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

**Strikethrough** = deletions from the First Draft of the Proposed Regulation

**Double Underline** = additions to the First Draft of the Proposed Regulation

**Gray Highlight with Single Strikethrough** = deletions from the Second Draft of the Proposed Regulation

**Gray Highlight (no underline or strikethrough)** = additions to the Second Draft of the Proposed Regulation
§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). The following definitions shall apply to the regulations contained in this Article:

(1) “Accept” “Accepted” means knowingly incorporated by 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- through 17989.5.

(3) “Collect” “Collected” 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.

(4) “Composting” has the same meaning as defined in PRC Public Resources Code Section 40116.1.
(4) (5) “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) 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).

(5) (6) “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.

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

(7) (8) “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 and California State University food courts and dormitories, fairs, expositions, and Legislative 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.

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

(10) “Food service packaging manufacturer” or “manufacturer” means a person that makes the food service packaging item(s), and includes persons acting on the food service packaging manufacturer's behalf.

(11) (A) “Food service packaging type” or “type of food service packaging” means a product that is used for serving or transporting prepared, ready-to-consume food or beverages and 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)(iii) It aids in the consumption of the prepared food or beverage.

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

(12) “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) and submitted under one application to meet the requirements of this Article.

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

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

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

(16) “List of Approved Food Service Packaging” or “List” means the published list, published by the department pursuant to Public Resources Code Section 42370.3, of the following:
(A) Food service packaging items approved by the department for use at
food service facilities; and

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

(15) "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.

(16) "Material" means the particular ingredient or combination of ingredients, such
as a feedstock, coating, layer, or other tangible constituent matter, that partially or
wholly constitute a food service packaging item. A material shall be described by
its identifying characteristics, such as its form (e.g., thermoform) and combination
or integration of ingredients (e.g., PLA-lined paperboard), when consideration of
those characteristics is necessary to determine compliance with this Articlethe 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 and may
include other characteristics such as the material form. Material is inclusive of any
coatings of other ingredients used to make a food service packaging item. A plastic
material shall may be identified solely by, or by a combination of, either the name
of the plastic resin (#1-6 in accordance with PRC Public Resources Code Sections
18013 through -18015), or by the name of the plastic polymer (e.g., polylactic
acid), or both (e.g., PET #1) the form (e.g., bottle, thermoform).

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

(18) "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.

(20) "Organic waste" has the same meaning as defined in PRC Public Resources
Code Section 42649.8, subsection (d).
(18) (21) “Person” has the same meaning as defined in PRC Public Resources Code Section 40170.

(19) (22) “Per- and polyfluoroalkyl substance (PFAS)” means a chemical that contains at least one fully fluorinated carbon atom.

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

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

(24) (25) “Proposition 65 list” means the list published in the California Code of Regulations Title 27, Division 4, Chapter 1, Article 9, Section 27001 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 through 25249.14, of chemicals known to the State of California to cause cancer or reproductive toxicity.

(25) (26) “Recycling” has the same meaning as defined in PRC Public Resources Code Section 40180.

(26) (27) “Recycling facility” means an entity that meets the definition of “recycling center” in Division 7, Chapter 3, Article 6.0, Section 17402.5, subsection (d).

(27) (28) “Recycling program” means a diversion program, as defined in PRC Public Resources Code Section 40127, that is established by a California jurisdiction for the purpose of providing recycling or organics collection services to residents or businesses. A recycling program must include services provided by a hauler that is authorized by a State or local government entity pursuant to a contract, an agreement, a permit, or other authorization with a jurisdiction to regularly collect materials, as defined in subsection 17989 (a)(18)(16), within the government entity’s jurisdiction for recycling. “Recycling
program” does not include a takeback program, as defined in this subsection 17989 (a)(30)(27).

(25) (28) “Safe and timely manner” means a food service packaging item 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 is verified by a third-party certification entity to meet the requirements of 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, or

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

(B) ASTM D6868 – 19: Standards 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.

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

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

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

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

(A) an 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 Electrotechnical Commission general requirements for the competence of testing and calibration laboratories, 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.

(29) “Transfer/processor” has the same meaning as in Division 7, Chapter 9, Article 9.25, Section 18845.2, subsection (a)(62). “”

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


ISO/IEC 17025:2017, “General requirements for the competence of testing and
 calibration laboratories,” International Organization for Standardization/

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 shall be published on the
department’s website and shall include, at a minimum, the following information for
each food service packaging item:

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

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

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

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

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

(6) As applicable, the 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) 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/or
17989.5(a)(1)(A) subsections 17989.5(a)(1) and (2). Food service packaging
manufacturers may identify the materials specified on the List pursuant to subsection
17989(a)(16)(B) in the application submitted pursuant to Section 17989.6. The department shall consider whether materials are identified on the List 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).

(b) The department shall establish the initial List required by subsection 42370.3(a) of the Public Resources Code, as follows:

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

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

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

(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.

(f) Except as otherwise provided in this Article, before removing a food service packaging item from the List, the department shall make a preliminary determination if the department determines that an approved food service packaging item or
material on the published List does no longer meets the requirements of this Article, and the department shall notify the manufacturer and remove the food service packaging item from the List:

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

(2) With regard to the potential removal of a material from the List, notify the public of the reason(s) for the department’s preliminary determination proposed removal of a food service packaging material and allow no fewer than 30 days to submit for submission of written comments and additional information relevant to the department’s preliminary determination.

(3) Evaluate the comments and information received pursuant to this subsection prior to issuing its final determination as to whether the item or material satisfies the requirements of this Article.

(4) Either maintain the food service packaging item and/or material on the List or remove the item or make no changes to the List.

(f) The department shall notify a food service packaging manufacturer, or person acting on its behalf, when the department determines that a manufacturer’s food service packaging items included on the List may contain a chemical that has been added to the definition of “regulated metal” in Health and Safety Code Section 25214.12(l) pursuant to the Toxics in Packaging Prevention Act (Health and Safety Code Sections 25214.11 through 25214.26), as that definition may be modified by statute or by regulations promulgated by the Department of Toxic Substances Control pursuant to its rulemaking authority under Health and Safety Code Section 25214.26, or added to
the Proposition 65 list a chemical that may be used in food service packaging is identified pursuant to subsections 17989.2(a)(1), (2), or (4).

(1) Within 60 days of the date of the notification, 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 indicating whether the identified chemical is present in the food service packaging item(s).

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

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

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

(1) If the department determines that a new application pursuant to Section 17989.6 is reasonably necessary for the department to evaluate whether a food service packaging item is reusable, recyclable, or compostable, the department shall notify the manufacturer that the item requires a new application. A food service packaging manufacturer, or person acting on its behalf, that it is evaluating the List shall submit a new application to the department within 180 days of being notified by the department that it is evaluating the List to determine whether each of the approved food service packaging items is reusable, recyclable, or compostable. If a new application is not received within 180 days the food service packaging item may be removed from the List. (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, and the
department shall consider such application in making its determination of
whether the item is reusable, recyclable, or compostable. If a new
application is not received submitted within 180 days of the date of the
notification, the department shall consider removing the food
service packaging item from the List, and the requirements of subsection
(e) shall not apply.
(2) The department shall review the new application and either maintain the
item on the List or make a preliminary determination pursuant to subsection
(e) that a food service packaging item is not reusable, recyclable, or
compostable.
(h) The department shall notify the Department of General Services and the public within
30 days of making any changes to the List.

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

(a) Food service packaging items included on the List shall meet satisfy all 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- through
25214.26) shall not contain lead, mercury, cadmium, or hexavalent chromium,
or any other “regulated metal” as described in subsection 17989.1(f) in an
amount that may pose a threat to public health or that exceeds 100 parts per
million by weight, as measured by the sum of the total concentration levels of
all such metals of the sum of these metals.
(2) A manufacturer, or person acting on its behalf, shall disclose the names
of all chemicals used in the manufacturing of the food service packaging item shall be
disclosed to the department by the manufacturer seeking to add the item to the List.

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

(4) If a food service packaging item is identified by another state agency, or another state or federal government agency or non-governmental organization as having to have the potential to contribute to an adverse public health impact (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, 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 Public Resources Code 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.

(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 may not include or remove food service packaging items made from that material from the List.
(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.

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

1. Consider whether the food service packaging item has been identified by a state or federal government agency or other organization as having the potential to contribute to an adverse impact;
2. Evaluate publications, reports, and any other information provided by a state agency, federal government agency, or other organization;
3. If the basis of the determination relates to public health or wildlife impacts, consult with the Office of Environmental Health Hazard Assessment and the Department of Toxic Substances Control; and
4. If the food service packaging item or 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 imposed pursuant to city or county ordinances, evaluate the ordinance and documentation in the public record in support of the ordinance concerning the food service packaging item’s potential to contribute to litter or ocean debris concerns.


§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 that it meets the requirements of Section 17989.2 and satisfies either of the following criteria it either:
(1) The item maintains its shape, structure, and function after 780 cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section 114101 and 114099.7, respectively, as demonstrated by test results from an ISO/IEC 17025:2017 accredited laboratory, a third-party certification entity, or

(2) The manufacturer of the food service packaging item provides an express, written warranty to purchasers of the item that the food service packaging item can be reused; it will remain reusable for its intended purpose for a minimum of one year or else the manufacturer will take back and replace the item at the manufacturer’s expense.


§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 satisfies all the following criteria:

(1) The food service packaging item shall be a minimum of two (2) inches measured in at least 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) Prior to January 1, 2026 December 31, 2025, the food service packaging item is comprised of materials that are material is collected by at least 75–60 percent of recycling programs statewide, have sufficient commercial value to be marketed for recycling, and are sorted and aggregated into defined streams (e.g., mixed paper, PET) a single named material bale by at least 75–60 percent
Effective January 1, 2026, the food service packaging item is comprised of materials that are collected by at least 75 percent of recycling programs statewide, have sufficient commercial value to be marketed for recycling, and are sorted and aggregated into defined streams (e.g., mixed paper, PET) by at least 75 percent of large volume transfer/processors, processing facilities in the state;

or,

Prior to January 1, 2026, the food service packaging item is included in a takeback program that collects, on an annual basis, recovers at least 75 percent of the food service packaging items in the program that are distributed at food service facilities for reuse or recycling. Effective January 1, 2026, the food service packaging item is included in a takeback program that collects, on an annual basis, recovers at least 75 percent of the food service packaging items in the program that are distributed at food service facilities for reuse or recycling.

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

(ii) Takeback programs shall collect at least 75 percent of the food service packaging items, and all food service packaging items that are recovered by the takeback program shall have sufficient commercial value to be marketed for recycling and be transported at the end of their useful life to a transfer/processor processing or recycling facility to be sorted and aggregated into defined streams (e.g., mixed paper, PET) for recycling for aggregation into a single named material bale.

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

§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 satisfies all the following criteria:

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

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

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

(2) The Prior to December 31, 2025, the food service packaging item material is accepted by at least 75 at least 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.

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

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

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

(4)(3) **Products**—The food service packaging item satisfies the legal requirements to be lawfully labeled “compostable,” including all shall meet the applicable requirements specified in Chapter 5.7 (Sections 42355- through 42358.5), Part 3, Division 30 of the PRC Public Resources Code 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).


§17989.6. Application Requirements and Submittal Process.

(a) If a food service packaging manufacturer, or person acting on its behalf, seeks would like to add one or more food service packaging item items to the List, an application
shall be submitted to the department demonstrating that for each food service packaging item or group of food service packaging items that meet the applicable requirements of Sections 17989.2 through -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 the department 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, including the food service packaging type(s), item name(s), and size(s) (e.g., dimensions, diameter, volume).

(4) As applicable, a description of the material(s), including identifying characteristics, used to manufacture the food service packaging item or group of items.

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

(6) As applicable, the chemical name(s), names and Chemical Abstract Service Registry Numbers necessary to demonstrate compliance with subsection 17989.2(a)(2). Disclose and a disclosure 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 due to the exposure to such chemicals from the use of the item or group of items.
(7) As applicable, the accreditation number(s) of the ISO/IEC 17025:2017 laboratory(ies) used to demonstrate compliance with the requirements of this Article, as applicable.

(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 or identify all portions of the application it believes are confidential or proprietary that it wants requests the department to maintain as confidential pursuant to Section 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 to meeting the requirements of subsection (a), an application for a reusable food service packaging item or group of items shall include either:

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

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

(d) In addition to the items submitted under subdivision to meeting the requirements of subsection (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 at least 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 each item in a group of items, does not contain additives to initiate or accelerate fragmentation.
(3) As applicable, test results from a third-party certification entity an ISO/IEC 17025:2017 accredited laboratory that demonstrate compliance with subsection 17989.2(a)(3), as applicable. Tests shall be conducted completed no more than within six (6) months of prior to the application submittal date and shall specify the analytical method and instrumentation used to quantify the results. (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.

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

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

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

(i) The information submitted includes the name and physical address for food service facilities dispensing food service
packaging items in the takeback program or intended to be included in the takeback program.

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

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

(iv) For a program that has not yet begun operating, the information submitted includes at least the following details concerning the program: description of the food service packaging items and any other products that the program will recover; program locations and methods of recovering food service packaging items; the anticipated start date of the program; specific mechanisms for enabling and incentivizing customers to participate; plans to conduct educational outreach and marketing activities to raise awareness of the program; names of the entities that will operate or partner with the program, including recycling service providers; and performance information (e.g., recovery rates of food service packaging items and commercial values of materials), if available, concerning similar takeback programs under similar circumstances. Inclusion of a food service packaging items on the List based in part on this information shall not occur until the manufacturer informs the department that the takeback program has begun operating, and the inclusion shall be
conditional, such that the item shall be removed from the List unless the manufacturer supplements its application with information demonstrating that the program's performance, extrapolated over an entire year, satisfies the annual percentage recovery requirement. Such supplemental information shall be provided no later than seven months after the program began operating.

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

(e) In addition to the items submitted under subdivision to meeting the requirements of subsection (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 each the food service packaging item meets the applicable criteria in material is regularly collected as required by subsection 17989.5(a)(1) for composting by a minimum of 75 percent of organics recycling programs.

(A) A takeback program shall be deemed to satisfy the annual percentage recovery requirement pursuant to subsection 17989.5(a)(1)(B) if the following requirements are met, as applicable:
(i) The information submitted includes the name and physical address for food service facilities dispensing food service packaging items in the takeback program or intended to be included in the takeback program.

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

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

(iv) For a program that has not yet begun operating, the information submitted includes at least the following details concerning the program: description of the food service packaging items and any other products that the program will recover; program locations and methods of recovering food service packaging items; the anticipated start date of the program; specific mechanisms for enabling and incentivizing customers to participate; plans to conduct educational outreach and marketing activities to raise awareness of the program; names of the entities that will operate or partner with the program, including recycling service providers; and performance information (e.g., recovery rates of food service packaging items and commercial values of materials), if available, concerning similar takeback programs under similar circumstances.

Inclusion of a food service packaging items on the List based in part on this information shall not occur until the
manufacturer informs the department that the takeback program has begun operating, and the inclusion shall be conditional, such that the item shall be removed from the List unless the manufacturer supplements its application with information demonstrating that the program's performance, extrapolated over an entire year, satisfies the annual percentage recovery requirement. Such supplemental information shall be provided no later than seven months after the program began operating.

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

(2) Information demonstrating that the food service packaging item material or group of items are is accepted as required by subsection 17989.5(a)(2) 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), and that the material is not screened out for disposal prior to or after active composting.

(2)(3) Test results from a third-party certification entity that demonstrates the food service packaging item or group of items biodegrades composts in a safe and timely manner. Tests shall be For any food service packaging items that are plastic, plastic-coated or plastic-containing, documentation demonstrating that the items meet the requirements of ASTM D6400-19 or
ASTM D6868-19, as applicable pursuant to subsection 17989.5(a)(2)(A), as shown by results from tests completed no more than five years prior to within six (6) months of the application submittal date. (A) If an applicant submits test results documentation for a group of food service packaging items, the applicant must explain how the test results are documentation is representative of the group of food service packaging items.

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

(4) As applicable, test results from a third-party certification entity an ISO/IEC 17025:2017 accredited laboratory that demonstrate compliance with subsection 17989.2(a)(3), as applicable. Tests shall be conducted no more than within six (6) months of prior to the application submittal date and shall specify the analytical method and instrumentation used to quantify the results. (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.

(5) A statement that the food service packaging item or group of items satisfies the requirements of subsection 17989.5(a)(3)complies with the applicable labeling requirements of Section 17580.5 of the Business and Professions Code 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).
(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 and information required by this Section has been submitted.

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

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

(2) The department shall evaluate each complete application to determine if whether a food service packaging item or group of items meets the applicable criteria required by requirements of 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) Before finalizing a determination if the department determines that a food service packaging item or group of items does not meet the applicable requirements in this Article, the department shall notify the food service packaging manufacturer, or person acting on its behalf shall be notified of the basis for the department’s preliminary determination. (i) The department shall consider
the such supplemental documentation and information prior to finalizing its determination.

(3) The department shall maintain the confidentiality of information submitted in each application to the extent 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 Public Resources Code, and Article 4 of Chapter 1 of this Division (commencing with Section 17041).

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


§17989.7. Noncompliant Food Service Packaging Inventories.

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

(b) 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 food service facility may not use its remaining a food service packaging item inventory that is not unless the item is on the List published by the department pursuant to Section 42370.3 of the Public Resources Code, except that a food service facility may use a food service packaging item under any of 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—or subsequently updated.
(2) The food service facility possessed that specific inventory of food service packaging item(s) before the item was removed from 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 or subsequently updated.

(4) The food service facility acquired that specific inventory of food service packaging item(s) pursuant to a contract entered into before the item was removed from the List, 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 List when the food service facility entered into the contract.

(c) (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.


§17989.8. Records.

(a) A Within 60 days of a written request by the department, a food service facility shall provide the department with reasonable and timely access to its submit the following food service packaging item purchasing records to the department 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) - invoices or purchase order(s), which includes orders that include the date(s) - dates the food service packaging item(s) were purchased,
the food service packaging materials, the types of food service
packaging purchased, the manufacturer-manufacturers 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.