason(s)~~ reasons for the department's
283 preliminary determination ~~proposed removal of their food service packaging~~
284 ~~item~~ and allow ~~them~~ no fewer than 30 days for the manufacturer to submit
285 written comments and additional information relevant to the department's
286 preliminary determination.

287 (2) With regard to the potential removal of a material from the List, notify ~~Notify~~
288 the public of the ~~reason(s)~~ reasons for the department's preliminary
289 determination ~~proposed removal of a food service packaging material and~~
290 allow no fewer than 30 days to submit for submission of written comments
291 and additional information relevant to the department's preliminary
292 determination.

293 (3) Evaluate the comments and information received pursuant to this
294 subsection ~~subsections 17989.1 (e)(1) and (2)~~ prior to issuing its final
295 determination as to whether the item or material satisfies the requirements
296 of this Article.

297 (4) Either maintain the food service packaging item and/or material on the List
298 or remove the item ~~Remove the food service packaging item and/or material~~
299 ~~from the List or make no changes to the List.~~

300 (f) The department shall notify a food service packaging manufacturer, or person acting
301 on its behalf, when the department determines that a manufacturer's food service
302 packaging items included on the List may contain a chemical that has been added to
303 the definition of "regulated metal" in Health and Safety Code Section 25214.12(l)
304 pursuant to the Toxics in Packaging Prevention Act (Health and Safety Code Sections
305 25214.11 through 25214.26), as that definition may be modified by statute or by
306 regulations promulgated by the Department of Toxic Substances Control pursuant to
307 its rulemaking authority under Health and Safety Code Section 25214.26, or added to

308 the Proposition 65 ~~list a chemical that may be used in food service packaging is~~
309 ~~identified pursuant to subsections 17989.2(a)(1), (2), or (4).~~

310 ~~(1) Within 60 days of the date of the notification, the The food service packaging~~
311 ~~manufacturer, or person acting on its behalf, shall provide information to the~~
312 ~~department within 60 days of the date of the notification and indicate~~
313 ~~indicating whether the identified chemical is present in the food service~~
314 ~~packaging item(s)-items.~~

315 ~~(2) If this information is not received within 60 days of the date of the~~
316 ~~notification, or if the department determines that the food service~~
317 ~~packaging item no longer satisfies the criteria set forth in subsections~~
318 ~~17989.2(a)(1) or 17989.2(a)(2), the department shall consider removing~~
319 ~~remove the food service packaging item(s)-items from the List.~~

320 ~~(3) Removal of a food service packaging item from the List due to failure to~~
321 ~~provide the required information within 60 days of the notification pursuant~~
322 ~~to this subsection shall not be subject to the requirements of subsection (e).~~

323 ~~(g) Pursuant to subsection 42370.3(b)2(a) of the PRCPublic Resources Code, the~~
324 ~~department shall review and evaluate the entire List no less than once every five years~~
325 ~~to determine whether each of the food service packaging items on the List is reusable,~~
326 ~~recyclable, or compostable.~~

327 ~~(1) The If the department determines that a new application pursuant to Section~~
328 ~~17989.6 is reasonably necessary for the department to evaluate whether a~~
329 ~~food service packaging item is reusable, recyclable, or compostable, the~~
330 ~~department shall notify the manufacturer that the item requires a new~~
331 ~~application. A food service packaging manufacturer, or person acting on its~~
332 ~~behalf, that it is evaluating the List shall submit a new application to the~~
333 ~~department within 180 days of being notified by the department that it is~~
334 ~~evaluating the List to determine whether each of the approved food service~~
335 ~~packaging items is reusable, recyclable, or compostable. If a new~~
336 ~~application is not received within 180 days the food service packaging item~~
337 ~~may be removed from the List. (2) The food service packaging~~
338 ~~manufacturer, or person acting on its behalf, shall submit a new application~~

339 to the department within 180 days of the date of the notification, and the
340 department shall consider such application in making its determination of
341 whether the item is reusable, recyclable, or compostable. If a new
342 application is not ~~received~~ submitted within 180 days of the date of the
343 notification, the department shall ~~consider removing~~ remove the food
344 service packaging item from the List, and the requirements of subsection
345 (e) shall not apply.

346 (2) The department shall review the new application and either maintain the
347 item on the List or make a preliminary determination pursuant to subsection
348 (e) that a food service packaging item is not reusable, recyclable, or
349 compostable.

350 (h) The department shall notify the Department of General Services and the public within
351 30 days of making any changes to the List.

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

355 **§17989.2. Public Health and Litter Impacts Criteria.**

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

358 (1) A food service packaging item that is subject to the Toxics in Packaging
359 Prevention Act (Health and Safety Code Sections 25214.11- through
360 25214.26) shall not contain lead, mercury, cadmium, or hexavalent chromium,
361 or any other “regulated metal” as described in subsection 17989.1(f) in an
362 amount that ~~may pose a threat to public health or that exceeds 100 parts per~~
363 million by weight, as measured by the sum of the total concentration levels of
364 all such metals~~of the sum of these metals.~~

365 (2) ~~A manufacturer, or person acting on its behalf, shall disclose the~~ The names
366 of all chemicals ~~any chemical(s)~~ included on the Proposition 65 list that are
367 used in the manufacturing of the ~~a~~ food service packaging item shall be

368 disclosed to the department by the manufacturer seeking to add the item to
369 the List.

370 (3) A food service packaging item made from plastic or fiber and that is recyclable
371 or compostable shall not contain PFASs. A food service packaging item shall
372 be deemed not to contain PFASs if its, as measured by total fluorine at
373 concentrations above concentration is not more than 100 parts per million, as
374 determined by combustion ion chromatography, particle-induced gamma-ray
375 emission spectroscopy, instrumental neutron activation analysis, or other
376 technique utilized by an ISO/IEC 17025:2017 accredited laboratory.

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

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

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

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

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

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

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

402 (b) If the department determines that a food service packaging item has the potential to
403 contribute to litter or public health or wildlife impacts, then it shall follow the process
404 described in subsection 17989.1(e) for potential removal of the item from the List. In
405 making such a determination, the department shall:

406 (1) Consider whether the food service packaging item has been identified by a
407 state or federal government agency or other organization as having the
408 potential to contribute to an adverse impact;

409 (2) Evaluate publications, reports, and any other information provided by a state
410 agency, federal government agency, or other organization;

411 (3) If the basis of the determination relates to public health or wildlife impacts,
412 consult with the Office of Environmental Health Hazard Assessment and the
413 Department of Toxic Substances Control; and

414 (4) If the food service packaging item or material is subject to a ban, fee for
415 distribution (e.g., a fee for a single-use disposable cup at point of sale), or other
416 restrictions imposed pursuant to city or county ordinances, evaluate the
417 ordinance and documentation in the public record in support of the ordinance
418 concerning the food service packaging item's potential to contribute to litter or
419 ocean debris concerns.

420

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

423 **§17989.3. Reusable Food Service Packaging Criteria.**

424 (a) A food service packaging item is “reusable” and shall be included on the List if the
425 department determines that it meets the requirements of Section 17989.2 and
426 satisfies either of the following criteria ~~it either:~~

- 427 (1) ~~The item maintains~~ Maintains its shape, structure, and function after 780
428 425 cycles in a cleaning and sanitizing process as defined in California
429 Health and Safety Code Section 114101 and 114099.7, respectively, as
430 demonstrated by test results from an ISO/IEC 17025:2017 accredited
431 laboratory ~~a third-party certification entity~~; or
- 432 (2) The manufacturer of the food service packaging item provides an express,
433 written warranty to purchasers of the item that the food service packaging
434 item can be reused it will remain reusable for its intended purpose for a
435 minimum of one- year or else the manufacturer will take back and replace
436 the item at the manufacturer's expense.

437

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

440 **§17989.4. Recyclable Food Service Packaging Criteria.**

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

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

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

449 (3) The food service packaging item is regularly collected and recycled as
450 follows satisfies either of the following criteria:

451 (A) The ~~Prior to~~ Prior to January 1, 2026 ~~December 31, 2025,~~ the food service
452 packaging item is comprised of materials that are material is
453 collected by at least 75-60 percent of recycling programs statewide,
454 have sufficient commercial value to be marketed for recycling, and
455 are sorted and aggregated into defined streams (e.g., mixed
456 paper, PET) a single named material bale by at least 75-60 percent

457 of large volume transfer/processors, processing facilities in the state.
458 Effective January 1, 2026, the food service packaging item is
459 comprised of materials that are material is collected by at least 75
460 percent of recycling programs statewide, have sufficient commercial
461 value to be marketed for recycling, and is are sorted and aggregated
462 into defined streams (e.g., mixed paper, PET) a single named
463 material bale by at least 75 percent of large volume transfer
464 processing facilities in the state; or.

465 (B) ~~The~~ Prior to January 1, 2026 ~~December 31, 2025,~~ the food service
466 packaging item is included in a takeback program that collects, on
467 an annual basis, recovers at least 75-60 percent of the food service
468 packaging items in the program that are distributed at food service
469 facilities for reuse or recycling. Effective January 1, 2026, the food
470 service packaging item is included in a takeback program that
471 collects, on an annual basis, recovers at least 75 percent of the food
472 service packaging items in the program that are distributed at food
473 service facilities for reuse or recycling. (i) Takeback programs that
474 include reuse shall indicate the number of times the food service
475 packaging item may can be reused prior to being recycled. (ii)
476 Takeback programs shall collect at least 75 percent of the food
477 service packaging items, and a All food service packaging items that
478 are recovered collected by the takeback program shall have
479 sufficient commercial value to be marketed for recycling and be
480 transported at the end of their useful life to a
481 transfer/processor processing or recycling facility to be sorted and
482 aggregated into defined streams (e.g., mixed paper, PET) for
483 recycling for aggregation into a single named material bale.

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

486

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

489 **§17989.5. Compostable Food Service Packaging Criteria.**

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

493 (1) The food service packaging item meets either of the following criteria:

494 (A) ~~The~~ Prior to January 1, 2026~~December 31, 2025~~, the food service
495 packaging item is comprised of materials that are ~~material is~~ regularly
496 collected for composting by ~~a minimum of 75~~ at least 50 percent of
497 ~~organics~~ organic waste recycling programs statewide and accepted by
498 at least 50 percent of the compost facilities in the state that accept
499 mixed materials. Effective January 1, 2026, the food service packaging
500 item is comprised of materials that are ~~material is~~ regularly collected
501 for composting by at least 75 percent of ~~organics~~ organic waste
502 recycling programs statewide and accepted by at least 50 percent of
503 the compost facilities in the state that accept mixed materials.

504 (B) Prior to January 1, 2026, the food service packaging item is included
505 in a takeback program that, on an annual basis, recovers at least 50
506 percent of the food service packaging items in the program that are
507 distributed at food service facilities. Effective January 1, 2026, the food
508 service packaging item is included in a takeback program that, on an
509 annual basis, recovers at least 75 percent of the food service
510 packaging items in the program that are distributed at food service
511 facilities. All food service packaging items that are recovered by the
512 takeback program shall be accepted at a compost facility at the end of
513 their useful life.

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

517 service packaging material is accepted by at least 75 percent of the
518 compost facilities in the state that accept mixed materials.

519 ~~(3)~~(2) If the food service packaging item is plastic, plastic-coated or plastic-
520 containing, the ~~The~~ food service packaging item composts biodegrades in
521 a safe and timely manner, as demonstrated by:

522 (A) Test results from an ISO/IEC 17025:2017 accredited laboratory
523 indicating that the item meets the requirements of ASTM D6400-19 or
524 ASTM D6868-19, as applicable; and

525 (B) Test results from an ISO/IEC 17025:2017 accredited laboratory
526 indicating that the item has achieved at least 90% biodegradation
527 within 60 days, as documented by the food service packaging item's
528 ASTM D6400-19 or ASTM D6868-19 test report. The test report shall
529 include either a biodegradation curve or tabular data indicating
530 biodegradation rates utilizing one of the following test methods: ASTM
531 D5338-15, ISO 14855-1:2012, or ISO 14855-2:2018.

532 ~~(4)~~(3) Products—The food service packaging item satisfies the legal
533 requirements to be lawfully labeled “compostable,” including all shall meet
534 the applicable requirements specified in Chapter 5.7 (Sections 42355-
535 through 42358.5), Part 3, Division 30 of the PRC—Public Resources Code
536 and Section 17580.5(a) of the Business and Professions Code. ~~The food~~
537 ~~service packaging item complies with the Federal Trade Commission~~
538 ~~Guides for the Use of Environmental Marketing Claims (part 260~~
539 ~~commencing with Section 260.1 of Subchapter B of Chapter I of Title 16 of~~
540 ~~the Code of Federal Regulations).~~

541
542 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
543 Sections 42370.2 and 42370.3, Public Resources Code.

544 **§17989.6. Application Requirements and Submittal Process.**

545 (a) If a food service packaging manufacturer, or person acting on its behalf, seeks~~would~~
546 like to add one or more a food service packaging item items to the List, an application

547 shall be submitted to the department demonstrating that for each food service
548 packaging item or group of food service packaging items that meet-meets the
549 applicable requirements of Sections 17989.2 through -17989.5. The application shall
550 contain the following and be submitted electronically:

551 (1) Contact information

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

553 (B) Company or organization name

554 (C) Company or organization mailing and physical address

555 (D) Phone number

556 (E) Email address

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

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

562 (3) A description of the food service packaging item or group of items, including
563 the food service packaging type(s)types, item name(s)names, and size(s)
564 sizes (e.g., dimensions, diameter, volume).

565 (4) ~~As applicable, a~~ A description of the material(s) materials (e.g., PLA-lined
566 paperboard), including identifying characteristics, used to manufacture the
567 food service packaging item or group of items.

568 (5) ~~As applicable, documentation~~ Documentation that a food service packaging
569 item or group of items meets the requirements of subsection 17989.2(a)(1),
570 as applicable.

571 (6) ~~As applicable, the~~ The chemical name(s) names and Chemical Abstract
572 Service Registry Numbers necessary CASRN(s) to demonstrate
573 compliance with subsection 17989.2(a)(2). ~~Disclose~~ and a disclosure
574 whether a Proposition 65 warning is required for exposure(s) to the
575 chemical(s) resulting from the use of the food service packaging item or
576 group of items due to the exposure to such chemicals from the use of the
577 item or group of items.

578 ~~(7) As applicable, the~~The accreditation number(s) numbers of the ISO/IEC
579 17025:2017 laboratory(ies) used to demonstrate compliance with the
580 requirements of this Article, as applicable.

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

584 (b) A food service packaging manufacturer, or person acting on its behalf, shall label or
585 identify all any portions of the application it believes are confidential or proprietary that
586 it wants requests the department to maintain as confidential pursuant to
587 Section subsection 17989.6(f)(3). Applications submitted to the department shall not
588 contain redactions. Any portion(s) portions of an application that are not labeled or
589 identified as confidential shall be deemed a public document.

590 (c) In addition to the items submitted under subdivision to meeting the requirements of
591 subsection (a), an application for a reusable food service packaging item or group of
592 items shall include either:

593 (1) Test test results from a third party certification entity an ISO/IEC
594 17025:2017 accredited laboratory that demonstrate compliance with
595 subsection 17989.3(a)(1); or

596 (2) A copy of the manufacturer's express, written warranty, if any, pursuant to
597 as required by subsection 17989.3(a)(2).

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

602 (1) The measurement of at least two dimensions, in inches, of the food
603 service packaging item or each item in a group of food service packaging
604 items.

605 (2) A statement that the food service packaging item, or each item in a group
606 of items, does or group of items do not contain additives to initiate or
607 accelerate fragmentation.

608 ~~(3) As applicable, test~~ Test results from a third-party certification entity an
609 ISO/IEC 17025:2017 accredited laboratory that demonstrate compliance
610 with subsection 17989.2(a)(3), as applicable. Tests shall be
611 ~~conducted~~ completed no more than within six (6) months of prior to the
612 application submittal date and shall specify the analytical method and
613 instrumentation used to quantify the results. ~~(A) If an applicant submits~~
614 ~~test results for a group of food service packaging items, the applicant must~~
615 ~~explain how the test results are representative of the group of food service~~
616 ~~packaging items.~~

617 ~~(4) As applicable, information~~ Information demonstrating that the each food
618 service packaging item is regularly collected and recycled for recycling as
619 required by meets the applicable criteria in subsection 17989.4(a)(3).

620 (A) Materials shall be deemed to satisfy the requirement to have
621 sufficient commercial value to be marketed for recycling if the
622 materials are included on the List published by the department
623 pursuant to subsection 17989.1(a) or if the information submitted
624 (e.g., written contracts, bona fide offers, market data) demonstrates
625 that the materials have been available for sale for recycling, at
626 readily available prices, comprising the food service packaging item
627 during the 12-month period preceding the application. The
628 department shall deem this requirement satisfied if it determines
629 based on market data and other information in its possession that
630 the materials have sufficient commercial value to be marketed for
631 recycling.

632 (B) A takeback program shall be deemed to satisfy the annual
633 percentage recovery requirement pursuant to subsection
634 17989.4(a)(3)(B) if the following requirements are met, as
635 applicable:

636 (i) The information submitted includes the name and physical
637 address for food service facilities dispensing food service

638 packaging items in the takeback program or intended to be
639 included in the takeback program.

640 (ii) For a program that has been operating for at least one year,
641 the information submitted demonstrates that the program
642 met the annual percentage recovery requirement for at least
643 one 12-month period during the five years immediately
644 preceding the date of the application.

645 (iii) For a program that has not been operating for at least one
646 year, the information submitted includes the date the
647 program began operating and demonstrates that the
648 program's performance to date, extrapolated over an entire
649 year, satisfies the annual percentage recovery requirement.

650 (iv) For a program that has not yet begun operating, the
651 information submitted includes at least the following details
652 concerning the program: description of the food service
653 packaging items and any other products that the program
654 will recover; program locations and methods of recovering
655 food service packaging items; the anticipated start date of
656 the program; specific mechanisms for enabling and
657 incentivizing customers to participate; plans to conduct
658 educational outreach and marketing activities to raise
659 awareness of the program; names of the entities that will
660 operate or partner with the program, including recycling
661 service providers; and performance information (e.g.,
662 recovery rates of food service packaging items and
663 commercial values of materials), if available, concerning
664 similar takeback programs under similar circumstances.
665 Inclusion of a food service packaging items on the List based
666 in part on this information shall not occur until the
667 manufacturer informs the department that the takeback
668 program has begun operating, and the inclusion shall be

669 conditional, such that the item shall be removed from the List
670 unless the manufacturer supplements its application with
671 information demonstrating that the program's performance,
672 extrapolated over an entire year, satisfies the annual
673 percentage recovery requirement. Such supplemental
674 information shall be provided no later than seven months
675 after the program began operating.

676 (v) For a takeback program that has not been in operation for at
677 least one year or has not begun operations at the time of the
678 application, inclusion of a food service packaging item on the
679 List based in part on their inclusion in the takeback program
680 shall be conditional, such that the item shall be removed
681 from the List unless the manufacturer supplements its
682 application with information demonstrating that the program
683 satisfied the annual percentage recovery requirement over a
684 12-month period. Such supplemental information shall be
685 provided no later than 14 calendar months after the program
686 began operating.

687 (e) In addition to the items submitted under subdivision to meeting the requirements of
688 subsection (a), an application for a compostable food service packaging item or
689 group of items shall include information to demonstrate compliance with Section
690 17989.5. Applications shall include:

691 (1) Information demonstrating that each the food service packaging item
692 meets the applicable criteria in material is regularly collected as required
693 by subsection 17989.5(a)(1) for composting by a minimum of 75 percent
694 of organics recycling programs.

695 (A) A takeback program shall be deemed to satisfy the annual
696 percentage recovery requirement pursuant to subsection
697 17989.5(a)(1)(B) if the following requirements are met, as
698 applicable:

- 699 (i) The information submitted includes the name and physical
700 address for food service facilities dispensing food service
701 packaging items in the takeback program or intended to be
702 included in the takeback program.
- 703 (ii) For a program that has been operating for at least one year,
704 the information submitted demonstrates that the program
705 met the annual percentage recovery requirement for at least
706 one 12-month period during the five years immediately
707 preceding the date of the application.
- 708 (iii) For a program that has not been operating for at least one
709 year, the information submitted includes the date the
710 program began operating and demonstrates that the
711 program's performance to date, extrapolated over an entire
712 year, satisfies the annual percentage recovery requirement.
- 713 (iv) For a program that has not yet begun operating, the
714 information submitted includes at least the following details
715 concerning the program: description of the food service
716 packaging items and any other products that the program
717 will recover; program locations and methods of recovering
718 food service packaging items; the anticipated start date of
719 the program; specific mechanisms for enabling and
720 incentivizing customers to participate; plans to conduct
721 educational outreach and marketing activities to raise
722 awareness of the program; names of the entities that will
723 operate or partner with the program, including recycling
724 service providers; and performance information (e.g.,
725 recovery rates of food service packaging items and
726 commercial values of materials), if available, concerning
727 similar takeback programs under similar circumstances.
728 Inclusion of a food service packaging items on the List based
729 in part on this information shall not occur until the

730 manufacturer informs the department that the takeback
731 program has begun operating, and the inclusion shall be
732 conditional, such that the item shall be removed from the List
733 unless the manufacturer supplements its application with
734 information demonstrating that the program's performance,
735 extrapolated over an entire year, satisfies the annual
736 percentage recovery requirement. Such supplemental
737 information shall be provided no later than seven months
738 after the program began operating.

739 (v) For a takeback program that has not been in operation for at
740 least one year or has not begun operations at the time of the
741 application, inclusion of a food service packaging items on
742 the List based in part on their inclusion in the takeback
743 program shall be conditional, such that the item shall be
744 removed from the List unless the manufacturer supplements
745 its application with information demonstrating that the
746 program satisfied the annual percentage recovery
747 requirement over a 12-month period. Such supplemental
748 information shall be provided no later than 14 calendar
749 months after the program began operating.

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

756 ~~(2)(3) Test results from a third-party certification entity that demonstrates the~~
757 ~~food service packaging item or group of items biodegrades/composts in a~~
758 ~~safe and timely manner. Tests shall be~~ For any food service packaging
759 items that are plastic, plastic-coated or plastic-containing, documentation
760 demonstrating that the items meet the requirements of ASTM D6400-19 or

761 ASTM D6868-19, as applicable pursuant to subsection 17989.5(a)(2)(A), as
762 shown by results from tests completed no more than five years prior to
763 within six (6) months of the application submittal date. (A) If an applicant
764 submits test results documentation for a group of food service packaging
765 items, the applicant must explain how the test results are documentation is
766 representative of the group of food service packaging items.

767 (3) For any food service packaging items that are plastic, plastic-coated or
768 plastic-containing, a copy of the ASTM D6400-19 or ASTM D6868-19 test
769 report, as applicable pursuant to subsection 17989.5(a)(2)(B), showing the
770 percent biodegradation achieved at 60 days for the food service
771 packaging item or group of items. If an applicant submits a test report for a
772 group of food service packaging items, the applicant must explain how the
773 test report is representative of the group of food service packaging items.

774 (4) ~~As applicable, test~~ Test results from a third-party certification entity an
775 ISO/IEC 17025:2017 accredited laboratory that demonstrate compliance
776 with subsection 17989.2(a)(3), as applicable. Tests shall be
777 completed~~conducted~~ no more than within six (6) months of prior to the
778 application submittal date and shall specify the analytical method and
779 instrumentation used to quantify the results. (A) If an applicant submits
780 test results for a group of food service packaging items, the applicant must
781 explain how the test results are representative of the group of food service
782 packaging items.

783 (5) A statement that the food service packaging item or group of items
784 satisfies the requirements of subsection 17989.5(a)(3)~~complies with the~~
785 applicable labeling requirements of Section 17580.5 of the Business and
786 Professions Code Federal Trade Commission Guides for the Use of
787 Environmental Marketing Claims (part 260 commencing with Section
788 260.1 of Subchapter B of Chapter I of Title 15 of the Code of Federal
789 Regulations).

790

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

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

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

799 (B) If the department determines that an application is incomplete, the
800 department shall notify a the food service packaging manufacturer,
801 or person acting on its behalf, of this determination, and shall specify
802 the basis for the determination (e.g., description of materials does
803 not include sufficient identifying characteristics), and the number of
804 days allotted allow 30 days for the manufacturer to provide additional
805 information and the supporting documentation in support of the
806 application.

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

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

813 (B) Before finalizing a determination ~~If the department determines that a~~
814 food service packaging item or group of items does not meet the
815 applicable requirements ~~to~~ in this Article, the department shall notify
816 the food service packaging manufacturer, or person acting on its
817 behalf shall be notified of the basis for the department’s preliminary
818 determination. ~~(i) The~~ Within 30 days of receiving such notification,
819 the food service packaging manufacturer, or person acting on its
820 behalf, may provide additional documentation or and information to
821 supplement its application, and the. The department shall consider

822 thesuch supplemental documentation and information prior to
823 finalizing the its determination.

824 (3) The department shall maintain the confidentiality of information submitted
825 in each application to the extent as required by the California Public
826 Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
827 Title 1 of the Government Code), Section 40062 of the PRCPublic
828 Resources Code, and Article 4 of Chapter 1 of this Division (commencing
829 with Section 17041).

830 (g) A food service packaging manufacturer, or person acting on its behalf, shall submit a
831 new application to the department for evaluation prior to continued sale of that food
832 service packaging item to a food service facility within 30 days if a non-aesthetic
833 change, other than an aesthetic change, is made to an approved food service
834 packaging item.

835
836 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
837 Sections 42370.2, 42370.3, 42370.4, and 42370.5, Public Resources Code.

838 **§17989.7. Noncompliant Food Service Packaging Inventories.**

839 (a) On and after the date the List is published pursuant to Section 42370.3 of the Public
840 Resources Code, a food service facility shall not dispense prepared food using food
841 service packaging unless the food service packaging item is on the List.

842 (b) ~~Upon the removal of a food service packaging item or group of food service packaging~~
843 ~~items from the List pursuant to subsection 17989.1(f), a~~ A food service facility may not
844 use ~~its remaining a~~ food service packaging item inventory that is not
845 on the List published by the department pursuant to Section 42370.3 of the PRCPublic
846 Resources Code, except that a food service facility may use a food service packaging
847 item under any of the following conditions:

848 (1) The food service facility possessed that specific inventory of food service
849 packaging ~~item(s) items~~ before the date the List was published ~~or~~
850 ~~subsequently updated.~~

851 (2) The food service facility possessed that specific inventory of food service
852 packaging item(s)-items before the item was removed from the List,
853 maintained pursuant to Section 42370.3 of the PRC was updated to remove
854 the food service packaging item and the food service packaging item was
855 on the List when the food service facility took possession of the food service
856 packaging item.

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

860 (4) The food service facility acquired that specific inventory of food service
861 packaging item(s)-items pursuant to a contract entered into before the item
862 was removed from the List, List maintained pursuant to Section 42370.3 of
863 the PRC was updated to remove the food service packaging item and the
864 food service packaging item was on the list-List when the food service
865 facility entered into the contract.

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

870

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

873 **§17989.8. Records.**

874 ~~(a) A~~ Within 60 days of a written request by the department, a food service facility shall
875 provide the department with reasonable and timely access to its submit the following
876 food service packaging item purchasing records to the department by submitting the
877 following information within 60 days of a written request:

878 (1) For reusable food service packaging items, pursuant to Section 17989.3:
879 invoice(s) invoices or purchase order(s), which includes, orders that include
880 the date(s)-dates the food service packaging item(s)-items were purchased,

881 the food service packaging material materials, the type types of food service
882 packaging purchased, the manufacturer manufacturers of the food service
883 packaging item(s) items, and the number of food service packaging items
884 purchased.

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

892

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