

1 **Proposed Regulations**

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

3  
4 **TITLE 14: NATURAL RESOURCES**

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

6 **CHAPTER 4 RESOURCE CONSERVATION PROGRAMS**

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

8  
9 **§17989. Definitions.**

10 (a) The following definitions shall apply to the regulations contained in this Article:

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

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

24 (3) "Collected" means picked up and delivered to a recycling or composting  
25 facility after being used to serve or transport food or beverages.

26 (4) "Composting" has the same meaning as defined in Public Resources Code  
27 Section 40116.1.

28 (5) "Compost facility" has the same meaning as "compostable materials  
29 handling operation" or "facility" as defined in Division 7, Chapter 3.1, Article  
30 1, Section 17852, subsection (a)(12).

31 (6) "Cooking or food preparation technique" includes, but is not limited to, the  
32 following:

- 33                   (A) Cooking techniques, such as steaming, microwaving, simmering,  
34                   boiling, broiling, grilling, frying, or roasting.
- 35                   (B) Beverage preparation techniques, such as blending, brewing,  
36                   steeping, juicing, diluting, or pouring.
- 37                   (C) Food preparation techniques, such as defrosting, rinsing, washing,  
38                   diluting, cutting, portioning, mixing, blending, assembling, coating,  
39                   dipping, garnishing, or icing.
- 40                   (7) “Department” means the Department of Resources Recycling and  
41                   Recovery (CalRecycle).
- 42                   (8) “Food service facility” means an operation or business that stores, prepares,  
43                   packages, serves, vends, or otherwise provides prepared food and is also  
44                   one of the following:
- 45                   (A) An operation or business that is located in a state-owned facility,  
46                   including but not limited to: cafeterias, restaurants, catering  
47                   companies, shops, markets, delis, Department of Corrections and  
48                   Rehabilitation commissaries, University of California and California  
49                   State University food courts and dormitories, fairs, expositions, and  
50                   legislative offices.
- 51                   (B) An operation or business operating on or acting as a concessionaire  
52                   on State property.
- 53                   (C) An operation or business under contract to provide food service to a  
54                   State agency.
- 55                   (9) “Food service packaging item” means a specific combination of the food  
56                   service packaging type (e.g., plate, cup, bowl) and the materials the type of  
57                   food service packaging is made of (e.g., polyethylene terephthalate (PET),  
58                   polylactic acid (PLA)-lined paperboard).
- 59                   (10) “Food service packaging manufacturer” or “manufacturer” means a person  
60                   that makes the food service packaging items, and includes persons acting  
61                   on the food service packaging manufacturer’s behalf.
- 62                   (11)(A) “Food service packaging type” or “type of food service packaging”  
63                   means a product that is used for serving or transporting prepared, ready-

64 to-consume food or beverages and meets one or more of the following  
65 criteria:

66 (i) It comes into direct contact with the prepared food or beverage;

67 (ii) It keeps the prepared food or beverage contained while  
68 transporting it on or off a food service facility's premises; or

69 (iii) It aids in the consumption of the prepared food or beverage

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

74 (12) "Group of food service packaging items" or "group of items" means food  
75 service packaging items made by one or more food service packaging  
76 manufacturers and submitted under one application to meet the  
77 requirements of this Article.

78 (13) "Hauler" has the same meaning as defined in Division 7, Chapter 9, Article  
79 9.25, Section 18815.2, subsection (a)(32).

80 (14) "Jurisdiction" has the same meaning as defined in Public Resources Code  
81 Section 40145.

82 (15) "Large volume transfer/processing facility" has the same meaning as  
83 defined in Division 7, Chapter 3, Article 6.0, Section 17402, subsection  
84 (a)(8).

85 (16) "List of Approved Food Service Packaging" or "List" means the list,  
86 published by the department pursuant to Public Resources Code Section  
87 42370.3, of the following:

88 (A) Food service packaging items approved by the department for use  
89 at food service facilities; and

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

92 (17) "Mass produced" means that a food or beverage product is manufactured  
93 and/or packaged by a third party not affiliated with a food service facility and  
94 is intended to be sold or distributed to the general marketplace, including,

95 but not limited to, food service facilities, without the use of any cooking or  
96 food preparation techniques

97 (18)“Material” means the particular ingredient or combination of ingredients,  
98 such as a feedstock, coating, layer, or other tangible constituent matter, that  
99 partially or wholly constitute a food service packaging item. A material shall  
100 be described by its identifying characteristics, such as its form (e.g.,  
101 thermoform) and combination or integration of ingredients (e.g., PLA-lined  
102 paperboard), when consideration of those characteristics is necessary to  
103 determine compliance with this Article. A plastic material shall be identified  
104 by the name of the plastic resin (#1-6 in accordance with Public Resources  
105 Code Sections 18013 through 18015), the name of the plastic polymer (e.g.,  
106 polylactic acid), or both (e.g., PET #1).

107 (19)“Mixed material” has the same meaning as defined in Division 7, Chapter  
108 3.1, Article 1, Section 17852, subsection (a)(26).

109 (20)“Organic waste” has the same meaning as defined in Public Resources  
110 Code Section 42649.8, subsection (d).

111 (21)“Person” has the same meaning as defined in Public Resources Code  
112 Section 40170.

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

115 (23)“Plastic bag” means an open-top, carryout-style plastic bag that has  
116 handles and is designed not to be closeable or sealable.

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

122 (25)“Proposition 65 list” means the list published in the California Code of  
123 Regulations Title 27, Division 4, Chapter 1, Article 9, Section 27001  
124 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,

125 Health and Safety Code Sections 25249.5 through 25249.14, of chemicals  
126 known to the State of California to cause cancer or reproductive toxicity.

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

129 (27)“Recycling facility” has the same meaning as “recycling center” in Division  
130 7, Chapter 3, Article 6.0, Section 17402.5, subsection (d).

131 (28)“Recycling program” means a diversion program, as defined in Public  
132 Resources Code Section 40127, established by a California jurisdiction for  
133 the purpose of providing recycling or organic waste collection services to  
134 residents or businesses. A recycling program must include services  
135 provided by a hauler that is authorized by a State or local government entity  
136 pursuant to a contract, agreement, permit, or other authorization to regularly  
137 collect materials within the government entity’s jurisdiction for recycling.  
138 “Recycling program” does not include a takeback program, as defined in  
139 this subsection.

140 (29)“Takeback program” means a program that recovers certain food service  
141 packaging items for reuse, recycling, or composting and includes  
142 convenient options for customers to return the items to the program. A  
143 takeback program may, without limitation, require a customer to pay a  
144 deposit, or utilize other incentives offered by a food service packaging  
145 manufacturer or food service facility to ensure the food service packaging  
146 items are recovered for reuse, recycling, or composting.

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

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

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

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

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

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

169 (6) ISO/IEC 17025:2017, “General requirements for the competence of testing  
170 and calibration laboratories,” International Organization for Standardization/  
171 International Electrotechnical Commission, November 2017.

172  
173 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:  
174 Sections 42370.1, 42370.2, and 42370.3, Public Resources Code.

175 **§17989.1. List of Approved Food Service Packaging.**

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

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

182 (2) A description of the food service packaging item, including the food service  
183 packaging types (e.g., plate, cup, bowl, tray), item names, and sizes (e.g.,  
184 dimensions, diameter, volume).

- 185           (3) The materials used to manufacture the food service packaging item (e.g.,  
186           polyethylene terephthalate (PET), PLA lined paperboard).
- 187           (4) The name of the food service packaging manufacturer.
- 188           (5) The names of chemicals contained in the food service packaging item, and  
189           their Chemical Abstract Service Registry Numbers, that are included on the  
190           Proposition 65 list.
- 191 (b) The List shall also include a section that identifies materials which the department  
192           determines have met the requirements of subsection 17989.4(a)(3)(A) or  
193           17989.5(a)(1)(A). Food service packaging manufacturers may identify the materials  
194           specified on the List pursuant to subsection 17989(a)(16)(B) in the application  
195           submitted pursuant to Section 17989.6. The department shall consider whether  
196           materials are identified on the List when making recyclability and compostability  
197           determinations for food service packaging items.
- 198 (c) The department shall establish the initial List required by subsection 42370.3(a) of the  
199           Public Resources Code, as follows:
- 200           (1) A food service packaging manufacturer that seeks to have items included  
201           on the List shall submit an application to the department pursuant to Section  
202           17989.6 within 30 days of the department posting these regulations on its  
203           website after approval by the Office of Administrative Law.
- 204           (2) The department shall evaluate each application in the order it is received to  
205           determine if a food service packaging item or group of items meets the  
206           applicable criteria pursuant to this Article for inclusion on the List.
- 207 (d) Following publication of the initial List, the department shall evaluate applications on  
208           an ongoing basis and update the List with additional food service packaging items that  
209           it determines to be reusable, recyclable, or compostable pursuant to this Article.
- 210 (e) Except as otherwise provided in this Article, before removing a food service packaging  
211           item from the List, the department shall make a preliminary determination that a food  
212           service packaging item or material on the List no longer meets the requirements of  
213           this Article, and the department shall:
- 214           (1) With regard to the potential removal of a food service packaging item from  
215           the List, notify the food service packaging manufacturer of the reasons for

216 the department's preliminary determination and allow no fewer than 30 days  
217 for the manufacturer to submit written comments and additional information  
218 relevant to the department's preliminary determination.

219 (2) With regard to the potential removal of a material from the List, notify the  
220 public of the reasons for the department's preliminary determination and  
221 allow no fewer than 30 days for submission of written comments and  
222 additional information relevant to the department's preliminary  
223 determination.

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

227 (4) Either maintain the food service packaging item and/or material on the List  
228 or remove the item and/or material from the List.

229 (f) The department shall notify a food service packaging manufacturer when the  
230 department determines that a manufacturer's food service packaging items included  
231 on the List may contain a chemical that has been added to the definition of "regulated  
232 metal" in Health and Safety Code Section 25214.12(l) pursuant to the Toxics in  
233 Packaging Prevention Act (Health and Safety Code Sections 25214.11 through  
234 25214.26), as that definition may be modified by statute or by regulations promulgated  
235 by the Department of Toxic Substances Control pursuant to its rulemaking authority  
236 under Health and Safety Code Section 25214.26, or added to the Proposition 65 list.

237 (1) Within 60 days of the date of the notification, the manufacturer shall provide  
238 information to the department indicating whether the identified chemical is  
239 present in the food service packaging items.

240 (2) If this information is not received within 60 days of the date of the  
241 notification, or if the department determines that the food service packaging  
242 item no longer satisfies the criteria set forth in subsections 17989.2(a)(1) or  
243 17989.2(a)(2), the department shall remove the food service packaging  
244 items from the List.



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

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

252 (1) If the department determines that a new application pursuant to Section  
253 17989.6 is reasonably necessary for the department to evaluate whether a  
254 food service packaging item is reusable, recyclable, or compostable, the  
255 department shall notify the manufacturer that the item requires a new  
256 application. The food service packaging manufacturer shall submit a new  
257 application to the department within 180 days of the date of the notification,  
258 and the department shall consider such application in making its  
259 determination of whether the item is reusable, recyclable, or compostable.  
260 If a new application is not submitted within 180 days of the date of the  
261 notification, the department shall remove the food service packaging item  
262 from the List, and the requirements of subsection (e) shall not apply.

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

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

269  
270 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:  
271 Sections 42370.2 and 42370.3, Public Resources Code.

272 **§17989.2. Public Health and Litter Impacts Criteria.**

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

- 275 (1) A food service packaging item that is subject to the Toxics in Packaging  
276 Prevention Act (Health and Safety Code Sections 25214.11 through 25214.26)  
277 shall not contain lead, mercury, cadmium, or hexavalent chromium, or any  
278 other “regulated metal” as described in subsection 17989.1(f) in an amount that  
279 exceeds 100 parts per million by weight, as measured by the sum of the total  
280 concentration levels of all such metals.
- 281 (2) The names of all chemicals included on the Proposition 65 list that are used in  
282 the manufacturing of the food service packaging item shall be disclosed to the  
283 department by the manufacturer seeking to add the item to the List.
- 284 (3) A food service packaging item made from plastic or fiber and that is recyclable  
285 or compostable shall not contain PFASs. A food service packaging item shall  
286 be deemed not to contain PFASs if its total fluorine concentration is not more  
287 than 100 parts per million, as determined by combustion ion chromatography,  
288 particle-induced gamma-ray emission spectroscopy, instrumental neutron  
289 activation analysis, or other technique utilized by an ISO/IEC 17025:2017  
290 accredited laboratory.
- 291 (b) If the department determines that a food service packaging item has the potential to  
292 contribute to litter or public health or wildlife impacts, then it shall follow the process  
293 described in subsection 17989.1(e) for potential removal of the item from the List. In  
294 making such a determination, the department shall:
- 295 (1) Consider whether the food service packaging item has been identified by a  
296 state or federal government agency or other organization as having the  
297 potential to contribute to an adverse impact;
- 298 (2) Evaluate publications, reports, and any other information provided by a state  
299 agency, federal government agency, or other organization;
- 300 (3) If the basis of the determination relates to public health or wildlife impacts,  
301 consult with the Office of Environmental Health Hazard Assessment and the  
302 Department of Toxic Substances Control; and
- 303 (4) If the food service packaging item or material is subject to a ban, fee for  
304 distribution (e.g., a fee for a single-use disposable cup at point of sale), or other  
305 restrictions imposed pursuant to city or county ordinances, evaluate the

306 ordinance and documentation in the public record in support of the ordinance  
307 concerning the food service packaging item’s potential to contribute to litter or  
308 ocean debris concerns.

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

312 **§17989.3. Reusable Food Service Packaging Criteria.**

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

316 (1) The item maintains its shape, structure, and function after 780 cycles in a  
317 cleaning and sanitizing process as defined in California Health and Safety  
318 Code Section 114101 and 114099.7, respectively, as demonstrated by test  
319 results from an ISO/IEC 17025:2017 accredited laboratory; or

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

324  
325 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:  
326 Sections 42370.2 and 42370.3, Public Resources Code.

327 **§17989.4. Recyclable Food Service Packaging Criteria.**

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

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

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

336 (3) The food service packaging item satisfies either of the following criteria:

337 (A) Prior to January 1, 2026, the food service packaging item is  
338 comprised of materials that are collected by at least 60 percent of  
339 recycling programs statewide, have sufficient commercial value to be  
340 marketed for recycling, and are sorted and aggregated into defined  
341 streams (e.g., mixed paper, PET) by at least 60 percent of large  
342 volume transfer/processing facilities in the state. Effective January 1,  
343 2026, the food service packaging item is comprised of materials that  
344 are collected by at least 75 percent of recycling programs statewide,  
345 have sufficient commercial value to be marketed for recycling, and  
346 are sorted and aggregated into defined streams (e.g., mixed paper,  
347 PET) by at least 75 percent of large volume transfer/processing  
348 facilities in the state.

349 (B) Prior to January 1, 2026, the food service packaging item is included  
350 in a takeback program that, on an annual basis, recovers at least 60  
351 percent of the food service packaging items in the program that are  
352 distributed at food service facilities. Effective January 1, 2026, the  
353 food service packaging item is included in a takeback program that,  
354 on an annual basis, recovers at least 75 percent of the food service  
355 packaging items in the program that are distributed at food service  
356 facilities. All food service packaging items that are recovered by the  
357 takeback program shall have sufficient commercial value to be  
358 marketed for recycling and be transported at the end of their useful  
359 life to a transfer/processing or recycling facility to be sorted and  
360 aggregated into defined streams (e.g., mixed paper, PET) for  
361 recycling.

362  
363 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:  
364 Sections 42370.2 and 42370.3, Public Resources Code.

365 **§17989.5. Compostable Food Service Packaging Criteria.**

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

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

370 (A) Prior to January 1, 2026, the food service packaging item is comprised  
371 of materials that are regularly collected for composting by at least 50  
372 percent of organic waste recycling programs statewide and accepted  
373 by at least 50 percent of the compost facilities in the state that accept  
374 mixed materials. Effective January 1, 2026, the food service packaging  
375 item is comprised of materials that are regularly collected for  
376 composting by at least 75 percent of organic waste recycling programs  
377 statewide and accepted by at least 75 percent of the compost facilities  
378 in the state that accept mixed materials.

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

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

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

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

402 (3) The food service packaging item satisfies the legal requirements to be  
403 lawfully labeled "compostable," including all applicable requirements  
404 specified in Chapter 5.7 (Sections 42355 through 42358.5), Part 3, Division  
405 30 of the Public Resources Code and Section 17580.5(a) of the Business  
406 and Professions Code.

407  
408 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:  
409 Sections 42370.2 and 42370.3, Public Resources Code.

410 **§17989.6. Application Requirements and Submittal Process.**

411 (a) If a food service packaging manufacturer seeks to add one or more food service  
412 packaging items to the List, an application shall be submitted to the department  
413 demonstrating that each food service packaging item or group of food service  
414 packaging items meets the applicable requirements of Sections 17989.2 through  
415 17989.5. The application shall contain the following and be submitted electronically:

416 (1) Contact information

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

418 (B) Company or organization name

419 (C) Company or organization mailing and physical addresses

420 (D) Phone number

421 (E) Email address

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

- 424 (2) A statement that the application is being submitted to the department to be  
425 considered for determination of whether the food service packaging item or  
426 group of items is reusable, recyclable, or compostable.
- 427 (3) A description of the food service packaging item or group of items, including  
428 the food service packaging types, item names, and sizes (e.g., dimensions,  
429 diameter, volume).
- 430 (4) A description of the materials (e.g., PLA-lined paperboard), including  
431 identifying characteristics, used to manufacture the food service packaging  
432 item or group of items.
- 433 (5) Documentation that a food service packaging item or group of items meets  
434 the requirements of subsection 17989.2(a)(1), as applicable.
- 435 (6) The chemical names and Chemical Abstract Service Registry Numbers  
436 necessary to demonstrate compliance with subsection 17989.2(a)(2) and a  
437 disclosure whether a Proposition 65 warning is required due to the exposure  
438 to such chemicals from the use of the item or group of items.
- 439 (7) The accreditation numbers of the ISO/IEC 17025:2017 laboratory(ies) used  
440 to demonstrate compliance with the requirements of this Article, as  
441 applicable.
- 442 (8) A declaration signed under penalty of perjury by the food service packaging  
443 manufacturer stating that all information and data submitted as part of the  
444 application is true and correct.
- 445 (b) A food service packaging manufacturer shall label or identify all portions of the  
446 application that it requests the department maintain as confidential pursuant to  
447 subsection 17989.6(f)(3). Applications submitted to the department shall not contain  
448 redactions. Any portions of an application that are not labeled or identified as  
449 confidential shall be deemed a public document.
- 450 (c) In addition to meeting the requirements of subsection (a), an application for a  
451 reusable food service packaging item or group of items shall include either:
- 452 (1) Test results from an ISO/IEC 17025:2017 accredited laboratory that  
453 demonstrate compliance with subsection 17989.3(a)(1); or

454 (2) A copy of the manufacturer's express, written warranty, if any, pursuant to  
455 subsection 17989.3(a)(2).

456 (d) In addition to meeting the requirements of subsection (a), an application for a  
457 recyclable food service packaging item or group of items shall include information to  
458 demonstrate compliance with Section 17989.4. Applications shall include:

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

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

463 (3) Test results from an ISO/IEC 17025:2017 accredited laboratory that  
464 demonstrate compliance with subsection 17989.2(a)(3), as applicable.

465 Tests shall be completed no more than six months prior to the application  
466 submittal date and shall specify the analytical method and instrumentation  
467 used to quantify the results. If an applicant submits test results for a group  
468 of food service packaging items, the applicant must explain how the test  
469 results are representative of the group of food service packaging items.

470 (4) Information demonstrating that each food service packaging item meets  
471 the applicable criteria in subsection 17989.4(a)(3).

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



484           (B) A takeback program shall be deemed to satisfy the annual  
485           percentage recovery requirement pursuant to subsection  
486           17989.4(a)(3)(B) if the following requirements are met, as  
487           applicable:

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

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

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

502           (iv)   For a program that has not yet begun operating, the  
503           information submitted includes at least the following details  
504           concerning the program: description of the food service  
505           packaging items and any other products that the program  
506           will recover; program locations and methods of recovering  
507           food service packaging items; the anticipated start date of  
508           the program; specific mechanisms for enabling and  
509           incentivizing customers to participate; plans to conduct  
510           educational outreach and marketing activities to raise  
511           awareness of the program; names of the entities that will  
512           operate or partner with the program, including recycling  
513           service providers; and performance information (e.g.,  
514           recovery rates of food service packaging items and

515 commercial values of materials), if available, concerning  
516 similar takeback programs under similar circumstances.  
517 Inclusion of a food service packaging item on the List based  
518 in part on this information shall not occur until the  
519 manufacturer informs the department that the takeback  
520 program has begun operating, and the inclusion shall be  
521 conditional, such that the item shall be removed from the List  
522 unless the manufacturer supplements its application with  
523 information demonstrating that the program's performance,  
524 extrapolated over an entire year, satisfies the annual  
525 percentage recovery requirement. Such supplemental  
526 information shall be provided no later than seven months  
527 after the program began operating.

528 (v) For a takeback program that has not been in operation for at  
529 least one year or has not begun operations at the time of the  
530 application, inclusion of a food service packaging item on the  
531 List based in part on their inclusion in the takeback program  
532 shall be conditional, such that the item shall be removed  
533 from the List unless the manufacturer supplements its  
534 application with information demonstrating that the program  
535 satisfied the annual percentage recovery requirement over a  
536 12-month period. Such supplemental information shall be  
537 provided no later than 14 calendar months after the program  
538 began operating.

539 (e) In addition to meeting the requirements of subsection (a), an application for a  
540 compostable food service packaging item or group of items shall include information  
541 to demonstrate compliance with Section 17989.5. Applications shall include:

542 (1) Information demonstrating that each food service packaging item meets  
543 the applicable criteria in subsection 17989.5(a)(1).

544 (A) A takeback program shall be deemed to satisfy the annual  
545 percentage recovery requirement pursuant to subsection

546 17989.5(a)(1)(B) if the following requirements are met, as  
547 applicable:

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

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

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

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

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

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

599 (2) For any food service packaging items that are plastic, plastic-coated, or  
600 plastic-containing, documentation demonstrating that the items meet the  
601 requirements of ASTM D6400-19 or ASTM D6868-19, as applicable  
602 pursuant to subsection 17989.5(a)(2)(A), as shown by results from tests  
603 completed no more than five years prior to the application submittal date.  
604 If an applicant submits documentation for a group of food service  
605 packaging items, the applicant must explain how the documentation is  
606 representative of the group of food service packaging items.

- 607           (3) For any food service packaging items that are plastic, plastic-coated, or  
608           plastic-containing, a copy of the ASTM D6400-19 or ASTM D6868-19 test  
609           report, as applicable pursuant to subsection 17989.5(a)(2)(B), showing the  
610           percent biodegradation achieved at 60 days for the food service  
611           packaging item or group of items. If an applicant submits a test report for a  
612           group of food service packaging items, the applicant must explain how the  
613           test report is representative of the group of food service packaging items.
- 614           (4) Test results from an ISO/IEC 17025:2017 accredited laboratory that  
615           demonstrate compliance with subsection 17989.2(a)(3), as applicable.  
616           Tests shall be completed no more than six months prior to the application  
617           submittal date and shall specify the analytical method and instrumentation  
618           used to quantify the results. If an applicant submits test results for a group  
619           of food service packaging items, the applicant must explain how the test  
620           results are representative of the group of food service packaging items.
- 621           (5) A statement that the food service packaging item or group of items  
622           satisfies the requirements of subsection 17989.5(a)(3).
- 623 (f) The department shall review submitted applications in the order in which they are  
624 received and as follows:
- 625           (1) The department shall review each application to determine if it is complete.  
626           For purposes of this review, “complete” means that all documentation and  
627           information required by this Section has been submitted.
- 628           (A) Within 30 days of receipt, the department shall notify the food service  
629           packaging manufacturer whether the application is complete.
- 630           (B) If the department determines that an application is incomplete, the  
631           department shall notify the food service packaging manufacturer of  
632           this determination, specify the basis for the determination (e.g.,  
633           description of materials does not include sufficient identifying  
634           characteristics), and allow 30 days for the manufacturer to provide  
635           additional information and documentation in support of the  
636           application.

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

640 (A) Upon approval, the department shall add the food service packaging  
641 item or group of items to the List and notify the food service  
642 packaging manufacturer.

643 (B) Before finalizing a determination that a food service packaging item  
644 or group of items does not meet the applicable requirements in this  
645 Article, the department shall notify the food service packaging  
646 manufacturer of the basis for the department's preliminary  
647 determination. Within 30 days of receiving such notification, the food  
648 service packaging manufacturer may provide additional  
649 documentation and information to supplement its application, and the  
650 department shall consider such supplemental documentation and  
651 information prior to finalizing its determination.

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

657 (g) A food service packaging manufacturer shall submit a new application to the  
658 department for evaluation prior to continued sale of that food service packaging item  
659 to a food service facility if a change, other than an aesthetic change, is made to an  
660 approved food service packaging item.

661  
662 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:  
663 Sections 42370.2, 42370.3, 42370.4, and 42370.5, Public Resources Code.

664 **§17989.7. Noncompliant Food Service Packaging.**

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

668 (b) A food service facility may not use a food service packaging item unless the item is  
669 on the List published by the department pursuant to Section 42370.3 of the Public  
670 Resources Code, except that a food service facility may use a food service packaging  
671 item under any of the following conditions:

672 (1) The food service facility possessed that specific inventory of food service  
673 packaging items before the date the List was published.

674 (2) The food service facility possessed that specific inventory of food service  
675 packaging items before the item was removed from the List, and the item  
676 was on the List when the food service facility took possession of the item.

677 (3) The food service facility acquired that specific inventory of food service  
678 packaging items pursuant to a contract entered into before the date the List  
679 was published.

680 (4) The food service facility acquired that specific inventory of food service  
681 packaging items pursuant to a contract entered into before the item was  
682 removed from the List, and the item was on the List when the food service  
683 facility entered into the contract.

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

688  
689 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:  
690 Sections 42370.2, 42370.3, and 42370.4, Public Resources Code.

691 **§17989.8. Records.**

692 Within 60 days of a written request by the department, a food service facility shall submit  
693 the following food service packaging item purchasing records to the department:

694 invoices or purchase orders that include the dates the food service packaging items were  
695 purchased, the food service packaging materials, the types of food service packaging  
696 purchased, the manufacturers of the food service packaging items, and the number of  
697 food service packaging items purchased.

698

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