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

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

§17989. Definitions.
(a) The definitions of this Article supplement and are governed by the definitions set forth in Chapter 6 (commencing with Section 42370), Part 3, Division 30 of the Public Resources Code (PRC).

The following definitions shall apply to the regulations contained in this Article:

(1) "Accepted" means knowingly incorporated by a compost facility into the compost facility’s routine daily operations for processing at the end of a food service packaging 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.
deletion] 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) "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 Public Resources Code Section 40116.1. (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). (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.

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

“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 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.

“Food service packaging item” means a specific combination of the food service packaging type (e.g., plate, cup, bowl) and the materials the type of food service packaging is made of (e.g., polyethylene terephthalate (PET), polylactic acid (PLA)-lined paperboard).
“(9) "Food service packaging manufacturer" [start third draft addition] or "manufacturer" [end third draft addition] means a person that makes the food service packaging [start third draft deletion] item(s) [end second draft deletion] [start third draft addition] items, and includes persons acting on the food service packaging manufacturer’s behalf [end third draft addition].

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

(i) [start third draft deletion] Comes [end third draft deletion] [start third draft addition] It comes [end third draft addition] into direct contact with the prepared food or beverage;

(ii) [start third draft deletion] Keeps [end third draft deletion] [start third draft addition] It keeps [end third draft addition] the prepared food or beverage contained while transporting it on or off a food service facility’s premises; or

(iii) [start third draft deletion] [start third draft addition] (iii) It aids [start third draft deletion] [start third draft deletion] [start third draft deletion] (iii) It aids [start third draft deletion] Aids [end third draft deletion] [start third draft deletion] in the consumption of the prepared food or beverage.

(B) “Food service packaging type” does not include beverage containers [start third draft addition] (as defined in Public Resources Code Section 42370.1(a)) [end third draft addition] or single-use disposable items, such as straws, cup lids, plastic bags, and utensils, or single-use disposable packaging for unprepared foods.
“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). Manufacturers and submitted under one application to meet the requirements of this Article.

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

“Jurisdiction” has the same meaning as defined in Public Resources Code Section 40145.

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

“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 have met the requirements of subsection 17989.4(a)(3)(A) or 17989.5(a)(1)(A) [end third draft addition].

[start second draft deletion]

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

[start second draft deletion]

(16) [end second draft deletion] [start second draft addition] (18) [end second draft addition] “Material” means the 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 Article [end third draft addition] [start third draft deletion] the type of feedstock used to make a food service packaging item including, but not limited to, glass, ceramic, metal, fiber (i.e., derived from cellulose), or plastic 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. [end third draft deletion] A plastic material [start third draft addition] shall [end third draft addition] [start third draft deletion] may [end third draft deletion] be identified [start third draft deletion] [start second draft addition] solely [end second draft addition] [end third draft deletion] by [start third draft deletion] either [end second draft deletion] the name of the plastic resin (#1-6 in accordance with [start third draft deletion] Public Resources Code [end third draft deletion] [start third draft addition] Sections 18013 [start third draft addition] through [end third draft addition] [start third draft deletion]
(18) "Person" has the same meaning as defined in Public Resources Code Section 40170.

(19) "Per- and polyfluoroalkyl substance (PFAS)" means a chemical that contains at least one fully fluorinated carbon atom.
“Plastic bag” means an open-top, carryout-style plastic bag that has handles and is designed not to be closeable or sealable that cannot be closed or sealed, by design.

“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.

“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.

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

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

(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—

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

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

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

(28) [end second draft deletion] [start third draft deletion] [start second draft addition]

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

(A) 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 [start second draft addition] or

(B) An entity (e.g., Biodegradable Products Institute) that has executed a contract with an ISO/IEC 17025 accredited laboratory to perform testing
methods to certify a food service packaging item. [end second draft addition]
[end third draft deletion]

[start second draft deletion]

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

[start third draft addition]

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


[end third draft addition]

§17989.1. List of Approved Food Service Packaging.
(a) The List of Approved Food Service Packaging [start third draft addition] shall be [end third draft addition] [List] [end third draft deletion] published on the department’s website [start third draft addition] and [end third draft addition] shall include, at a minimum, the following information for each food service packaging item:

   (1) An indication that the [start third draft addition] department has determined the [end third draft addition] food service packaging item [start third draft deletion] is determined by the department [end third draft deletion] to be reusable, recyclable, or compostable, and [start third draft addition] to meet [end third draft addition] all applicable requirements of Sections 17989.2-17989.5.

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

   (3) The [start third draft deletion] material(s) [end third draft deletion] [start third draft addition] materials [end third draft addition] used to manufacture the food service packaging item (e.g., polyethylene terephthalate (PET), [start third draft deletion] polylactic acid [end third draft deletion] (PLA) lined [start third
(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 17989.5(a)(1)(A) or subsections 17989.5(a)(1) and 17989.4(a)(3)(A) 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 the materials whether identified on the List included in this section when making recyclability and compostability determinations for food service packaging items.
identified in this section when submitting applications pursuant to subsections 17989.6(d)(4) and (e)(1) and (2). [end third draft deletion] [end second draft addition]

(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 date these regulations become effective.

(2) The department shall evaluate each application in the order it is received to determine if a food service packaging item or group of items meets the applicable criteria pursuant to this Article for inclusion on the List 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.
third draft addition] [start third draft deletion] on an ongoing basis [end third draft deletion].

[start second draft deletion]
(d) The department shall notify the Department of General Services and the Public within 30 days of making any changes to the List.

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

[start second draft deletion]
(f)

[start third draft deletion] [start third draft addition] Except as otherwise provided in this Article, before removing a food service packaging item from the List, the department shall make a preliminary determination [end third draft deletion] [start third draft deletion] if the department determines [end third draft deletion] that [start third draft addition] a [end third draft addition] [start third draft deletion] an approved [end third draft deletion] food service packaging item [start second draft addition] or material on the [start third draft deletion] published [end third draft deletion] List [start second draft deletion] does not [end second draft deletion] [start second draft addition] no longer [end second draft addition] [start second draft addition] meets [end third draft deletion] [start third draft addition] meets [end third draft addition] the requirements of this Article [start third draft addition], and [end third draft addition] the department shall [start second draft deletion] notify the manufacturer and remove the food service packaging item from the List [end second draft deletion]; [start second draft addition]

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

[start second draft addition]

(2) [end second draft addition] [start third draft addition] With regard to the potential removal of a material from the List, notify [end third draft addition] [start second draft addition] [start third draft deletion] Notify [end third draft deletion] the public of the [start third draft deletion] reason(s) [end third draft deletion] [end second draft addition] [start third draft addition] reasons [end third draft addition] [start second draft addition] for the [end second draft addition] [start third draft addition] department’s preliminary determination [start second draft addition] [start third draft deletion] proposed removal of a food service packaging material [end third draft deletion] and allow no fewer than 30 days [start third draft deletion] to submit [end third draft deletion] [end second draft addition] [start third draft deletion] for submission of [end third draft addition] [start second draft addition] written comments [end second draft addition] [start third draft addition] and additional information relevant to the department’s preliminary determination [end third draft addition].

[start second draft addition]

(3) Evaluate the comments [end second draft addition] [start third draft addition] and information [end third draft addition] [start second draft addition] received pursuant to [end second draft addition] [start third draft addition]
this subsection [end third draft addition] [start second draft addition] [start third draft deletion] subsections 17989.1 (e)(1) and (2) [end third draft deletion] prior to issuing its final determination [end second draft addition] [start third draft addition] as to whether the item or material satisfies the requirements of this Article [end third draft addition].

[start second draft addition]

(4) [end second draft addition] [start third draft addition] Either maintain the food service packaging item and/or material on the List or remove the item [end third draft addition] [start second draft addition] [start third draft deletion] Remove the food service packaging item [end third draft deletion] [start third draft addition] and/or [end third draft addition] or material from the List or make no changes to the List. [end second draft addition]

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

[start second draft addition]

(1) [end second draft addition] [start third draft addition] Within 60 days of the date of the notification, the [end third draft addition] [start second draft addition] [start third draft deletion] The food service packaging [end third draft deletion] manufacturer [start third draft deletion] or person acting on its behalf. [end third draft deletion] shall provide information to the
within 60 days of the date of the notification and indicate indicating whether the identified chemical is present in the food service packaging. If this information is not received within 60 days of the date of the notification or if the department determines that the item no longer satisfies the criteria set forth in subsections 17989.2(a)(1) or 17989.2(a)(2), the department shall consider removing the food service packaging item(s). If this information is not received within 60 days of the date of the notification pursuant to this subsection shall not be subject to the requirements of subsection (e).

Pursuant to subsection 42370.3(b) of the Public Resources Code, the department shall review and evaluate the entire item(s) from the List.
addition] List no less than once every five years [end second draft addition] [start third draft addition] to determine whether each of the food service packaging items on the List is reusable, recyclable, or compostable [end third draft addition].

[start second draft addition]

(1) [start third draft deletion] The [end third draft deletion] [end second draft addition] [start third draft addition] 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 [end third draft addition] [start second draft addition] department shall notify [end second draft addition] [start third draft addition] the manufacturer that the item requires a new application [end third draft addition] [start third draft deletion] [end third draft deletion] [start second draft deletion] [start third draft deletion] to determine whether each of the food service packaging items is reusable, recyclable, or compostable [end third draft deletion] [start second draft deletion] [start third draft deletion] [end second draft deletion] [start third draft deletion] [start second draft deletion] [end third draft deletion] [start second draft deletion] [start third draft deletion] [end third draft deletion] [start second draft deletion] shall submit a new application to the department within 180 days of being notified by the department that it is evaluating the List [end second draft deletion] [start third draft deletion] shall submit a new application to the department within 180 days of being notified by the department that it is evaluating the List [end second draft deletion] [start third draft deletion] to determine whether each of the approved food service packaging items is reusable, recyclable, or compostable [end third draft deletion] [start second draft deletion]. If a new application is not received within 180 days the food service packaging item may be removed from the List [end second draft deletion]. [start third draft deletion] [end third draft deletion] [start second draft deletion] The food service packaging manufacturer [start third draft deletion] or person acting on its behalf [end third draft deletion] shall submit a new application to the department within 180 days of the date of the notification [end second draft addition] [start third draft addition] and the department shall consider such application in making its determination of whether the item is reusable, recyclable, or compostable [end third draft addition] [start second draft addition]. If a new application is not [start third draft deletion] received [end third draft deletion] [end second
[start third draft addition] submitted [end third draft addition] [start second draft addition] within 180 days of the date of the notification, the department shall [start third draft deletion] consider removing [end third draft deletion] [end second draft addition] [start third draft addition] remove [end third draft addition] [start second draft addition] the [end second draft addition] [start third draft addition] food service packaging [end third draft addition] [start second draft addition] item from the List [end second draft addition] [start third draft addition], and the requirements of subsection (e) shall not apply [end third draft addition].

(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. [end third draft addition]

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


(a) Food service packaging items included on the List shall [start third draft deletion] meet [end third draft deletion] [start third draft addition] satisfy all [end third draft addition] the following criteria to minimize public health and litter impacts:

(1) A food service packaging item that is subject to the Toxics in Packaging Prevention Act (Health and Safety Code Sections 25214.11 - 25214.26) shall not contain lead, mercury, cadmium, or hexavalent chromium [start third draft addition], or any other "regulated metal" as described in subsection 17989.1(f) [end third draft addition] in an amount that [start third draft deletion] 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 included on the Proposition 65 list that are used in the manufacturing of the food service packaging item. A 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 that is recyclable or compostable shall not contain PFASs. A food service packaging item shall be deemed not to contain PFASs if its total fluorine 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 a state agency or another state or federal government agency or non-governmental, another state agency, or another state agency, or another state agency, or another state agency, or another state agency, or another state agency.
addition] organization [start second draft addition] as having [end second draft addition] [end third draft deletion] [start second draft deletion] to have [end second draft deletion] [start third draft deletion] the potential to contribute to an adverse public health impact [end third draft deletion] [start second draft deletion] (e.g., through publications or reports provided by the Office of Environmental Health Hazard Assessment’s Prop 65 program or the Department of Toxic Substances Control’s Safer Consumer Products Program) the department may not include or remove the food service packaging item from the list [end second draft deletion] [start third draft deletion] [start second draft deletion] [start second draft addition] the department shall:

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

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

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

(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. [end second draft deletion] [start second draft deletion] may not include or remove food service packaging items made from that material from the List [end second draft deletion] [start second draft deletion] [start second draft addition] shall:

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

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

(1) The item maintains its shape, structure, and functionality for multiple uses.
and function after [start second draft addition] 780 [end second draft addition] [start second draft deletion] 125 [end second draft deletion] cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section 114101 and 114099.7, respectively, as demonstrated by [start third draft addition] test results from an ISO/IEC 17025:2017 accredited laboratory [end third draft addition] [start third draft deletion] a third-party certification entity [end third draft deletion]; or

(2) The manufacturer of the food service packaging item provides an express [start third draft addition] , written [end third draft addition] warranty [start third draft addition] to purchasers of the item [end third draft addition] that [start third draft deletion] the food service packaging item can be reused [end third draft deletion] [start third draft addition] it will remain reusable [end third draft addition] for its intended purpose for a minimum of one-year or [start third draft addition] else [end third draft addition] 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 [start third draft addition] satisfies [end third draft addition] all the following criteria:

(1) The food service packaging item shall be a minimum of two [start third draft deletion] [2] [end third draft deletion] inches measured in [start third draft addition] at least [end third draft addition] 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:

- The item satisfies either of the following criteria:
  - (A) Prior to 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. Effective January 1, 2026, the food service packaging item is comprised of materials that are
material is [end third draft deletion] collected by at least 75 percent of recycling programs [end second draft addition] [start third draft addition] statewide, have sufficient commercial value to be marketed for recycling, [end third draft addition] [start second draft addition] and [start third draft deletion] is [end third draft deletion] [end second draft addition] [start third draft addition] are [end third draft addition] [start second draft addition] sorted and aggregated into [end second draft addition] [start third draft addition] defined streams (e.g., mixed paper, PET) [end third draft addition] [start second draft addition] [start third draft deletion] a single named material bale [end third draft deletion] by at least 75 percent of large volume transfer processing facilities in the state; [end second draft addition] [start third draft deletion] or, [end third draft deletion]

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

(C) 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) Prior to January 1, 2026, the food service packaging item is comprised of materials that are regularly collected for composting by at least 50 percent of organics 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 recycling programs statewide and accepted by at least 50 percent of the compost facilities in the state that accept mixed materials.
50 percent of the compost facilities in the state that accept mixed materials [end third draft addition].

[start third draft addition]

(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. [end third draft addition]

[start third draft deletion]

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

[start third draft deletion]
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.

The food service packaging item satisfies the legal requirements to be lawfully labeled “compostable,” including all applicable requirements specified in Chapter 5.7 (Sections 42355 through 42358.5), Part 3, Division 30 of the Public Resources Code and
Section 17580.5(a) of the Business and Professions Code. [end second draft addition] The food service packaging item complies with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (part 260 commencing with Section 260.1 of Subchapter B of Chapter I of Title 16 of the Code of Federal Regulations). [end second draft deletion]


§17989.6. Application Requirements and Submittal Process.

(a) If a food service packaging manufacturer or person acting on its behalf seeks to add one or more food service packaging items to the List, an application shall be submitted to the department demonstrating that each food service packaging item or group of food service packaging items meets 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) used to manufacture the food service packaging item or group of items.

(5) Documentation that a food service packaging item or group of items meets the requirements of subsection 17989.2(a)(1).

(6) The chemical name(s)
addition] names [end third draft addition] and [start third draft addition] Chemical Abstract Service Registry Numbers necessary [end third draft addition] [start third draft deletion] CASRN(s) [end third draft deletion] to demonstrate compliance with subsection 17989.2(a)(2) [start third draft deletion] Disclose [end third draft deletion] [start third draft addition] and a disclosure [end third draft addition] whether a Proposition 65 warning is required [start third draft deletion] for exposure(s) to the chemical(s) resulting from the use of the food service packaging item or group of items [end third draft deletion] [start third draft addition] due to the exposure to such chemicals from the use of the item or group of items [end third draft addition].

(7) [start second draft deletion] As applicable, the [end second draft deletion] [start second draft addition] The [end second draft addition] accreditation [start third draft deletion] number(s) [end third draft deletion] [start third draft addition] numbers [end third draft addition] of the ISO/IEC 17025 [start third draft addition]:2017 [end third draft addition] laboratory(ies) used to demonstrate compliance [start third draft addition] with the requirements of this Article [end third draft addition] [start second draft addition] as applicable [end second draft addition].

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

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

(c) In addition [start third draft deletion] to the items submitted under subdivision [end third draft deletion] [start third draft addition] to meeting the requirements of subsection [end third draft addition] (a), an application for a reusable food service packaging item or group of items shall include [start third draft addition] either: [end third draft addition]

[start third draft addition]

(1) Test [end third draft addition] [start third draft deletion] test [end third draft deletion] results from [start third draft deletion] a third-party certification entity [end third draft deletion] [start third draft addition] an ISO/IEC 17025:2017 accredited laboratory [end third draft addition] that demonstrate compliance with subsection 17989.3(a)(1); or

[start third draft addition]

(2) A copy of [end third draft addition] the manufacturer’s [start third draft addition] express, written [end third draft addition] warranty [start third draft addition], if any, pursuant to [end third draft addition] [start third draft deletion] as required by [end third draft deletion] subsection 17989.3(a)(2).

(d) In addition [start third draft deletion] to the items submitted under subdivision [end third draft deletion] [start third draft addition] to meeting the requirements of subsection [end third draft addition] (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 [start third draft addition] at least [end third draft addition] two dimensions, in inches, of the food service packaging item or each item in a group of [start third draft deletion] food service packaging [end third draft deletion] 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 that demonstrate compliance with subsection 17989.2(a)(3), as applicable. Tests shall be conducted no more than six months prior to the application submittal date and shall specify the analytical method and instrumentation used to quantify the results. 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 each food service packaging item is regularly collected and recycled.
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 item 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. [end third draft addition]

(e) In addition to the items submitted under subdivision [end third draft deletion] meeting the requirements of subsection [end third draft addition] (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 food service packaging item meets the applicable criteria in [end third draft addition] 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 item 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 or group of items are 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) Test results from a third-party certification entity that demonstrates the food service packaging item or group of items biodegrades in a safe and timely manner. Tests shall be completed no more than five years prior to within six (6) months of the application submittal date. 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. If an applicant submits a test report for a

(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 that demonstrate compliance with subsection 17989.2(a)(3), as applicable. Tests shall be completed no more than six months prior to the application submittal date and shall specify the analytical method and instrumentation used to quantify the results. 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.
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 the application is complete.

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

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

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

(B) 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, of the basis for the department’s preliminary determination. Within 30 days of receiving such notification, the food service packaging manufacturer, or person acting on its behalf, may provide additional documentation and...
information to supplement its application, and the, The department shall consider 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 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 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 [start third draft deletion] Inventories [end third draft deletion].

(a) [start third draft addition] 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) [end third draft addition] [start second draft deletion] Upon the removal of a food service packaging item or group of food service packaging items from the List pursuant to subsection 17989.1(f), a [end second draft deletion] [start second draft addition] A [end second draft addition] food service facility may [start third draft addition] not [end third draft addition] use [start second draft deletion] its remaining [end second draft deletion] [start second draft addition] a [end second draft addition] food service packaging item [start second draft deletion] inventory [end second draft deletion] [start second draft addition] [start third draft deletion] that is not [end third draft deletion] [end second draft addition] [start third draft addition] unless the item is [end third draft addition] [start second draft addition] on the List published by the department pursuant to Section 42370.3 of the [start third draft deletion] PRC [end third draft deletion] [end second draft addition] [start third draft addition] Public Resources Code, except that a food service facility may use a food service packaging item [end third draft addition] under [start third draft addition] any of [end third draft addition] the following conditions:

(1) The food service facility possessed that specific inventory of food service packaging [start third draft deletion] item(s) [end third draft deletion] [start third draft addition] items [end third draft addition] before the date the List was published [start second draft deletion] or subsequently updated [end second draft deletion].

(2) The food service facility possessed that specific inventory of food service packaging [start third draft deletion] item(s) [end third draft deletion] [start
third draft addition] items [end third draft addition] before the [start third draft addition] item was removed from the [end third draft addition] List, [start third draft deletion] maintained pursuant to Section 42370.3 of the PRC was updated to remove the food service packaging item [end third draft deletion] and the [start third draft deletion] food service packaging [end third draft deletion] item was on the List when the food service facility took possession of the [start third draft deletion] food service packaging [end third draft deletion] item.

(3) The food service facility acquired that specific inventory of food service packaging items pursuant to a contract entered into before the date the List was published [start second draft deletion] or subsequently updated [end second draft deletion].

(4) The food service facility acquired that specific inventory of food service packaging [start third draft deletion] item(s) [end third draft deletion] [start third draft addition] items [end third draft addition] pursuant to a contract entered into before the [start third draft addition] item was removed from the List, [end third draft addition] [start third draft deletion] List maintained pursuant to Section 42370.3 of the PRC was updated to remove the food service packaging item [end third draft deletion] and the [start third draft deletion] food service packaging [end third draft deletion] item was on the [start third draft deletion] List [end third draft deletion] [start third draft addition] List [end third draft addition] when the food service facility entered into the contract.

[start third draft addition]

(c) [end third draft addition] [start third draft deletion] (b) [end third draft deletion] 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 food service facility shall provide the department with reasonable and timely access to its food service packaging item purchasing records by submitting the following information within 60 days of a written request:

(1) For reusable food service packaging items, pursuant to Section 17989.3:

   invoices, which includes, orders that include the dates the food service packaging items were purchased, the food service packaging material, the type of food service packaging purchased, the manufacturer of the food service packaging, and the number of food service packaging items purchased.

(1) 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, orders that include the dates of food service packaging purchased, the manufacturer of the food service packaging, and the number of food service packaging items purchased.
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. [end third draft deletion]