

**CalRecycle Responses to 45-day Comments (3/13/2020 – 5/21/2020)**  
**Proposed Regulations for the Sustainable Packaging for the State of California Act of 2018**  
**Sorted by Proposed Regulation Section Number**

Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
<b>General Comments</b>							
General Comment	PH01-02	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle has proposed limitations on what qualifies as “recyclable” that are inconsistent with the Federal Trade Commission’s “Green Guides” as mandated by SB 1335. Food service packaging materials should qualify as “recyclable” or “compostable” under equal standards whereby applicable programs or facilities service 60% of the population where the items are sold.	See response to W06-02 regarding consideration of the Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims (“FTC Green Guides”).  See response to W04-50 regarding how California law and regulations do not conflict with or duplicate the FTC Green Guides.	Yes
General Comment	PH05-10	Californians Against Waste (CAW)	Nick	Lapis	The viability and effectiveness of this program is dependent on the department’s ability to verify its successful implementation. The department should identify a process to verify compliance.	See response to W13-12 regarding enforcement authority.	No
General Comment	PH07-01	Lori’s Concessions, Inc.	Lori	Southerlend	Since the businesses in the Fair and festival industry are not operating this year, can this be pushed back to 2022?	CalRecycle does not have authority to delay implementation of SB 1335 (Allen, Chapter 610, Statutes of 2018). Public Resources Code (PRC) subsection 42370.2(a)(1) requires CalRecycle to adopt regulations for determining the types of food service packaging that are reusable, recyclable, or compostable on or before January 1, 2021, and pursuant to PRC subsection 42370.3(a), the department is required to develop the List of Approved Food Service Packaging (List) within 90 days of the regulation being approved by the Office of Administrative Law (OAL).	No
General Comment	PH07-02	Lori’s Concessions, Inc.	Lori	Southerlend	If it turns out that we must use products that are substantially more expensive after the list is compiled for approved products, an opportunity to arrange group purchasing would be appreciated.	No change is necessary because the proposed regulations do not prohibit food service facilities from independently arranging for group purchasing. To the extent this comment requests that the proposed regulations delay implementation of SB 1335, CalRecycle lacks the authority to do so.	No
General Comment	PH07-03	Lori’s Concessions, Inc.	Lori	Southerlend	Waste management companies vary from county to county for composting and recycling. The products that are approved I’m assuming will be acceptable at all state owned properties and hopefully county owned facilities.	Recyclable and compostable food service packaging items must be collected by a minimum percentage of recycling programs, as defined. Although CalRecycle is unable to require any facilities to recycle or compost specific items, the purpose of the thresholds is to identify the types of food service packaging materials that are being regularly collected and recycled/composted statewide and to ensure the items on the List are compatible with the state’s recycling and composting infrastructure.	No

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General Comment	PH08-01	Newlight Technologies, Inc.	Yair	Crane	We wish to provide information on our manufacturing, products, and technology, including our certifications for both industrial compostability (ASTM D6400) and marine biodegradability (ASTM D7081), which should be criteria to be on the approved list, pursuant to 42370.2(a)(3).	<p>Pursuant to the definition of “Safe and timely manner,” a compostable plastic food service packaging item must be verified to meet ASTM D6400-19, Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities, or D6868-19, Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities, as applicable.</p> <p>The statute does not require CalRecycle to include ASTM D7081, Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment. In any event, the standard was withdrawn by ASTM International in 2014, and it was subsequently removed from PRC Section 42356 pursuant to the passage of AB 2287 (Eggman, Chapter 281, Statutes of 2020).</p>	No
General Comment	PH09-02	Recology, Inc.	Christine	Wolfe	For recyclability and compostability, Recology, Inc. would like to see greater clarity around the processes through which the Department will engage with stakeholders other than state facilities. It is imperative that the Department establishes an appeal procedure for operators of recycling facilities, MRFs, and compost facilities. An appeal process would allow operators to provide input to the Department to indicate that listed items are not able to be diverted from landfill using the technology that is reasonably available and that is economically efficient. This is a necessary backstop to ensure the list reflects operational realities and the intent of the law.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes
General Comment	W05-06	American Forest and Paper Association (AF&PA)	Elizabeth	Bartheld	<p>The regulations should incorporate flexibility to allow for fluctuations in market value and demand for recovered commodities.</p> <p>Markets for recovered materials are complex and dynamic. Developing end markets for recovered materials requires a reliable supply of sufficient quality to support significant long-term investment in recycling infrastructure. For SB 1335 to be successful, we would caution against abrupt changes that would jeopardize the reliable supply needed to support investment in recycling.</p>	See response to W06-09 regarding market fluctuations.	No
General Comment	W06-01	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	We submit these comments with the understanding that the criteria in these regulations for determining how food service packaging will be evaluated in order to be considered recyclable, reusable or compostable might also be used for other types of packaging in future California law and regulation.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No

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General Comment	W06-02	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	California’s criteria for determining which food service packaging is recyclable, compostable and/or reusable should align with U.S. Federal Trade Commission (FTC) Green Guides (Code of Federal Regulations (CFR) Title 16, Chapter I, Subchapter B, Part 260). These Guides provide, “When recycling facilities are available to a substantial majority of consumers or communities where the item is sold, marketers can make unqualified recyclable claims.” The term “substantial majority,” as used in this context, means at least 60 percent. Packaging and product manufacturers have made significant investments to boost recycling access rates and to nurture markets, using the FTC Green Guides 60 percent threshold as the uniform standard. Imposing differing and conflicting requirements could disincentivize future investments and efforts that will strengthen recycling infrastructure and markets.	<p>PRC subsections 42370.2(d) and (e) identified the FTC Green Guides, via reference to Business and Professions Code Division 7, Part 3, Chapter 1, Article 7, among the minimum criteria that CalRecycle should consider. The statute, however, only requires CalRecycle to consider the FTC Green Guides and does not mandate wholesale adoption of them.</p> <p>With regard to recyclable claims, CalRecycle lowered the initial collection threshold in the Second Draft Proposed Regulations from 75 percent to 60 percent, which aligns more closely with the FTC Green Guides, which define access to recycling facilities to mean a “substantial majority of consumers” as “at least 60 percent.” However, effective Jan 1, 2026, the collection and sortation thresholds will increase to 75 percent, which aligns with the state’s policy goal that not less than 75 percent of solid waste generated be source reduced, recycled or composted by 2020, and annually thereafter (per PRC Section 41780.01). See response to W10-03 regarding phased collection and sortation thresholds.</p> <p>With regard to compostable claims, the FTC Green Guides do not provide a recommendation for access thresholds to compost facilities, as they do for recycling facilities. However, FTC Green Guides (16 CFR Part 260) state that a compostable item should break down into usable compost in a “safe and timely manner,” or “approximately the same time as the materials with which it is composted.” See response to W08-10 regarding the 60-day timeframe.</p> <p>With regard to reusable claims, CalRecycle disagrees that the FTC Green Guides can be utilized to develop criteria for reusable food service packaging because relevant guidance is not included for “reusable” food service packaging.</p> <p>See response to W04-50 regarding how California law and regulations do not conflict with or duplicate the FTC Green Guides.</p>	Yes

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General Comment	W07-01	Association of Compost Producers (ACP)	Dan	Noble	Composters should be free to accept feedstocks which they believe benefit their enterprises. Quality compost means the USCC STA Certified Compost that serves a specification of compost use that is determined by the user of the compost product for their application. The order of priority for food service packaging materials should be: 1) reusable, 2) recyclable, and 3) compostable being a distant third choice when the other materials cannot be acquired and used in a food services facility.	<p>The regulations do not impose requirements on compost facilities or dictate what types of materials or feedstocks they may accept. Instead, the compostable criteria consider the types of food service packaging materials that are already regularly accepted and compatible with existing operations statewide and may be included on the List.</p> <p>SB 1335 did not establish a hierarchical preference for types of food service packaging that may be used; rather, the law does not allow food service facilities to serve single-use disposable packaging that is destined for a landfill. The statute provides three types of acceptable food service packaging (reusable, recyclable, or compostable), irrespective of hierarchical preference.</p>	No
General Comment	W08-01	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Composters should be free to accept feedstocks which they believe benefit their businesses.	See response to W07-01 regarding feedstocks.	No
General Comment	W08-02	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Composting is fundamentally different from recycling, as local feedstocks are delivered to a local facility which directly makes a valuable end-product, which can be used locally. "Recycling" is a complex value chain which involves sorting locally, and then distributing on a national or global scale to process. The resulting product must be introduced into the raw material value chain, on a global or national level.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
General Comment	W08-03	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The role of third-party certification for ensuring safety and performance of compostable materials along with value-chain constraints should be considered.	<p>A third-party certification entity must be accredited to perform the tests referenced in the regulation that measure safety and performance.</p> <p>Value-chain constraints are not clearly defined or measurable and do not pertain to the safety and performance of compostable food service packaging at end-of-life. No change is necessary because the regulations already clearly specify safety and performance requirements, and it is not possible to directly address the general concept of "value-chain constraints" in the proposed regulation.</p>	No
General Comment	W13-12	Californians Against Waste (CAW)	Nick	Lapis	The viability and effectiveness of this program is dependent on the department's ability to verify its successful implementation. The department should identify a process to verify compliance.	CalRecycle does not have statutory authority to impose a process to verify compliance or to take enforcement actions. The only role given to CalRecycle with respect to ensuring compliance is stated in PRC Section 42370.5, which authorizes CalRecycle to review specified records (contracts, invoices, and purchase orders) to determine whether food service packaging items acquired by a food service facility are compliant.	No

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General Comment	W14-01	Carton Council	Derric	Brown	We submit these comments with the understanding and concern that the criteria for determining how food service packaging will be evaluated in order to be considered recyclable, reusable or compostable may also be used in future legislation that covers other types of packaging, including cartons.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
General Comment	W14-02	Carton Council	Derric	Brown	The State's criteria for determining which food service packaging is recyclable, compostable and/or reusable should align completely with the FTC guidelines. Manufacturers have made significant investments to boost recycling access rates and to nurture markets, all of which were grounded in an assumption that the FTC Green Guides would be considered the law of the land. Imposing additional, more stringent requirements could disincentivize future investments and efforts to further strengthen recycling infrastructure end markets.	See response to W06-02 regarding consideration of the FTC Green Guides.	No
General Comment	W14-04	Carton Council	Derric	Brown	We recommend CalRecycle integrate flexibility into the determinations so that abrupt changes are not made during periodic down markets. Recycling markets are notoriously volatile and often unpredictable. Local governments are reticent to remove materials from their list of accepted materials even during periodic downturns, and even MRFs have ceased processing/marketing certain materials. Removing a recyclability determination from a material experiencing a short-term market disruption or price drop jeopardizes long-term efforts and investment needed to sustain and strengthen recycling infrastructure and end markets.	See response to W06-09 regarding market fluctuations.	No



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General Comment	W14-07	The Carton Council	Derric	Brown	We recommend that CalRecycle consider lifecycle and other impacts in addition to reusability, recyclability and compostability to evaluate packaging. Research has shown that some packaging materials with recyclability constraints may have lower lifecycle energy, greenhouse gas and/or other impacts than alternatives that are more readily recyclable. The concept of considering LCA impacts is also endorsed by U.S. EPA, among others. Focusing solely on end-of-life attributes of a product/package can lead to overall detriment to the environment.	<p>To the extent this comment suggests that the proposed regulation allow CalRecycle to include on the List food service packaging items that CalRecycle does not consider recyclable, compostable, or reusable but that may have decreased environmental impact in certain regards, CalRecycle lacks the authority to do so.</p> <p>PRC Section 42370.2 directs the department to “adopt regulations to establish a process, and develop criteria, for determining the types of food service packaging that are reusable, recyclable, or compostable.” The statutory language specifies the criteria that the department must consider in developing the regulation, which focus on end-of-life management, not impacts throughout product life cycles. The statutory language does not direct the department to consider greenhouse gas emissions, energy consumption, or other environmental impacts that concern the entire lifecycle of a product. Furthermore, given the high cost to perform life cycle analyses and the wide range of lifecycle assessment tools, models, assumptions, and databases, it would be overly burdensome and impractical for the department to evaluate and verify lifecycle impacts for every type of food service packaging item subject to the law. Such criteria would expand the department’s analyses significantly beyond the scope and complexity intended under the statute, as indicated by the minimum criteria that the Legislature included in PRC section 42370.2.</p>	No

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General Comment	W15-01	Clean Seas Lobbying Coalition	Genevieve	Abedon	Our two main suggestions are to keep the regulations strong with regards to reusable food service packaging criteria, and ensure that any recyclable or compostable food service packaging does not contain toxic chemicals, including, but not limited to, per- and polyfluoroalkyl substances (PFAS.)	<p>With regard to reusable packaging criteria, this comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>With regard to recyclable and compostable food service packaging, no change is necessary because the regulations include disclosure requirements and limitations that take into account potential impacts on litter, public health, and wildlife as provided by statute. Food service packaging manufacturers must disclose the presence of chemicals on the Proposition 65 list (those known to cause cancer, birth defects, or other reproductive harms). Food service packaging items included on the List and subject to the Toxics in Packaging Prevention Act, may not contain lead, mercury, cadmium, or hexavalent chromium in an amount that may pose a threat to public health or that exceeds 100 parts per million by weight of the sum of these metals. The proposed regulation also includes a criterion that prohibits more than 100 ppm total fluorine in plastic and fiber food service packaging items that are recyclable or compostable.</p> <p>See response to W01-01 regarding USFDA regulation of PFASs and concerns over potential impacts.</p>	No
General Comment	W15-43	Clean Seas Lobbying Coalition	Genevieve	Abedon	There are no proposed enforcement or compliance mechanisms, or language describing how violations will be addressed. We suggest adding a final section clearly outlining how violations will be addressed and how these regulations will be enforced.	See response to W13-12 regarding enforcement authority.	No
General Comment	W16-08	Compost Manufacturing Alliance (CMA)	Janet	Thoman	In front of the house collection, we strongly encourage compostables-only.	<p>CalRecycle does not have statutory authority to require food service facilities to use compostable food service packaging items or limit the use of reusable or recyclable items.</p> <p>See response to W07-01 regarding hierarchical preference for types of food service packaging.</p>	No

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General Comment	W18-01	Foodservice Packaging Institute (FPI)	Brian	Sernulka	FPI strongly opposes any government intervention in the marketplace, especially regulations that would limit the use of any foodservice packaging. We believe that each foodservice package must compete in the marketplace based on its own merits of product performance and suitability, price competitiveness, and impact on the environment. Each product plays an essential part in the foodservice industry, and applying bans severely impacts the efficiency, cost, and stability of a complex supply chain. FPI believes in reducing waste, recycling or composting foodservice packaging, and protecting public health through the use of sanitary, single-use items. FPI believes the current draft of the proposed rulemaking will limit single-use foodservice products, akin to a ban, by requiring operators to meet artificial standards of recovery. The rulemaking provides no mechanism to expand recovery infrastructure in the state...and without a dramatic increase in this infrastructure the products included under this regulation will essentially be removed from the marketplace, without a cost-effective, sanitary, alternative being available.	<p>PRC subsection 42370.2(a)(1) requires CalRecycle to develop regulations to establish criteria for determining whether food service packaging items are reusable, recyclable, or compostable.</p> <p>The criteria (standards) for recovery of food service packaging are not artificial. See response to W10-03 regarding phased collection and sortation thresholds and W07-02 regarding collection and acceptance thresholds.</p> <p>Regarding expansion of the state's recovery infrastructure, no change is warranted to the regulatory text because funding and building infrastructure in California are outside the scope of the statute and this rulemaking.</p>	No
General Comment	W18-04	Foodservice Packaging Institute (FPI)	Brian	Sernulka	CalRecycle, while they did consult with stakeholders, did not create an official stakeholder group to provide public feedback around the definitions of reusable, recyclable, or compostable. These definitions were developed internally at CalRecycle without a formal stakeholder group's input.	<p>CalRecycle solicited feedback from the public through two informal workshops and a formal rulemaking process in accordance with the California Administrative Procedure Act (APA). All stakeholder comments were considered in the development of these regulations, including the definitions.</p> <p>Staff and management met with stakeholders and responded to requests to give presentations to encourage participation in the rulemaking process. The statute (see subsection (h) of PRC section 42370.2) is permissive with regard to convening a stakeholder group.</p>	No
General Comment	W18-06	Foodservice Packaging Institute (FPI)	Brian	Sernulka	The requirement laid out in rulemaking puts a tremendous burden on manufacturers to provide information on each product offered.	<p>This comment does not suggest specific changes to the proposed regulations or raise an issue related to the rulemaking process.</p> <p>To the extent this comment suggests that the proposed regulation should not require manufacturers to provide information on each product offered, no change is warranted. The proposed regulation implements CalRecycle's statutory duty to require information relevant to its determinations of whether packaging is reusable, recyclable, or compostable, including information relevant to the factors set forth in the statute.</p>	No



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General Comment	W18-07	Foodservice Packaging Institute (FPI)	Brian	Sernulka	The requirement laid out in rulemaking puts a tremendous burden on manufacturers to have them third-party certified.	Testing performed by third-party certification entities is necessary to ensure food service packaging items meet specific requirements outlined in the proposed regulation. Independent, accredited laboratories possess the qualifications and equipment necessary to provide reliable test results that determine if a food service packaging item meets the specified criteria requirements.  In addition, compostable plastic packaging must already meet ASTM D6400-19 or ASTM D6868-19, as applicable, to be labeled “compostable” in the state pursuant to PRC section 42355 et. seq.	No
General Comment	W18-08	Foodservice Packaging Institute (FPI)	Brian	Sernulka	The requirement laid out in rulemaking puts a tremendous burden on manufacturers to disclose potentially sensitive material information and costs publicly.	This comment does not suggest specific changes to the proposed regulations or raise an issue related to the rulemaking process.  To the extent this comment suggests that manufacturers should not be required to disclose confidential information, no change is warranted because subsection 17989.6(b) provides protection for confidential information. As provided in subsection 17989.6(f)(3), applicants may label information in their application as confidential or proprietary, and the department will maintain confidentiality as required by the California Public Records Act.	No
General Comment	W19-01	Lori’s Concessions, Inc.	Lori	Southerlend	Since the businesses in the Fair and festival industry are not operating this year can this be pushed back to 2022. If it turns out that we must use products that are substantially more expensive after the List is compiled, an opportunity to arrange group purchasing would be appreciated.	See response to PH07-01 regarding the statutory timeline.  See response to PH07-02 regarding group purchasing.	No
General Comment	W19-02	Lori’s Concessions, Inc.	Lori	Southerlend	Waste management companies vary from county to county for composting and recycling. The products that are approved I’m assuming will be acceptable at all state owned properties and hopefully county owned facilities.	See response to PH07-03 regarding acceptance of food service packaging items at facilities.	No
General Comment	W19-03	Lori’s Concessions, Inc.	Lori	Southerlend	The group purchasing will be done through our purveyors and it does take time to get consensus from independent businesses.	See response to PH07-02 regarding group purchasing.	No
General Comment	W19-04	Lori’s Concessions, Inc.	Lori	Southerlend	We use SYSCO for the majority of our purchasing so they will be a great resource for products as we move forward.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
General Comment	W19-05	Lori’s Concessions, Inc.	Lori	Southerlend	Many of the commenters do not have a good understanding of the health regulations food service businesses are under so I really appreciate Katie at CRA voicing those concerns.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No

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General Comment	W19-06	Lori's Concessions, Inc.	Lori	Southerlend	I will be meeting with a few fairgrounds waste departments to further my education to get their input on paper vs compostable plastic.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
General Comment	W19-07	Lori's Concessions, Inc.	Lori	Southerlend	The intent of this is to get us all on a path to less trash in landfills and not worry about enforcement penalties until the system is working.	See response to W13-12 regarding enforcement authority.	No
General Comment	W20-01	National Association for PET Container Resources (NAPCOR)	Darrel	Collier	<p>NAPCOR requests that thermoform food service packaging made from polyethylene terephthalate (PET) should be included on the list of approved food service packages for the following reasons:</p> <p>The polymer composition of PET used in bottles and thermoforms is chemically identical. Automatic sorting machines are able to include PET thermoforms with PET bottles in the recovery process. The public is becoming more familiar with PET thermoforms and place these into the curbside collection system. PET reclaimers find that PET thermoforms are replacing look-alike thermoforms of other materials and as a result postconsumer thermoforms are becoming more sought-after. PET thermoforms are valuable contributions to PET recycling, and conforming to the FTC Commission Green Guides for the Use of Environmental Marketing Claims.</p> <p>Several California postconsumer PET reclaimers are asking for bales consisting of only postconsumer PET thermoforms to be manufactured into new, food-grade thermoforms with postconsumer recycled content. In order for this growing market to remain strong, there needs to be regular purchases of these materials. To foster growth in this environmentally responsible market, we recommend including PET thermoforms on the List to encourage and support this market growth.</p>	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>To the extent that this comment suggests that the proposed regulation specifically defines certain items or materials as recyclable, reusable, or compostable, CalRecycle declines to make such change. The List is intended to reflect the existing statewide infrastructure and markets; if a type of food service packaging material is not being collected, baled, and re-sold as a new product, then it is being landfilled and should not be deemed recyclable. CalRecycle will review each application it receives for a food service packaging item, or group of items (e.g., PET thermoform), and will evaluate whether the food service packaging item(s) meets the recyclable criteria established by the regulations. Food service packaging items that are determined to meet the specified regulatory requirements will be added to the List.</p>	No
General Comment	W20-02	National Association for PET Container Resources (NAPCOR)	Darrel	Collier	<p>The PET foodservice thermoforms conform to the requirements of recyclable, Section 42370.2 (d). The PET food service thermoforms, being chemically identical to PET CRV bottles, are recycled in volume and maintain market value as PET polymer.</p> <p>We reiterate our position requesting that thermoform foodservice packaging be included on the List of approved foodservice packages.</p>	See response to W20-01 regarding creation and maintenance of the List.	No

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General Comment	W21-01	Newlight Technologies	Mark	Herrema	AirCarbon is a natural material, FDA food contact approved, and both compostable and ocean degradable. In order to enable large-scale change, products need to work for both people and the planet, providing comparable pricing and performance to traditional synthetic plastic products, but offering unique end-of-life benefits, including both industrial compostability (ASTM D6400) and marine biodegradability (ASTM D7081). Please include Air Carbon PHA as a viable material for the products regulated by SB1335.	See response to W20-01 regarding creation and maintenance of the List.  See response to PH08-01 regarding the marine biodegradable standard.	No
General Comment	W22-04	Ocean Protection Council (OPC)	Holly	Wyer	OPC staff is happy to collaborate with CalRecycle on providing future guidance to the regulated community as these regulations are implemented. We have attached an example flyer that communicates about a local foodware ordinance, and a similar communications strategy could be used to assist with implementation of the final regulations.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No

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General Comment	W23-01	OSD Distribution	Dan	Reyes	Does this affect distributors or the products that we distribute to our customers? As a supplier of consumable products, I just want to make sure that I understand what I need to be doing on my end for my customers.	<p>This comment does not suggest any specific changes to the regulations or raise an issue related to the rulemaking process.</p> <p>To the extent this comment asserts that the proposed regulations lack clarity with regard to whom they will effect, no change is warranted. These regulations define with clarity which entities they will affect directly, and how they will do so. They will directly impact food service facilities and certain types of food service packaging, as defined by statute.</p> <p>“Food service facility” is defined in PRC subsection 42370.1(b) as operations or businesses “that are located in a state-owned facility, operating on or acting as a concessionaire on state property, or under contract to provide food service to a state agency.” Food service facilities will be required to purchase reusable, recyclable, or compostable food service packaging items that are included on the List.</p> <p>Food service packaging items that must meet the regulatory requirements include, but are not limited to, the following: plates, cups, bowls, trays, and hinged or lidded containers that are used to serve prepared food. Food service facilities will not be able to purchase these types of food service packaging items sold by distributors if they are not included on the List. Food service packaging manufacturers will be required to verify that their products meet the applicable criteria in Sections 17989.3, 17989.4, or 17989.5. The extent to which individual products will be impacted by this program will vary.</p> <p>As specified in statute (PRC subsection 42370.1(d)), ““Food service packaging” does not include beverage containers or single-use disposable items, such as straws, cup lids, plastic bags, and utensils, or single-use disposable packaging for unprepared foods.” Statute defines “Prepared food” as “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.”</p>	No

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General Comment	W25-06	Plastics Industry Association (PLASTICS)	Shannon	Crawford	Regulation thresholds are arbitrary and reasonable alternatives were not properly considered. Given the nature of this regulation it is difficult to imagine what materials will be able to legitimately replace the materials deemed non-compliant. In Alternative one CalRecycle examined the possibility of lowering the access threshold to 60 percent and increasing the “safe and timely manner” definition to 84-180 days, changes that would have allowed “polypropylene to be considered recyclable and a wide range of compostable plastic materials (such as polylactic acid (PLA), waxed paper products, and thick starch-based food service packaging items to be considered compostable under this alternative.” They chose not to go through with this alternative because the “benefits” were not significant enough. The benefit of allowing these increased materials is enormous, and would prevent manufacturers from going out of business.	<p>CalRecycle disagrees with the commenter’s suggestion that the proposed access and collection thresholds are arbitrary. In contrast, the revised thresholds align with federal and state policies for access to recycling as well as landfill diversion of organics and are intended to ensure that food service packaging items that are determined to be recyclable or compostable actually are being recycled or composted in the state. See responses to W10-03 regarding phased collection and sortation thresholds for the recyclable criteria and W07-02 regarding collection and acceptance thresholds for the compostable criteria.</p> <p>CalRecycle disagrees with the commenter’s assertion that changes to the compostable criteria may impact the recyclability determination for polypropylene. The recyclable and compostable criteria require separate determinations, and it is incorrect to assume that one should have any bearing on the other.</p> <p>The proposed regulation creates a framework by which CalRecycle will evaluate food service packaging items on a case-by-case basis. If these materials do, in fact, meet all the applicable criteria, they may be added to the List. Note, the recyclable or compostable criteria make up only part of the requirements for an item to be added to the List. Applicants will also need to demonstrate compliance with additional criteria, including those concerning public health and litter.</p> <p>CalRecycle also disagrees with the commenter’s suggestion that “reasonable alternatives were not properly considered.” As required by the APA, CalRecycle analyzed “Alternatives to the Regulation” and published the results of that analysis in an Economic and Fiscal Impact Statement (EIS) and accompanying appendix as part of the initial 45-day comment period, and a revised Economic and Fiscal Impact Statement was made available for public comment as part of a 15-day comment period. The original EIS and revised EIS identified and addressed the full economic impacts of the proposed regulation and provided the rationale for its assessment. For example, it expressly considers potential effects on recycling and composting businesses, including with respect to the available capacity and the minimal effect that the regulation will have on the amount of material that will be recycled in the State.</p>	No



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						In the “Alternatives to the Regulation” analysis, Alternative 1 was not selected because the department concluded it would not materially improve the standards by which materials are considered recyclable or compostable compared to current practices but would still impose significant annual costs on regulated businesses.	
General Comment	W26-03	Recology, Inc.	Christine	Wolfe	In order for a food service packaging item to be called recyclable or compostable, it should be capable of being recycled or composted consistently with available technology.	<p>No change is warranted because the proposed regulations already reflect whether items are capable of being recycled or composted with available technology. The criteria established for recyclable and compostable food service packaging items take into account the existing infrastructure in the state (i.e., the technologies and operational processing systems currently available and in place), as directed by statute.</p> <p>PRC subsections 42370.2(d)-(e) specify the minimum criteria the director shall consider for determining recyclability and compostability of food service packaging, including whether an item is “regularly processed and reclaimed or recycled with commercial recycling processes.” The proposed regulations clarify these criteria in a manner that allows the department to verify the data to evaluate the disposition of food service packaging items at end-of-life.</p> <p>See response to W26-04 regarding verification of whether items are recycled or composted.</p>	No

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General Comment	W26-04	Recology, Inc.	Christine	Wolfe	Recology, Inc. would like to see greater clarity around the processes through which the Department will engage with stakeholders other than state facilities. The Department should establish an appeals procedure for operators of recycling facilities, MRFs, and compost facilities to contest whether a product at our facilities can successfully be recycled or composted. An appeals procedure could entail an initial appeal submitted by a facility operator or representative that is subsequently supported by some percentage of other facilities that have accepted and attempted to process the material. The Department would be obligated to consider these appeals when deciding whether to remove or add materials to the List. This should relieve concerns around how the Department will verify and enforce whether a material is being recycled or composted.	<p>To the extent this comment requests a procedure for operators of facilities to contest whether specific materials can be recycled or composted at their facilities, no change is necessary because the proposed regulation does not require any facilities to compost or recycle particular items on the List.</p> <p>To the extent this comment requests an appeals procedure through which facilities could provide input for the department to consider when removing materials or items from the list, see response to W13-09.</p> <p>To the extent this comment suggests that CalRecycle “enforce” the statute by requiring that particular items or materials are recycled or composted, see response to W13-12.</p> <p>To the extent this comment suggests that an item’s status on the List should depend on verification by CalRecycle that the item is actually recycled or composted, no change is necessary because such a process would be unworkable under the statute. PRC Section 42370.3 requires the department to develop and publish a List of approved types of reusable, recyclable, or compostable food service packaging that food service facilities may use. As such, an item must be approved and placed on the List before a facility purchases it, so the department’s consideration of an item cannot depend on verification after the item is used and discarded. Also, CalRecycle does not have statutory authority to impose verification obligations on food service facilities or food service packaging manufacturers regarding the condition of packaging items after consumer use. The statute only requires food service facilities to ensure that their procurement contracts comply with the statute (PRC Section 42370.4(c)), maintain records demonstrating such compliance (PRC Section 42370.5(b)), and provide such records to CalRecycle upon request (PRC Section 42370.5(a)).</p>	No
General Comment	W26-20	Recology, Inc.	Christine	Wolfe	We would recommend that the Department convene a working group with stakeholder representation from all affected groups to work through some of these complex, cross-supply chain issues.	See responses to W28-01 and W18-04 regarding a stakeholder group.	No

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General Comment	W28-02	Resource Recovery Coalition of California	Veronica	Pardo	What is the mechanism by which CalRecycle will engage with transfer/processors and compost facilities to determine whether food service packaging meets recyclable or compostable criteria?	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>To the extent this comment asserts that the proposed regulations lack clarity regarding the process for determining whether an item is recyclable or compostable, no change is warranted. The proposed regulations describe the process for creating the list (section 17989.1) and the application process (section 17989.6). The application process does not require direct engagement with transfer/processors or compost facilities. Rather, the regulations place the onus on the applicant to demonstrate compliance with the recyclable and compostable criteria, as applicable.</p> <p>See response to W13-09 regarding the process for removing an item or material from the List.</p>	No
General Comment	W28-04	Resource Recovery Coalition of California	Veronica	Pardo	What oversight will the department provide to ensure state food service facilities use only food service packaging from the List of Approved Food Service Packaging?	<p>See response to W13-12 regarding CalRecycle's enforcement authority.</p> <p>With regard to oversight by the Department of General Services:            PRC Section 42370.6(a) requires that "The Department of General Services or any state agency that is entering into a contract or agreement or amending an existing contract or agreement with a food service facility shall ensure that the relevant contract or agreement conforms to any applicable provisions" of the statute.</p> <p>In addition, PRC Section 42370.6(b) requires that the Department of General Services "Ensure that any new, modified, or renewed agreements, contracts, or procurement undertaken by a food service facility as part of a contract or agreement with the Department of General Services complies with the requirements" of the statute.</p>	No
General Comment	W28-18	Resource Recovery Coalition	Veronica	Pardo	We look forward to convening a stakeholder working group to discuss in more detail the complexities of the proposed language and how we might ensure program success.	See responses to W28-01 and W18-04 regarding a stakeholder group.	No

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General Comment	W28-17	Resource Recovery Coalition of California	Veronica	Pardo	SB 1335 requires the department to adopt regulations before January 1, 2021. When does the department anticipate the regulatory obligations to begin and for a List to be published?	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>CalRecycle anticipates the List will be published by fall 2021. Once the List is published, PRC subsection 42370.4(a) prohibits food service facilities from using food service packaging that is not on the List. Exceptions for using unapproved food service packaging are specified in PRC subsections 42370.4(b)(1)-(4).</p> <p>See response to PH07-01 regarding the statutory timeline.</p>	No
General Comment	W31-01	Surfrider Foundation	Miho	Ligare	We are in support of the CalRecycle's endeavor to promote reusable, recyclable, or compostable food service packaging to reduce packaging waste. However, we have several concerns with the proposed regulatory text and provide the following recommendations.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
General Comment	W31-04	Surfrider Foundation	Miho	Ligare	There is currently nothing about enforcement and violations. Having clear enforcement procedures and violation will help with the implementation. We recommend creating a new section that defines this topic clearly. Verifying compliance by CalRecycle will be vital to the success of this program.	See response to W13-12 regarding enforcement authority. See response to W26-04 regarding verification of whether items are recycled or composted, and W05-02 regarding verification of reuse.	No
General Comment	W33-02	US Composting Council (USCC)	Frank	Franciosi	The USCC has instituted an open-source database for field testing of compostability to increase the information available about this challenge. The Compost Manufacturing Alliance (CMA) works daily to test compostability of packaging and act as a bridge between composters and products companies. The USCC's Target Organics project, with the goal of addressing municipal-level issues, is integrating product compostability as a key policy item to address.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
General Comment (APA and/or Econ)	PH01-07	American Chemistry Council (ACC)	Tim	Shestek	ACC is deeply concerned by CalRecycle's failure to fully and properly comply with all procedural obligations required under the California Administrative Procedures Act (APA) and the California Environmental Quality Act (CEQA). ACC believes CalRecycle has not adequately assessed the potential adverse economic impacts that will be caused by promulgation of the Proposed Regulations, has not fully estimated the costs associated with the Proposed Regulations, and has not properly addressed the duplicative nature of certain aspects of the Proposed Regulations. The Proposed Regulations will adversely affect California's recycling infrastructure, including existing businesses in emerging areas of the State's recycling sector, and will stifle innovation and investments in the State's	<p>CalRecycle disagrees with the commenter's suggestion that the department failed to comply with the APA.</p> <p>Regarding the California Environmental Quality Act (CEQA), the requirement of an environmental review is not relevant to whether CalRecycle followed rulemaking procedures required under the APA. This part of the comment is not specifically directed at the proposed regulation itself, so no response is required pursuant to Government Code subsection 11346.9(a)(3). In any event, the proposed regulation does not constitute a "project" and thus is not subject to CEQA; in the alternative, they are exempt from CEQA pursuant to 14 CCR subsection 15601(b)(3) or 14 CCR Section 15308.</p>	No

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					<p>recycling sector, including those being explored for secondary MRFs and advanced recycling technologies. These impacts have not been identified or properly assessed by CalRecycle. CalRecycle has not evaluated the potential environmental impacts that may result from the Proposed Regulations, as required by CEQA, including the environmental impacts that would result from the anticipated increases in usage of non-plastic food packaging and composting and recycling operations forecasted by the Department. Implementation of the Proposed Regulations will likely have significant impacts on the environment, and require a full environmental review under CEQA.</p>	<p>Regarding the economic and fiscal impact analysis, CalRecycle disagrees with the commenter’s suggestion that CalRecycle has not adequately assessed potential economic impacts or fully estimated costs. CalRecycle published its Economic and Fiscal Impact Statement (EIS) and an accompanying appendix as part of the initial 45-day comment period, and a revised Economic and Fiscal Impact Statement was made available for public comment as part of a 15-day comment period. The original EIS and revised EIS identified and addressed the economic impacts of the proposed regulation and provided the rationale for its assessment, according to the requirements set forth in Government Code Section 11346.3. The department’s analysis also expressly considers potential effects on recycling and composting businesses, including with respect to the available capacity and the minimal effect that the regulation will have on the amount of material that will be recycled in the State.</p> <p>CalRecycle also disagrees with the commenter’s conclusion that the regulation will adversely affect California’s recycling infrastructure, including “emerging areas of the State’s recycling sector.” “Recycling” is defined in statute and does not include certain advanced technologies (e.g., pyrolysis) that meet the definition of “transformation” (as defined in PRC Section 40201) or “engineered municipal solid waste conversion” (as defined in PRC Section 40131.2). The proposed regulations do not alter these existing definitions, and therefore do not impact operation of these technologies in California. As explained in the EIS appendix, recycling businesses are unlikely to be impacted by this regulation due to the minimal amount of additional material that will be recycled (between 0.1 percent and 1.0 percent) and the current excess capacity at California sorting facilities and plastic reclamation facilities. This excess recycling capacity is sufficient to accommodate the additional material that will be diverted from landfill disposal as a result of this regulation. CalRecycle also estimates that the proposed regulations will affect fewer than 20 food service packaging manufacturers.</p> <p>Regarding secondary sorting facilities or secondary MRFs, the proposed regulations do not alter the definitions of “transfer/processing operation,” as defined in CCR 17402 (a)(31), or “secondary material processing facility,” as defined</p>	



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						in CCR 17402 (a)(26.5), and would not affect their ability to operate in California.  See response to W04-50 regarding how California law and regulations do not conflict with or duplicate the FTC Green Guides.	
General Comment (APA and/or Econ)	W04-01	American Chemistry Council (ACC)	Tim	Shestek	Several aspects of the Proposed Regulations are inconsistent with the language and intent of SB 1335, exceed the Department's statutory authority, are arbitrary, capricious and without rational basis or evidentiary support in the record, or violate due process rights. CalRecycle has not met its statutory obligations to address the environmental and economic impacts of this rule.	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.  The issues mentioned by the commenter are specifically raised in comments W04-02 through W04-50 and are addressed in response to each.	No
General Comment (APA and/or Econ)	W04-04	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle has not adequately addressed legal requirements imposed by the CEQA and the California APA that are necessary to lawfully promulgate this rulemaking. The Department must comply with all mandatory procedural requirements and properly consider the potential environmental and economic impacts that may result from the Proposed Regulations.	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.	No
General Comment (APA and/or Econ)	W04-40	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle's current rulemaking activities constitute a "project" under CEQA. There is no information in the rulemaking file indicating that CalRecycle is complying with its legal obligations under CEQA to evaluate the potential environmental impacts that may result from adopting the Proposed Regulations. Any assumption on CalRecycle's part that it is exempt from conducting the reviews required under CEQA would be arbitrary, erroneous and unlawful, as it is reasonably foreseeable from the subject matter that CalRecycle's actions may cause changes in the environment. If adopted in their current form, the Proposed Regulations are likely to have significant environmental impacts that must be evaluated in a full environmental review.	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.	No

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General Comment (APA and/or Econ)	W04-41	American Chemistry Council (ACC)	Tim	Shestek	All food packaging has an environmental impact across the product's life cycle. CEQA requires a full evaluation of all impacts that may result from the Department's rulemaking, including other environmental impacts that may result from the increased usage of certain types of nonplastic packaging that is anticipated under the Proposed Regulations. According to the Initial Statement of Reasons, CalRecycle anticipates that polystyrene and polypropylene food service packaging will not be considered "recyclable" under the current version of the Proposed Regulations and that a "wide range" of compostable plastic materials will not satisfy the Department's proposed "compostable" criteria. Thus, an increase in substitute products is expected to result under the Proposed Regulations. CalRecycle is required by CEQA to evaluate the environmental impacts that may result from the increased usage of these substitute products.	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.	No
General Comment (APA and/or Econ)	W04-42	American Chemistry Council (ACC)	Tim	Shestek	The environmental impact of substitutes can be substantial. Examples include: <ul style="list-style-type: none"> <li>- significantly higher CO2 impacts or water usage compared to plastic packaging.</li> <li>- some lifecycle studies have shown that policies which force a shift from plastic to paper materials result in significant increases in greenhouse gas emissions, energy usage and waste generation, according to a 2015 report by the Water Board.</li> <li>- Increased use of substitute products to replace expandable polystyrene could have significant environmental impacts which fall within the following CEQA technical areas: utilities and service systems, hydrology/water quality, biological resources, air quality, greenhouse gases, aesthetics, and agriculture/forest resources.</li> <li>- Several lifecycle assessments (LCAs) show polystyrene food service products consume less energy and water, and generate less greenhouse gases in production and transport than their substitutes. Alternatives to polystyrene food service products are also associated with increases in particulate emissions, VOC emissions and criteria air pollutant emissions.</li> <li>- Alternatives to plastic food service products, namely, compostable paper products, are also associated with decreased water quality, increased water usage, and increased forest products consumption.</li> </ul>	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.  To the extent that this comment generally describes the environmental effects of using substitutes for plastic (rather than the requirements of CEQA), it is not relevant to whether CalRecycle followed rulemaking procedures under the APA, nor is it specifically directed at the proposed regulation itself, so no response is required. To the extent that this comment asserts that CalRecycle has not fulfilled a statutory mandate regarding what it must consider in developing the proposed regulations, CalRecycle disagrees. The statute (PRC Section 42370.2(g)) permits, but does not require, CalRecycle to consider certain environmental impacts: "the department <i>may</i> take into account potential impacts on litter, public health, and wildlife." (PRC Section 42370.2(g) (emphasis added).)	No

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General Comment (APA and/or Econ)	W04-43	American Chemistry Council (ACC)	Tim	Shestek	<p>Another substitution effect that CalRecycle must evaluate is the environmental impacts caused by littering non-plastic products. Numerous studies have found that the use of substitutes for plastic products does not reduce litter. It only changes the composition of the litter to products that often have greater environmental impacts.</p> <p>Consumers may be more likely to litter non-plastic substitutes because they wrongly believe that littering products marketed as 'biodegradable' does not impact the environment. CalRecycle acknowledged this substitution effect in its 2004 Report to the Legislature on Polystyrene:</p> <p>We must realize that using biodegradable food service products alone will not eliminate litter problems. Some have argued that it may even increase litter if consumers believe that it no longer poses an environmental problem. A shift to reusable products brings alternative environmental impacts, such as additional water, energy consumption, and the need for cleaning and disinfecting. Thus, the potential impacts caused by the anticipated increase in non-plastic substitute products is potentially significant. Nevertheless, there is no evidence in the rulemaking file that CalRecycle has made any attempt to analyze the potential impacts that may result from the Proposed Regulations, as is required by CEQA.</p>	<p>See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.</p> <p>To the extent that this comment generally describes the environmental effects of using substitutes for plastic and polystyrene (rather than the requirements CEQA), it is not relevant to whether CalRecycle followed rulemaking procedures under the APA, nor is it specifically directed at the proposed regulations themselves, so no response is required.</p> <p>To the extent that this comment argues that the proposed regulation should not aim to increase the use in state facilities of reusable, recyclable, or compostable food service packaging items instead of plastic items, no change is warranted because such an increase is the purpose of the statute itself. The statute expressly requires CalRecycle to identify products that are considered compostable, allows food service facilities to use packaging designated as "compostable," and prohibits food service facilities from using packaging that is not designated "reusable," "recyclable," or "compostable."</p> <p>To the extent that this comment objects to the elimination from food service facilities of plastic items in favor of non-plastic substitutes, no change is required. CalRecycle has no discretion to include food items other than reusable, recyclable, or compostable on the List. While the statute permits CalRecycle to consider impacts on litter, public health, and wildlife, it does not require litter elimination or other environmental benefit as a criterion for any particular item to be on the List or otherwise authorize CalRecycle to make its determinations concerning reusability, recyclability, and compostability based solely on environmental factors.</p>	No
General Comment (APA and/or Econ)	W04-44	American Chemistry Council (ACC)	Tim	Shestek	<p>According to the Initial Statement of Reasons, CalRecycle anticipates that under the Proposed Regulations, "recycling and compositing facilities will receive increased quantities of food service packaging for processing." The environmental impacts that will result from the anticipated increases in these operations require a full environmental review under CEQA.</p>	<p>See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.</p>	No

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General Comment (APA and/or Econ)	W04-45	American Chemistry Council (ACC)	Tim	Shestek	Composting is a source of greenhouse gas emissions, including carbon dioxide and methane. According to the California Air Resources Board (CARB), composting is also a source of volatile organic compounds (VOCs)/reactive organic gases (ROG), particulate matter and ammonia. Given that the Department anticipates an increase in the amount of compostable food service packaging that will be sent for composting under the Proposed Regulations, it follows that air emissions from these composting operations will also increase. There is no evidence in the rulemaking file that CalRecycle has properly evaluated the nature or extent of these environmental impacts, as required by CEQA.	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.  To the extent that this comment suggests CalRecycle has a responsibility to mitigate the potential increase in composting, no change in the regulation is warranted because that potential is an inherent result of the statute's core mandate: that food service facilities only use food service packaging items that are reusable, recyclable, or compostable. CalRecycle determines what qualifies as such items, but the statute does not authorize CalRecycle to regulate greenhouse gas emissions, generally, or attempt to reduce composting, specifically.	No
General Comment (APA and/or Econ)	W04-46	American Chemistry Council (ACC)	Tim	Shestek	The environmental impacts that may result from an increase in recycling operations under the Proposed Regulations must be evaluated under CEQA. A 2017 CalRecycle Report found that the greenhouse gas impacts of recycling polystyrene were lower than nearly all of its paper and plastic substitutes. CalRecycle anticipates that the amount of materials that will be sent to recycling facilities in the State will increase under the Proposed Regulations. There is no evidence in the rulemaking file that CalRecycle has evaluated any of the environmental impacts that may occur under the Proposed Regulations in this regard, including the impacts associated with increasing the amount of materials that are collected, transported and processed for recycling in the state and/or the impacts associated with recycling more polystyrene substitute materials. CEQA requires a full environmental review of these and any other potential impacts that may be caused by the Proposed Regulations.	See the responses to PH01-07 regarding CEQA requirements, the APA, and the economic analysis, W04-45 regarding mitigation of greenhouse gases, and W04-43 regarding the impacts of plastic substitutes.	No
General Comment (APA and/or Econ)	W04-47	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle has not satisfied its procedural obligations under the APA, as it has not adequately assessed the potential adverse economic impacts that will be caused by the promulgation of the Proposed Regulations, it has not fully estimated the costs associated with the Proposed Regulations, and it has not properly addressed the duplicative nature of certain aspects of the Proposed Regulations.	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis, and W04-50 regarding how California law and regulations do not conflict with or duplicate the FTC Green Guides.	No
General Comment (APA and/or Econ)	W04-48	American Chemistry Council (ACC)	Tim	Shestek	Under the APA, CalRecycle must assess the potential for adverse economic impacts on California business enterprises and individuals, the creation of new businesses and jobs in the State, and on investments and/or incentives for innovation in the State.  The Department's Economic and Fiscal Impact Statement and Initial Statement of Reasons hastily conclude that the Proposed	See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.  To the extent that this comment asserts that CalRecycle has inadequately addressed the economic effects of the proposed regulation, CalRecycle disagrees. Government Code subsection 11346.3(b)(1) specifies the considerations that agencies are obligated to assess in an economic impact	No



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					<p>Regulations will only impact food service facilities and food service packaging manufacturers. According to the Economic and Fiscal Impact Statement “no change is expected” to investments or incentives for innovation in the State as a result of the Proposed Regulations. The Department is mistaken because it has inadequately assessed the impacts as required under the law.</p> <p>The Proposed Regulations will adversely affect existing businesses in emerging areas of the State’s recycling sector and will also stifle innovation and investments in the State’s recycling sector.</p> <p>The Proposed Regulations will disenfranchise existing secondary sortation MRFs in the State and disincentive any further investments or expansions in this segment of the market. The Proposed Regulations do not allow mixed-named bales beyond paper. This threatens current and future businesses in the State that process mixed plastic bales. If the Proposed Regulations are adopted as currently written, the future investments in businesses employing these processes will be threatened.</p> <p>The Proposed Regulations will stifle investments in advanced plastic recycling which are emerging across the country. U.S. investment in both improved sortation technology and in advanced plastic recycling and recovery technologies. This emerging class of recycling and recovery technologies can convert used plastics into a range of products, including new plastics and chemicals, raw materials for manufacturing, and transportation fuels.</p> <p>CalRecycle’s economic impact analysis improperly narrows the scope of its analysis in this regard by failing to consider the impacts that will be felt by businesses seeking to develop new and innovative technologies in the State’s recycling sector. These impacts are direct and have the potential to be significant. Therefore, they must be evaluated by the Department and its economic impact analysis should be revised accordingly.</p>	<p>assessment for non-major regulations, and CalRecycle’s Economic and Fiscal Impact Statement assesses each of them.</p> <p>The Economic and Fiscal Impact Statement addresses the number of jobs eliminated or created, and CalRecycle does not expect the loss or creation of industry jobs as a direct result of SB 1335 (see STD. Form 399 Part A.6.).</p> <p>CalRecycle disagrees that the regulations will have a significant adverse economic impact. Regulations that exceed \$50 million are considered major regulations, and the economic impacts of SB 1335 are estimated to be \$7.2 million, which is significantly less than the \$50 million threshold.</p> <p>See also response W04-49 regarding the sufficiency of the Economic and Fiscal Impact Statement.</p>	



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General Comment (APA and/or Econ)	W04-49	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle’s economic impact analysis fails to consider the COVID-19-related costs that will invariably result under the Proposed Regulations, especially in light of the announcement of a \$54 billion State budget deficit. The financial impacts resulting from COVID-19 are likely to be felt for several months, if not years in the future. The Proposed Regulations will compound those challenges by restricting use of reliable and more economic packaging options. In order to comply with its obligations under the APA, the Department must revise its economic impact analysis to incorporate any previously unidentified costs which may result from the Proposed Regulations, as well as economic impacts that now exist in light of the COVID-19 pandemic. These include the costs associated with the anticipated increase in usage of reusable food service packaging, such as the costs associated with properly cleaning and disinfecting the products.	<p>See response to PH01-07 regarding CEQA requirements, the APA, and the economic analysis.</p> <p>CalRecycle’s obligation under Government Code Section was to prepare an assessment of the effects that the regulation itself will have with respect to the items listed in subsections (b)(1)(A) through (b)(1)(D) of Government Code Section 11346.3. The analysis is not required to assess the impacts of intervening, non-regulatory events that may arise before the rulemaking is complete.</p> <p>In any event, as with the duration, severity, and overall course of the COVID-19 pandemic itself, the future economic impacts from COVID are unknown and cannot be predicted within the scope of the regulation. The APA does not require CalRecycle to update its economic impact analysis on an ongoing basis as unforeseeable, post-analysis facts arise.</p> <p>Moreover, the criticism of the economic impact assessment based on the instant circumstances is unwarranted because the relevant timeframe for the costs associated with the proposed regulation is far broader than the economic circumstances existing at any one time, especially where those circumstances are extraordinary and likely to change. By statute, the restrictions imposed by the proposed regulation will not take effect until 90 days after the OAL has approved them; also, the proposed regulation will not be fully implemented until 2026, after the full phase-in of the recyclability and compostability criteria. The economic conditions over the entire period from now through 2026 cannot be assumed to be the same as the current economic conditions, especially given the inherent unpredictability of the course of the COVID-19 pandemic.</p>	No
General Comment (APA and/or Econ)	W04-50	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle has not properly identified or evaluated the overlapping regulations that currently exist at the federal level, including those adopted by the FDA to regulate food contact substances and the inconsistencies with the FTC’s Green Guides. The Department erroneously asserts that the “regulations do not duplicate or conflict with any federal law or regulation” and in support proffers the unsound rationale that “the department found that there are no federal laws or regulations comparable to the proposed regulations.” The Department’s analysis in this regard is unequivocally inadequate under the governing requirements in the APA.	CalRecycle disagrees that it did not fulfill its requirements pursuant to California Government Code subsection 11346.2(b)(6). In accordance with the California APA, CalRecycle reviewed other state and federal laws and regulations and found that, although other federal laws do regulate certain aspects of food service packaging, each of the laws and regulations reviewed apply to a scope that is distinct from SB 1335. Notably, there are no other state or federal laws or regulations that define “reusable,” “recyclable,” and “compostable” as criteria for allowing packaging to be used in California food service facilities. There are no federal laws or	No

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					<p>Section 11346.2(b)(6) of the Government Code does not limit CalRecycle’s obligation to identifying “comparable” regulatory regimes at the federal level.</p> <p>Section 11346.2(b)(6) states that CalRecycle must “describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations <u>addressing the same issues.</u>” (emphasis added).</p> <p>CalRecycle may only adopt regulations “addressing the same issues” as those contained in the Code of Federal Regulations upon a finding that certain specified justifications exist warranting the overlapping regulations. In order to fulfill its procedural obligations under the APA, CalRecycle must identify all federal regulations that address any of the same issues or subject matters that any of the provisions in the Proposed Regulations also seeks to duplicatively address, describe the efforts undertaken to avoid any such “unnecessary duplication or conflicts,” and, where such overlap still exists, cannot proceed with adopting the regulations unless it makes the finding in its Initial Statement of Reasons that the overlapping requirements are warranted under one of the justifications enumerated in the statute.</p> <p>The Proposed Regulations as currently written contain provisions that overlap with federal regulations adopted by the FDA and FTC. CalRecycle has failed to fulfill its obligations under the APA in this regard, and the Proposed Regulations cannot be lawfully adopted until these conflicts are properly addressed in the rulemaking.</p>	<p>regulations that address the same issues as addressed in the proposed regulation. The requirement of Government Code subsection 11346.2(b)(6) therefore does not apply.</p> <p>The regulations cited by the commenter do not affect this conclusion. The US Food and Drug Administration’s (USFDA) regulations regarding food contact substances established the Food Contact Substance Notification Program, under which the USFDA assesses the effects of packaging materials on foods they come in contact with (21 Code of Federal Regulations (CFR) Part 170.100-106). That program does not address what food service packaging items California food service facilities may use, nor does it regulate the determination of whether food service packaging materials may be considered reusable, recyclable, or compostable. In contrast, the proposed regulation does not set material <i>safety</i> standards, but rather addresses how to determine whether food service packaging items are reusable, recyclable, or compostable for purposes of the Legislature’s requirement that food service facilities owned by or serving the State of California use only such items. The proposed regulation allows CalRecycle to consider safety standards established by federal agencies (see subsection 17989.2(b)), but such consideration merely acknowledges that federal safety determinations may counsel removal of an item from the List of Approved Items; it does not render the proposed regulation duplicative or in conflict with any federal laws or regulations. Moreover, even if the proposed regulation could be read to unnecessarily duplicate or conflict with USFDA regulations addressing material safety issues, the exception under Government Code subsection 11346.2(b)(6)(A) applies: SB 1335 expressly authorizes CalRecycle’s regulation to consider public health issues related to materials in packaging (e.g., PRC subsection 42370.2(g)).</p> <p>Likewise, the FTC Green Guides provide broad guidance on environmental marketing claims. They do not regulate the <i>use</i> of food service packaging items, nor do they prescribe specifications to be used for determining whether such items are reusable, recyclable, or compostable for the purpose of prohibiting other products. The proposed regulation, on the other hand, does not regulate marketing claims. Rather, it imposes restrictions as to what food service packaging items food service facilities that deal with the state may use: They must use reusable, recyclable, or compostable products.</p>	

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						<p>Even if the proposed regulation was read to address the same issues addressed in the FTC Green Guides, the proposed regulations cannot be considered duplicative or inconsistent with them. The FTC Green Guides set forth the FTC’s “current views about environmental claims,” but they “do not confer any rights on any person <i>and do not operate to bind the FTC or the public</i>” (16 CFR Part 260, subsection 260.1(a) (emphasis added)). Furthermore, as noted in 16 CFR Part 260, subsection 260.1(b), the guides “do not preempt federal, state, or local laws.” In other words, the FTC Green Guides are not binding regulations, so any state law addressing similar issues cannot be unnecessarily duplicative or in conflict with them.</p> <p>Even if the proposed regulation could be read to duplicate or conflict with the FTC Green Guides, the exception under Government Code subsection 11346.2(b)(6)(A) would apply: SB 1335 expressly requires CalRecycle to establish regulation governing its determination of whether food service packaging items are reusable, recyclable, or compostable. Statute (PRC subsections 42730.2(d)(1) and (e)(4)) also expressly authorizes the department to consider whether items are eligible to be labeled “recyclable” or “compostable” under Business and Professions Code Section 17580, which incorporates the FTC Green Guides. The statute also expressly requires the department to consider whether food service packaging items satisfy certain ASTM standards regarding labeling food service packaging items as compostable (PRC subsection 42370.2(e)(2)). In sum, even if the proposed regulation could be read to address the same issues as the FTC Green Guides and duplicate or conflict with them, CalRecycle is expressly authorized to adopt the regulation, and the exception of Government Code subsection 11346.2(b)(6)(A) applies.</p> <p>Finally, the text of the proposed regulation itself demonstrates how it is complementary to the FTC Green Guides, not duplicative of or in conflict with them. Subsection 17989.5(a)(3), for example, requires products be eligible to be marketed as “compostable” under California’s environmental marketing law (Business and Professions Code Section 17580.5) in order to be considered “compostable” under the regulation. This does not create new rules as to what constitutes improper environmental marketing. Rather, as explained in the Initial Statement of Reasons (ISOR), it refers to another California law (Business and Professions Code Section 17580.5), which</p>	

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						<p>refers to the FTC Green Guides to help establish what constitutes a “marketing claim” and what is considered “deceptive.” In other words, the proposed regulation does not duplicate or conflict with federal guidelines, but rather references the state law codifying the guidelines themselves as to what constitutes deceptive marketing claims.</p> <p>For the above reasons, the proposed regulation does not address the same issues addressed by federal regulation, and no change is necessary to avoid duplication of or conflict with federal regulations.</p>	
General Comment (COVID)	PH04-05	California Restaurant Association (CRA)	Katie	Hansen	<p>It is important to note the public health and economic landscape has changed dramatically over the last two months with restaurant dine-in operations shuttered to help the battle against COVID-19. With restaurants continuing to serve the public as an “essential business” via take-out and delivery of food orders to consumers, the actual food packaging itself has taken on an even more critical role. Take-out and delivery orders will play an even larger role in serving consumers. The recently issued “Guidance for Dine-In Restaurants” is meant to help guide counties as they combat the spread of COVID-19 and recommends a prioritization of take-out and delivery while also paving the way to reopen dine-in operations. Both the state issued guidance and separate local health department guidance recommend the use of single-service products. These recent developments will inevitably increase the demand and need for available food packaging options and it is critical to consider these issues in the context of the proposed SB 1335 regulations and their likely impact on the single service food-ware supply chain and the restaurant community.</p>	<p>See response to W04-49 regarding the COVID-19 pandemic.</p>	No
General Comment (COVID)	W05-08	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	<p>We are concerned that CalRecycle is proceeding with the proposed regulations in a vacuum and does not acknowledge the challenges that COVID-19 will create for implementation. Restaurants are providing an essential service to consumers during this crisis. Several major chains have discontinued use of reusable packaging as a preventative measure. While these concerns continue, restaurants need access to packaging options in order to serve customers while minimizing risk of virus transmission. Now is not the time to create arbitrary and impractical regulatory burdens that will function to ban safe and reliable packaging.</p>	<p>This comment does not suggest specific changes to the proposed regulations or raise an issue related to the rulemaking process.</p> <p>See response to PH07-01 regarding the statutory timeline.</p>	No



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General Comment (COVID)	W11-01	California Restaurant Association (CRA)	Katie	Hansen	Restaurants are highly regulated businesses which operate on very thin economic margins. Restaurants that contract with the State to operate on state parks, university campuses and in state facilities need surety when it comes to purchasing food service packaging products. Such surety has been turned on its head in the midst of COVID-19. The public health and economic landscape has changed dramatically over the last two months with restaurant dine-in operations shuttered to help the battle against COVID-19. With the state allowing- and encouraging- restaurants to continue to serve the public as an “essential business” via take-out and delivery of food orders to consumers, the actual food packaging itself has taken on an even more critical role. The recently issued “Guidance for Dine-In Restaurants” is meant to help guide counties as they combat the spread of COVID-19. The guidance recommends a prioritization of take-out and delivery while also paving the way to reopen dine-in operations. Both the state issued guidance and separate local health department guidance recommend the use of single-service products. These recent developments will inevitably increase the demand and need for available food packaging options and is critical to consider in the context of the proposed SB 1335 regulations and their likely impact on the single service food-ware supply chain and the restaurant community.	This comment does not suggest specific changes to the proposed regulations or raise an issue related to the rulemaking process.  See responses to W04-49 regarding the COVID-19 pandemic and PH07-01 regarding the statutory timeline,	No
General Comment (COVID)	W11-03	California Restaurant Association (CRA)	Katie	Hansen	As localities are responding to the COVID-19 crisis with measures to protect the public health, many are suspending their disposable food service ware ordinance as they take into account health and safety considerations.	This comment does not suggest specific changes to the proposed regulations or raise an issue related to the rulemaking process.  See response to W04-49 regarding the COVID-19 pandemic and PH07-01 regarding the statutory timeline.	No
General Comment (COVID)	W11-09	California Restaurant Association (CRA)	Katie	Hansen	The COVID-19 crisis has dramatically impacted recycling rates in California. Governor Newsom recently issued an executive order allowing grocery stores to stop accepting bottles and cans from customers for 60 days, while allowing recycling centers to close temporarily. Prior to COVID-19, California’s recycling system has been in crisis with major recycling centers closing and many localities landfilling curbside recyclables or warehousing them. The impacts of COVID-19 have only worsened the crisis and left many wondering if the recycling centers that are temporarily closed will be able to reopen in the future. We are deeply concerned that under today’s COVID-19 operating standard it is going to be nearly impossible for any material to meet the 75% recycled threshold.	See responses to W04-49 regarding the COVID-19 pandemic, PH07-01 regarding the statutory timeline, and W10-03 regarding phased collection and sortation thresholds.	Yes



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General Comment (COVID)	W18-02	Foodservice Packaging Institute (FPI)	Brian	Sernulka	FPI believes CalRecycle should reconsider the proposed rules and the timing. This proposed rulemaking has the potential to severely disrupt the foodservice marketplace and limit foodservice operations in state facilities. FPI has signed onto a larger industry letter detailing specific concerns over overreach, artificial definitions, and overall timing of this regulation.	See response to PH07-01 regarding the statutory timeline.  See responses to W04-01 through W04-71 regarding the “larger industry letter” referred to by the commenter.	No
General Comment (COVID)	W18-12	Foodservice Packaging Institute (FPI)	Brian	Sernulka	We are living through unprecedented times, something that wasn’t envisioned when the original legislation was developed and the rulemaking timeline set. When properly stored and handled, single-use items offer the most sanitary option and the sanitary benefits are undeniable. Foodservice establishments know these products minimize the threat of foodborne illnesses and ensure the safe and sanitary delivery of food. These items are essential to the survival of foodservice operations, through takeout and delivery transactions. This rulemaking will severely disrupt a critical supply chain through unnecessary product bans. Limited choice, material access, and potential increased costs will hamper the recovery and overall operations of foodservice establishments. Now is not the time to ban options.	See responses to W04-49 regarding the COVID-19 pandemic and PH07-01 regarding the statutory timeline.	No
General Comment (COVID)	W25-01	Plastics Industry Association (PLASTICS)	Shannon	Crawford	Implementation of SB 1335 could not come at a worse time for Californians. CalRecycle conducted the economic impact assessment before COVID-19, thus the financial repercussions from the pandemic are not addressed.	See responses to W04-49 regarding the COVID-19 pandemic and PH07-01 regarding the statutory timeline.	No

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General Comment (COVID)	W25-02	Plastics Industry Association (PLASTICS)	Shannon	Crawford	<p>The initial determination this action will not have a significant adverse economic impact is flawed. CalRecycle seems unaware that the proposed regulations could force companies out of business. CalRecycle’s reasoning is that most manufacturers offer a variety of material types and “may adjust their manufacturing process, so their products comply with the new regulations.” This assertion shows a lack of understanding of material science. A manufacturer cannot simply replace their EPS products with PET. These materials have different properties and are used for different purposes. If a different material needs to be used, this will influence the package design which subsequently impacts the equipment used. The manufacturing process is much more complicated than presented in CalRecycle’s Statement of Reasons. The proposed regulations could halt production of entire product lines.</p> <p>According to CalRecycle “[t]his regulation is expected to increase costs by \$0.02 per item and the increased costs will primarily be passed on to customers purchasing meals.” It is unclear what analysis these figures are based on. Food service packaging is often a very low dollar amount product, an increase of \$.02 could double the cost of the food service packaging item. According to a study in New York City, “banning all plastic foam foodservice items and drink containers would result in an overall cost increase (simple average) of 87.1% for disposal food service items.” As there is no additional information on how the expected cost increase from CalRecycle was calculated, it is unclear whether this calculation groups products of various volumes and prices together in a way that distorts and therefore minimizes the cost.</p> <p>According to CalRecycle’s own Economic Impact Assessment the “results of the REMI (Regional Economic Models Inc.) economic model show a slight decrease in the forecasted gross domestic product (GDP) and employment growth” as a result of this regulation. All these facts are compounded by the economic hardships faced by the state. “California is projecting a \$54.3 billion deficit — a landmark shortfall due to the COVID-19 crisis that will reverberate through state budgets for years to come.” Not only will manufacturers lose product lines, food service facilities will need to purchase more expensive materials and consumers will pay more per item, all at a time when nearly one in four Californians is out of work.</p>	<p>The proposed regulation is determined not to have a significant adverse economic impact, since the economic impact is estimated to be \$7.2 million. Major regulations are those that exceed \$50 million in economic impacts and are subject to a Standardized Regulatory Impact Assessment (SRIA).</p> <p>CalRecycle’s rationale in the ISOR states that manufacturers may “adjust” their processes, which includes adjusting production amounts of food service packaging items of compliant and noncompliant materials.</p> <p>Regarding the cost increases per food service packaging item, CalRecycle used an average of retail costs of food service packaging items made of compliant and noncompliant materials to estimate increases in costs per food service packaging item. The scope of the New York City study, and any economic analysis relating to its expanded polystyrene (EPS) ban, is different in scope from SB 1335. Many jurisdictions within California already have ordinances which ban the use of EPS in food service packaging, which was considered in the economic analysis. Food service packaging materials other than EPS may be impacted by this regulation and were considered in the Economic and Fiscal Impact Statement.</p>	No

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General Comment (COVID)	W28-01	Resource Recovery Coalition of California	Veronica	Pardo	California is currently facing a state of emergency as a result of COVID-19. CalRecycle extended the 45-day public comment period for this rulemaking. Given the current emergency, we are constrained in our ability to fully respond to the regulations. Our resources are focused on responding to the COVID-19 crisis, and are severely limited in ability to adequately review the regulations and provide meaningful input at this time. We strongly recommend coordinating a working group with stakeholders and CalRecycle staff following this comment period to ensure that all relevant issues are addressed prior to the next iteration of regulatory text.	To the extent the commenter suggests that CalRecycle is required to coordinate a working group to ensure relevant issues are addressed prior to the next iteration of the regulatory text, CalRecycle disagrees. The department held two informal workshops and a formal public meeting to receive input from stakeholders. In addition, CalRecycle extended the 45-day public comment period and will be holding a 15-day public comment period to provide stakeholders with an opportunity to comment on the Second Draft of the Proposed Regulations. All stakeholder feedback received by the department is considered in the rulemaking process.  See also response to W18-04.	No
General Comment (Labeling)	W09-01	California Compost Coalition (CCC)	Neil S.R.	Edgar	Packaging and products made from compostable materials are not welcome at a majority of compost manufacturing facilities, especially those products which are not directly associated with food scrap recovery. Compostable plastics frequently are a contamination problem for recycling facility operators and remanufacturers.  One of the key issues for both composting and recycling facility operators is a lack of clear identification of materials, which leads to cross contamination. These regulations, and the impacted industries, could benefit greatly from a standard which could require listed packaging to be “readily and easily identifiable” as either compostable or recyclable. We would suggest that products covered under this regulation be clearly and legibly marked with the words “compostable” or “recyclable.” If, by cursory visual inspection, a product is not discernible as either, it would not be allowed for listing.	CalRecycle does not have statutory authority to implement labeling requirements for food service packaging items under PRC Sections 42370-42370.7.  Existing California law, PRC Sections 18000-18016, requires rigid plastic containers to be labeled with the corresponding resin identification code. This helps facilitate the sorting and baling of items and materials to be recycled.  Existing California law, PRC Sections 42355-42358.5, governs the marketing and labeling of degradable plastic products in California, including those claimed to be “compostable.” Requirements for products to be “readily and easily identifiable” are only provided for compostable bags, under PRC Section 42357.5.	No
General Comment (Labeling)	W16-07	Compost Manufacturing Alliance (CMA)	Janet	Thoman	Recyclable and compostable products should be readily and easily identifiable.	See response to W09-01 regarding labeling requirements.	No
General Comment (Labeling)	W26-01	Recology, Inc.	Christine	Wolfe	Food service packaging items, especially compostable packaging, needs to be clearly labeled so consumers can tell which bin they should place their materials (and at compost facilities, operators can differentiate conventional packaging from compostable packaging). Reducing cross contamination between different streams is critical to reaching these regulatory objectives.	See response to W09-01 regarding labeling requirements.	No

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General Comment (Labeling)	W28-03	Resource Recovery Coalition of California	Veronica	Pardo	How will food service packaging be readily and easily identifiable as recyclable or compostable?	This comment does not suggest specific changes to the proposed regulations or raise an issue related to the rulemaking process.  See response to W09-01 regarding labeling requirements.	No
General Comment (Labeling)	W33-03	US Composting Council (USCC)	Frank	Franciosi	We also continue to support a unified, national identification system. We request the State of California's participation and leadership as that system moves forward through the work of our partners at the Biodegradable Products Institute (BPI) as well as compostable products companies who are USCC members.	See response to W09-01 regarding labeling requirements.	No
General Comment (Life cycle analysis)	W06-07	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	We encourage CalRecycle to consider additional criteria for food service packaging such as life cycle assessments (LCA) and sustainable materials management (SMM) before limiting the potential use of such packaging. Research from AMERIPEN and others has shown that some packaging materials have lower life cycle energy, greenhouse gas and/or other impacts than packaging that may be more readily recyclable. Packaging that may be viewed as less readily recyclable can also play a significant role in reducing food waste. Focusing solely on the end-of-life attributes of certain packaging materials could be more harmful to the environment.	To the extent this comment suggests that the proposed regulation allow CalRecycle to include on the List food service packaging items that CalRecycle does not consider recyclable, compostable, or reusable but that may have decreased environmental impact in certain regards, CalRecycle lacks the authority to do so.  See also response to W14-07 regarding life cycle analyses.	No
General Comment (Life cycle analysis)	W25-05	Plastics Industry Association (PLASTICS)	Shannon	Crawford	This regulation ignores lifecycle analysis and will ultimately increase emissions as manufacturers are forced to switch from lightweight, efficient plastics to bulky, heavier materials. Shifting to alternative materials will have negative consequences. "The higher environmental costs of alternatives to plastic are driven by the poorer material efficiency of these materials when used in common consumer goods applications – on average, replacing one metric ton of plastic requires 4.1 metric tons of alternatives materials across the sector."	To the extent this comment suggests that the proposed regulation allow CalRecycle to include on the List food service packaging items that CalRecycle does not consider recyclable, compostable, or reusable but that may have decreased environmental impact in certain regards, CalRecycle lacks the authority to do so.  See response to W14-07 regarding life cycle analyses.	No

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<b>§17989. Definitions.</b>							
17989(a)	W08-07	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	We suggest adding this definition: “Compostable” is defined in the PRC Division 30, Part 3, Chapter 5.7, Section 42355-42358.5.	<p>CalRecycle disagrees with the commenter’s assertion that PRC Division 30, Part 3, Chapter 5.7, Section 42355 et. seq. defines “Compostable.” Rather, these statutory provisions clarify the testing requirements that must be passed in order for plastic products to be labeled with the terms “Compostable” and “Home compostable.” These statutory provisions help to ensure consumers are not deceived by unsubstantiated environmental marketing claims.</p> <p>PRC Section 42370.2(e) requires CalRecycle to consider several factors in its determination of which types of food service packaging are “Compostable,” such as whether the food service packaging is regularly collected and accepted for processing. Further, the compostable criteria developed under SB 1335 apply to different material types; whereas the testing requirements in PRC Section 42356 are uniquely applicable to the performance of plastic food service packaging. The regulation, consistent with statute, requires compostable plastic food service packaging items to comply with PRC 42355 et seq; however, additional criteria must also be met.</p>	No
17989(a)	W08-08	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	We suggest adding this definition: “Certified compostable” means the product is certified by a “third-party certification entity” to meet the requirements of “compostable” as defined in the PRC Division 30, Part 3, Chapter 5.7, Section 42355-42358.5.	Defining “Certified compostable” is unnecessary because that term is not used in statute or the proposed regulation.	No
17989(a)	W18-05	Foodservice Packaging Institute (FPI)	Brian	Sernulka	These definitions do not align with those set forth in the U.S. FTC Guidelines for Environmental Marketing Claims, which we strongly believe they should.	See response to W06-02 regarding consideration of the FTC Green Guides.	No



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Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
17989(a)	W31-07	Surfrider Foundation	Miho	Ligare	Dine-in foodware should be defined and specifically called out.	<p>CalRecycle disagrees with the commenter’s recommendation to define “Dine-in foodware.” The statute specifies that food service facilities may distribute food service packaging items that are reusable, recyclable, or compostable, regardless of where the meal is consumed (inside or outside the facility). Pursuant to PRC Section 42370.1(d), the types of food service packaging subject to SB 1335 includes those used to deliver or transport food for “consumption on or off a food service facility’s premises.”</p> <p>Further, the proposed regulation includes a takeback option, which could include a program where a food service facility distributes a reusable food service packaging item that can be brought back by a consumer for reuse (e.g., reusable “to go” cup).</p>	No
17989(a)(1)	PH02-01	Biodegradable Products Institute (BPI)	Bruce A.	Magnani	The definition of “physical contaminant” is explicitly defined as inert material which does not compost, which prevents this definition from being self-consistent. Because the output of a composting process is compost, no matter where the compost is produced, acceptance of feedstocks should be dictated by the individual composter. We suggest CalRecycle delete the following: “that received the item does not compost the item or”	See response to W08-04 regarding the term “Physical contaminant.”	No
17989(a)(1)	W08-04	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>The definition of “physical contaminant” is explicitly defined as inert material which does not compost, which prevents this definition from being self-consistent. Because the output of a composting process is compost, no matter where the compost is produced, acceptance of feedstocks should be dictated by the individual composter.</p> <p>This comment suggests the following revision to the proposed regulations:  “Accept” means a compost facility knowingly incorporates a food service packaging item into its routine daily operations for processing at the end of the item’s intended purpose. A food service packaging item is not considered “accepted” under this Article if the compost facility <del>that received the item does not compost the item or</del> 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).</p>	<p>CalRecycle disagrees with the commenter’s proposed revision of “Accept.”</p> <p>Pursuant to PRC Section 42370.2(e)(1) the department must consider whether a food service packaging item becomes part of usable compost. The purpose of the proposed definition of “Accept” is to ensure that a food service packaging item that is routinely screened out by compost facilities is not deemed to be “compostable.” A compost facility screens out “physical contaminants” that are by definition inert; however, a facility may additionally choose to screen out non-inert items that do not break down within their normal operational process or timeline.</p> <p>Therefore, it is necessary to specify that if the food service packaging item is received by the facility, but not composted, then it is not “accepted.”</p>	No

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17989(a)(1)	W09-02	California Compost Coalition (CCC)	Neil	Edgar	We recommend revising to account for the potential for a compost facility to both receive and not compost an item and also identify it as a physical contaminant: "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 and/or identifies the item as a physical contaminant."	See response to W16-02 regarding the definition of "Accept."	No
17989(a)(1)	W16-02	Compost Manufacturing Alliance (CMA)	Janet	Thoman	The language is ambiguous. It could be interpreted to mean: 1. That the facility does not take ANY packaging, OR 2. That the facility does not accept a <i>specific kind</i> of packaging, OR 3. A non-compliant item came into the facility. We suggest changing text on line 17 to, "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 <u>and/or</u> identifies the item as a physical contaminant."	CalRecycle disagrees with the commenter's recommendation to add " <u>and/or</u> " to the definition of "Accept" because it does not add clarity to the requirement of the regulation.  The use of "or" without "either" in a sentence does not imply mutual exclusivity. Under a plain reading of the regulation, therefore, whether a food service packaging item is (i) identified as a physical contaminant, (ii) received but not composted, or (iii) both identified as a physical contaminant and received but not composted, the result is the same: the item is not accepted.	No
17989(a)(1)	W26-05	Recology, Inc.	Christine	Wolfe	Recology supports this definition. See further comments under Section 17989.6.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
17989(a)(3)	W26-06	Recology, Inc.	Christine	Wolfe	Given the definition of recycling facility, this definition would exclude collection of material that is hauled to a MRF that is permitted as a transfer/processor instead of a recycling center.	See response to W26-08 regarding the definition of "Recycling facility."	No
17989(a)(3)	W26-07	Recology, Inc.	Christine	Wolfe	PRC Section 42370.2(d)(2) requires that the Department consider if food service packaging is regularly <u>collected, separated, and cleansed for recycling by recycling service providers</u> . This is consistent with the Department's definition of a recycling program, but it is unclear if this is what is intended in the definition of takeback programs. Takeback programs were not mentioned in the authorizing statute. If physical collection is used, it should be contracted to the existing collection service provider used today by the state facilities. Doing so would not restrict creative opportunities for state facilities and packaging producers programs that are focused on what happens before material enters the waste stream.	CalRecycle disagrees that PRC Section 42370.2(d)(2) requires food service packaging to be collected for recycling by existing collection service providers contracted to provide services to state facilities.  PRC subsections 42370.2(d)(1)-(6) do not comprise an exhaustive list of considerations, but rather the minimum factors that CalRecycle must consider. Nor does the statute define any of the enumerated criteria as setting forth necessary or sufficient traits for packaging to be deemed recyclable. Because there may be food service packaging items and materials that cannot meet the statewide collection requirements, CalRecycle determined it would be beneficial to include takeback programs as an option to qualify as recyclable. This option reflects CalRecycle's consideration of the factors identified in the statute and allows for more isolated implementation of a program that can demonstrate food service packaging items are regularly recycled at the required threshold at end of life, though these items may not be recycled statewide.	No

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17989(a)(4)	PH11-01	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	The definition of compost facility includes “in-vessel digestion” operations, which may or may not accept the same material for processing as a compost facility. A wet anaerobic digestion system typically does not accept a large amount of fiber material. How will this difference impact the criteria for compostability?	See response to W16-03 regarding the definition of “Compost facility.”	Yes
17989(a)(4)	W09-03	California Compost Coalition (CCC)	Neil	Edgar	We are unaware of a reason to consider in-vessel digestion facilities as a potential recipient of compostable materials. While “in-vessel” digesters may also include aerobic technologies, in addition to anaerobic digestion, we are unaware that any exist which will effectively compost materials meeting the ASTM D6400 or D6868 standards. It would be best if in-vessel digestion operations or facilities were excluded from this definition.	See response to W16-03 regarding the definition of “Compost facility.”	Yes
17989(a)(4)	W16-03	Compost Manufacturing Alliance (CMA)	Janet	Thoman	In most cases, food service packaging that is designed to be compostable breaks down in aerobic systems and is typically not tested for biodegradation in anaerobic digestors. Accepting aerobically compostable items into anaerobic digestion systems means that facilities would require anaerobic digestors to further compost the resultant solid digestate, while additionally inviting in contaminants that may severely affect the performance of the digester. CMA suggests specifically excluding anaerobic digestion from the process. CMA is not aware of any aerobic digestion systems in use and, therefore, directs this comment only to anaerobic digestors.	<p>CalRecycle agrees that the definition of “Compost facility” should not include references to anaerobic digestion (AD) systems.</p> <p>Although CalRecycle is aware of at least three AD facilities in the state that accept and process food waste and food service packaging, these systems are not standardized due to the variability in AD technologies and digested materials (including food service packaging) which is typically required to undergo a secondary process to be fully <i>composted</i>. Due to the limited number of AD operations in the state that accept mixed materials, and based on the concerns raised by stakeholders, staff has determined it is premature to include AD systems in the definition of “Compost facility.”</p> <p>Section 17989(a)(4) has been revised as follows:  “Compost facility” has the same meaning as “compostable materials handling operation” or “facility” as defined in Division 7, Chapter 3.1, Article 1, Section 179852, Subsection (a)(12) or <del>“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 17986.2, Subsection (a).</del></p>	Yes
17989(a)(4)	W28-05	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	The definition of compost facility includes “in-vessel digestion” operations, which may or may not accept the same material for processing as a compost facility. A wet anaerobic digestion system typically does not accept a large amount of fiber material. How will this difference impact the criteria for compostability?	See response to W16-03 regarding the definition of “Compost facility.”	Yes

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17989(a)(7)(A)	PH05-01	Californians Against Waste (CAW)	Nick	Lapis	By referencing University of California explicitly, but not calling out other higher ed. state facilities, the regulations might be interpreted to imply that CSU's and Community College Districts are not included. Additionally fairgrounds are large state facilities that should be explicitly mentioned. It should be read: Cafeterias, restaurants, catering companies, shops, markets, delis, Department of Corrections commissaries, Universities of California, Community College Districts and California State Universities food courts and dormitories, Fairs & Expositions, and Legislative offices.	See response to W13-11 regarding examples of "Food service facilities."	Yes
17989(a)(7)(A)	PH06-01	Clean Seas Lobbying Coalition	Genevieve	Abedon	Currently the University of California food courts and dormitories are the only academic institutions listed. We suggest adding "California State Universities (CSUs) and Community Colleges" to the definition.	See response to W13-11 regarding examples of "Food service facilities."	Yes
17989(a)(7)(A)	W13-11	Californians Against Waste (CAW)	Nick	Lapis	Add CSUs, Community Colleges, and Fairgrounds to VII (b)(1)(A). By referencing University of California explicitly, but not calling out other higher education state facilities, the regulations might be interpreted to imply that CSU's and Community College Districts are not included. Additionally fairgrounds are large state facilities that should be explicitly mentioned. It should be read: Cafeterias, restaurants, catering companies, shops, markets, delis, Department of Corrections commissaries, Universities of California, Community College Districts and California State Universities food courts and dormitories, Fairs & Expositions, and Legislative offices.	<p>The scope of "Food service facilities" is established by statute and includes businesses that operate in state-owned facilities, on state property, or under a contract to provide food services to state agencies. Subsection 17989(a)(8)(A) contains a list of examples of the types of facilities that will be considered food service facilities, but this is not intended to be an exhaustive list.</p> <p>CalRecycle agrees with the commenter's suggestion to add more examples to the definition of "Food service facilities" due to stakeholder confusion. However, adding additional items to the non-exhaustive list of examples does not affect the scope of the definition.</p> <p>CalRecycle disagrees with the commenter's suggestion to add "Community Colleges," which are classified as "school districts" pursuant to Article IX, Section 14 of the California Constitution and Government Code Section 17519, to the non-exhaustive list.</p> <p>Based on comments received, the definition of "Food service facility" has been revised as follows:</p> <p>"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."</p>	Yes



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17989(a)(7) (A)	W15-02	Clean Seas Lobbying Coalition	Genevieve	Abedon	Currently the University of California food courts and dormitories are the only academic institutions listed. We suggest adding "California State Universities (CSUs) and Community Colleges" to the definition.	See response to W13-11 regarding examples of "Food service facilities."	Yes
17989(a)(7) (A)	W31-02	Surfrider Foundation	Miho	Ligare	Add California State Universities (CSUs) and Community Colleges under "food service facility." Currently the University of California food courts and dormitories are the only academic institutions listed. It's important to add CSUs and community colleges under this definition. CSUs were the first higher education school system to act university-wide to reduce plastic pollution.	See response to W13-11 regarding examples of "Food service facilities."	Yes
17989(a)(8)	W08-05	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>In the case of the recycling industry, where the product's recyclability performance is determined by its composition, it will be possible to characterize the packaging "type." These products typically are not composites due to the fact that it would therefore render them unsuitable for mechanical recycling. However, for compostable products, their compostability performance is not dictated by their composition, but their performance is determined by performance-based testing and the resulting certification. Many certified compostable products are comprised of more than one material to ensure proper performance and safety in-use, both during service life and in composting.</p> <p>The commenter suggests the following revision to the proposed regulation:  "Food service packaging item" means a specific combination of the food service packaging type (e.g., plate, cup, bowl) and the <u>material-relevant end-of-life characteristic(s)</u> of the type of food service packaging <del>is made of</del> (e.g., <u>reusable, recyclable polyethylene terephthalate (PET), recyclable aluminum, certified compostable product poly(lactic acid (PLA)-lined paperboard</u>).</p>	<p>CalRecycle disagrees with the commenter's suggested revisions to the definition of "Food service packaging item."</p> <p>The definition in the proposed regulations clarifies the specific information that CalRecycle needs in order to categorize different types of food service packaging products for evaluation. In addition, basic descriptions of food service packaging items will be used to establish the materials list that will be established pursuant to subsection 17989.1(b).</p> <p>The definition of "Food service packaging item" is not intended to include consideration of performance, certification, or end-of-life management; rather that function is served by the development of the reusable, recyclable, and compostable criteria. CalRecycle will evaluate the composition and performance of food service packaging items against the applicable criteria for each of these categories separately and distinctly regardless of the type of packaging item.</p>	No



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17989(a)(10)	W08-06	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>This section exempts many of the most common certified compostable products, which would likely result in an increased level of contamination in the food waste sent to composters; these exempt items are necessarily food-soiled at the point of collection.</p> <p>This comment suggests the following revision to the proposed regulation:  “Food service packaging type” or “type of food service packaging” means a product used for serving or transporting prepared, ready-to-consume food or beverages that meets one or more of the following conditions:  (A) Comes into direct contact with the prepared food or beverage;  (B) Keeps the prepared food or beverage contained while transporting it on or off a food service facility’s premises; or  (C) Aids in the consumption of the prepared food or beverage.  “Food service packaging type” does not include beverage containers or <del>single-use disposable items, such as straws, cup lids, plastic bags, and utensils,</del> or single-use disposable packaging for unprepared foods.</p>	<p>CalRecycle does not have statutory authority to broaden the definitions established by SB 1335. The definition of “Food service packaging type” in the proposed regulations draws on the definition of “Food service packaging type” stated in PRC section 42370.1, specifically interpreting and implementing the Legislature’s intent for the statute to cover items “used for serving or transporting prepared, ready-to-consume food or beverages.” PRC Section 42370.1(c) does not cover non-packaging items or packaging for unprepared foods, however, and provides “straws, cup lids, plastic bags, and utensils” as examples of items that fall outside its scope. The proposed regulations cannot modify that scope.</p>	No
17989(a)(10) (A)	W16-04	Compost Manufacturing Alliance (CMA)	Janet	Thoman	<p>This definition leaves out a significant volume of food packaging by being “prepared food service” related only. Does this mean ready-to-eat bulk food packaging is acceptable, excluding bags?</p>	<p>CalRecycle does not have statutory authority to expand the scope of the types of food or food service packaging that are subject to the law. PRC Section 42370.1 clearly specifies that only food service packaging used to distribute “prepared food” must meet the reusable, recyclable, or compostable criteria.</p>	No
17989(a)(10) (B)	W16-05	Compost Manufacturing Alliance (CMA)	Janet	Thoman	<p>Should state “<b>bags</b>” rather than “plastic bags.” Are carry out pizza boxes, bottles, cups, plates and napkins also excluded? The exclusion stated is very broad and catches most carry-out food service related items that appear to be better for the (A) category.</p>	<p>CalRecycle does not have statutory authority to modify the scope of the food service packaging items covered by SB 1335. PRC Section 42370.1(c) explicitly excludes “plastic bags” from the requirements of the law, pursuant to the definition of “Food service packaging.”</p> <p>According to the statutory definition, pizza boxes, cups, and bottles other than “beverage containers” are included, provided that they are used to serve or transport prepared, ready-to-consume food or beverages. Napkins would be subject to the requirements of SB 1335 if they are used for serving or transporting prepared, ready-to-consume food.</p>	No

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17989(a)(10) (B)	W16-06	Compost Manufacturing Alliance (CMA)	Janet	Thoman	Please consider cross-contamination issues. Allowing items such as bowls and cups without also requiring compostable lids, straws, etc., will result in significant consumer confusion and contamination of the compostable stream. In our experience, most programs that collect both recyclables and compostables in front of the house see contamination of both streams.	CalRecycle does not have statutory authority to modify the scope of the food service packaging items covered by SB 1335. PRC Section 42370.1(c) expressly exempts straws and cup lids from the requirements of the law.	No
17989(a)(14)	W16-09	Compost Manufacturing Alliance (CMA)	Janet	Thoman	Please consider adoption of existing lists of fully vetted compostable items that incorporate <u>both</u> ASTM laboratory standards and field disintegration standards. Although CMA is not requesting a change in language, please consider that receiving facilities across the U.S. are now working through the CMA program and accepting the lab field standards accordingly.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.  To the extent this comment requests that CalRecycle should consider vetted lists of compostable items that incorporate ASTM standards and field standards, CalRecycle was not provided with or able to identify a standard field test or list of products that have been verified to demonstrate sufficient biodegradation and disintegration of compostable food service packaging at CA compost facilities, in accordance with the proposed compostable criteria.	No
17989(a)(16)	PH06-02	Clean Seas Lobbying Coalition	Genevieve	Abedon	We would like to assure that paper pulp would be included under fiber, and also add wood and porcelain.	See response to W15-03 regarding the definition of "Material."	No
17989(a)(16)	PH06-03	Clean Seas Lobbying Coalition	Genevieve	Abedon	For identifying a plastic material, we suggest adding plastic resin #7 to capture all plastics including "other."	See response to W15-04 regarding plastic resin #7.	No
17989(a)(16)	PH06-04	Clean Seas Lobbying Coalition	Genevieve	Abedon	We would also like assure that paper and/or plastic sandwich wrappers/deli paper are included.	See response to W15-05 regarding wrappers and paper.	No
17989(a)(16)	W04-51	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests the following revision to the proposed regulation: "Material" means the type of feedstock used to make a food service packaging item including, but not limited to, glass, ceramic, metal, fiber (i.e., derived from cellulose), or plastic. Material is inclusive of any coatings or other ingredients used to make a food service packaging item. A plastic material may be identified by either the name of the plastic resin ( <del>#1-6 in accordance with PRC Sections 18013-18015</del> ) or by the name of the plastic polymer (e.g., polylactic acid).	CalRecycle disagrees with the commenter's recommendation to delete the reference to the statutory definition of the resin identification codes #1-6. The resin identification codes (RIC) codified in PRC Sections 18013-18015 describe the names of the types of plastic materials most commonly used to make rigid containers and other plastic packaging products.  Plastic materials are aggregated into homogenous streams and sold in bales that are identified by the corresponding resin code, which demonstrates there is a market value for these materials. The RIC #1-6 codes facilitate the grouping of materials for sale. Thus, identification of plastic materials in accordance with the RIC is necessary and will enable the department to evaluate whether or not specific materials are collected and baled for recycling.	No

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Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
17989(a)(16)	W15-03	Clean Seas Lobbying Coalition	Genevieve	Abedon	We would like to ensure that paper pulp would be included under fiber, and also <b>add</b> wood and porcelain.	The addition of “paper pulp,” “wood,” and “porcelain” to the definition of “Material” is not necessary because the proposed language is broad enough to cover the major categories of materials. For example, the term “fiber” means “derived from cellulose” and includes paper pulp and wood. The term “ceramic” includes heat-hardened clay materials, such as porcelain.	No
17989(a)(16)	W15-04	Clean Seas Lobbying Coalition	Genevieve	Abedon	For identifying a plastic material, we suggest adding plastic resin #7 to capture all plastics including “other.”	CalRecycle disagrees with the commenter’s recommendation to add resin code #7 to the definition of “Material.”  PRC Section 18015 defines the RIC #1-6 codes with specific polymer names that identify the corresponding type of plastic material. The #7 “Other” code is used to define all types of plastic resins, composites, and bioplastics that do not fall into the #1-6 categories. Thus #7 does not identify a specific type of plastic resin or material and is intentionally excluded from the definition of “Material” for that reason. In addition, plastics labeled with a #7 ultimately comprise a non-homogenous stream of materials that are incompatible and not typically recycled.	No
17989(a)(16)	W15-05	Clean Seas Lobbying Coalition	Genevieve	Abedon	We would also like to ensure that paper and/or plastic sandwich wrappers/deli paper are included.	No change is necessary because the proposed regulations will cover these food service packaging items to the extent they are used to serve or transport prepared, ready to consume food. To the extent this comment suggests that the scope of the definition of “Material” is unclear, it has been revised to explain that a food service packaging item can be identified by its feedstock (e.g., plastic or paper) and form (e.g., wrapper or deli paper):  <del>(16)(18)</del> “Material” means the type of feedstock used to make a food service packaging item including, but not limited to, glass, ceramic, metal, fiber (i.e., derived from cellulose), or plastic <u>and may include other characteristics such as the material form.</u> Material is inclusive of any coatings or other ingredients used to make a food service packaging item. A plastic material may be identified <u>solely by, or by a combination of, either</u> the name of the plastic resin (#1-6 in accordance with PRC Sections 18013-18015), <del>or by</del> the name of the plastic polymer (e.g., polylactic acid), or the form (e.g., bottle, thermoform).	Yes

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17989(a)(19)	W04-52	American Chemistry Council (ACC)	Tim	Shestek	This comment suggested removing subsection 17989(a)(19) in its entirety.	The definition of "Per- and polyfluoroalkyl substance (PFAS)" is necessary to provide clarity to the regulated community regarding the purpose for the regulatory limit on the amount of total fluorine that may be contained in a food service packaging item. This definition describes specific types of chemicals used in the manufacturing of food service packaging that may pose risks to public health and wildlife, as specified in Section 17989.2.  See response to W04-32 regarding the external scientific peer review of the scientific evidence and technical resources relied upon for the conclusions about PFASs.	No
17989(a)(20)	PH06-05	Clean Seas Lobbying Coalition	Genevieve	Abedon	Though not entirely relevant for these purposes, so as not to set a precedent for any future regulations, we suggest striking "with handles" so as not to leave a loophole in the definition.	See response to W15-06 regarding the definition of "Plastic bag."	No
17989(a)(20)	W15-06	Clean Seas Lobbying Coalition	Genevieve	Abedon	In order not to set a precedent for any future regulations, we suggest striking "with handles" so as not to leave a loophole in the definition.	CalRecycle is directed to promulgate regulations for the purpose of implementing the requirements established by SB 1335, irrespective of future regulatory actions.  PRC Section 42370.1(c) excludes certain products from the definition of "Food service packaging," including plastic bags. The definition of "Plastic bag" and use of the descriptors "with handles" and "cannot be closed or sealed" are necessary to clarify the difference between a bag that is used to contain multiple items (which is excluded) and a plastic bag that is used only to serve or transport a prepared ready to consume food.	No
17989(a)(21)	W04-53	American Chemistry Council (ACC)	Tim	Shestek	This comment suggested removing subsection 17989(a)(21) in its entirety.	The definition of "Proposition 65 list" is necessary to clarify which list is referenced in Section 17989.2 (a)(2) that must be reviewed by a manufacturer in order to accurately disclose the names of chemicals used in the manufacturing of a food service packaging item.  See response to W04-33 regarding the Proposition 65 list.	No
17989(a)(22)	PH01-01	American Chemistry Council (ACC)	Tim	Shestek	The Proposed Regulations define "recycling," and "recyclable" food service packaging so narrowly that they would exclude certain advanced recycling technologies that make it possible to recycle plastics into varied types of feedstocks used in the creation of new plastic products and other new products. This is inconsistent with the language and intent of SB 1335, which specifically requires CalRecycle to consider "whether packaging material regularly becomes feedstock that is used in the production of new products."	See response to W04-02 regarding the definition of "Recycling."	No



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17989(a)(22)	PH01-03	American Chemistry Council (ACC)	Tim	Shestek	If CalRecycle were to define “recycling” and “recyclable” broadly, consistent with the statute, to include advanced recycling technologies, it would help to achieve California’s 75 percent recycling goal.	See response to W04-02 regarding the definition of “Recycling.”	No
17989(a)(22)	PH01-04	American Chemistry Council (ACC)	Tim	Shestek	Moreover, it would encourage innovation and investment in the State’s recycling sector and allow California to take its place as a leader in the circular economy.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
17989(a)(22)	W04-02	American Chemistry Council (ACC)	Tim	Shestek	<p>The narrow construction of the terms “recycling” and “recyclable” in the Proposed Regulations contravenes the statutory mandate and legislative intent of SB 1335 by restricting recycling to a limited set of methods that exclude certain advanced technologies used to recycle plastic packaging into feedstocks to produce new products. Limiting recycling in this manner would have the added negative consequence of stifling innovation and investments in the State’s recycling sector and impede the State’s ability to meet its 75 percent diversion goal.</p> <p>We request that the Department incorporate our suggested revisions to the text of the Proposed Regulations to ensure “recycling” and “recyclable” are appropriately defined and consistent with the enacting statute, among other required changes to the proposal package to remove arbitrary barriers to recycling.</p>	<p>CalRecycle does not have statutory authority to modify the definition of “Recycling” established by PRC Section 40180, which as explained in PRC Section 40100, applies to all of Division 30 of the PRC, which includes the Integrated Waste Management Act and SB 1335. See response to W04-09 regarding the express terms of PRC Section 40100.</p> <p>The statutory definition of “Recycling” describes the various types of processes that constitute recycling and expressly excludes “transformation” (e.g., pyrolysis and incineration, commonly referred to as advanced technologies).</p> <p>In addition, all of the subsections of PRC section 42370.2(d) other than (d)(1) clearly direct CalRecycle to weigh the extent to which a particular food service packaging item gets recycled in the <i>current</i> California recycling infrastructure. This reflects a legislative intent for CalRecycle to prioritize items that are already recycled using well-established, widely used methods. See also response to W04-06 regarding feedstocks and advanced recycling technologies.</p> <p>The commenter’s suggested revisions to the regulatory text and CalRecycle’s response can be found in W04-54.</p>	No
17989(a)(22)	W04-05	American Chemistry Council (ACC)	Tim	Shestek	<p>The Terms “Recycling” and “Recyclable” in the Proposed Regulations Are Improperly Narrow, Inconsistent with SB 1335, and Unsupported by Substantial Evidence.</p> <p>SB 1335 requires that food service packaging must be reusable, recyclable, or compostable in order to be used in state facilities. Instead of defining “recyclable” in the statute, the law requires CalRecycle to define what is recyclable by taking into account broad and varied criteria. Contrary to its mandate, CalRecycle has proposed narrow definitions of “recycling” in Section 17989 and “recyclable” in Section 17989.4 of the Proposed Regulations, which exclude certain advanced technologies used in plastics recycling.</p>	<p>See response to W04-02 regarding the definition of “Recycling.”</p> <p>CalRecycle developed the “Recyclable” criteria in accordance with the guidance provided by PRC Section 42370.2(d). The statute includes six provisions for CalRecycle to consider, and none of them directly concern processes or technologies, such as advanced chemical recycling.</p>	No



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17989(a)(22)	W04-06	American Chemistry Council (ACC)	Tim	Shestek	This narrowing effectively omits one of the statutory elements, “whether packaging material regularly becomes feedstock that is used in the production of new products.” The technologies excluded by the Proposed Regulations make it possible to recycle many types of plastic into varied forms of feedstocks to make new plastic products as well as other types of non-plastic products. These technologies are clearly within the scope of SB 1335. By excluding an entire range of technologies that can create “feedstock that is used in the production of new products,” CalRecycle is ignoring the plain language and intent of the statute. In order to be consistent with SB 1335, CalRecycle must revise the scope of its “recyclable” criteria to accommodate advanced recycling technologies.	See response to W04-02 regarding the definition of “Recycling.”  Statute does not require a product to be deemed recyclable merely because a technology exists that can create usable feedstock. This is not the consideration stated in PRC subsection 42370.2(d)(5); that subsection requires CalRecycle to consider whether a material “regularly becomes feedstock” (emphasis added).  The department considered whether a type of material (feedstock) is collected by a specified threshold (75 percent) of statewide recycling programs – which validates the feedstock is regularly collected – and whether that feedstock is aggregated into a bale by a specified threshold (75 percent) of large processing facilities – which demonstrates there is a market for selling the feedstock to be regularly recycled into new products.	No
17989(a)(22)	W04-07	American Chemistry Council (ACC)	Tim	Shestek	Revisions to allow advanced recycling technologies support the legislative intent behind SB 1335. The legislature viewed SB 1335 as a tool to amplify California’s ability to meet its state-wide recycling goals. If CalRecycle were to improperly limit technological innovation and what is deemed “recyclable,” smaller percentages of plastic food service packaging in California will meet this definition, potentially thwarting California’s efforts to achieve its 75 percent recycling goal and also stifling innovation in the recycling sector. Bringing the scope of “recyclable” within the statutory mandate and allowing advanced recycling technologies will encourage innovation and investment in recycling and allow California to take its place as a leader in the circular economy.	See response to W04-02 regarding the definition of “Recycling.”	No
17989(a)(22)	W04-08	American Chemistry Council (ACC)	Tim	Shestek	Section 17989 of the Proposed Regulations defines “recycling” by incorporating the recycling definition from PRC Section 40180. This definition explicitly excludes pyrolysis along with other heat-based technologies for breaking down plastics so that they can be used to create feedstocks in the manufacture of new products. There is no apparent rational basis for this exclusion and/or its divergence from the language of SB 1335.	See response to W04-02 regarding the definition of “Recycling.”	No

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17989(a)(22)	W04-09	American Chemistry Council (ACC)	Tim	Shestek	In adopting SB 1335, the legislature explicitly chose not to include a definition of “recycling” in the statute, although it has done so in other recycling legislation. (Notably, the legislature could have adopted the definition of recycling in PRC §40180, but it did not.) This omission must be read to have meaning. When read in conjunction with the statute’s underlying purposes, which includes achieving California’s 75 percent recycling goal, this omission suggests that the legislature did not intend to limit the meaning of “recycling” or “recyclable” to the narrow definition contained in PRC §40180. Rather, the plain language of the statute results in a broad definition of recycling, one that is inclusive of future innovation and arguably includes any technology that results in the packaging becoming “feedstock that is used in the production of new products.” The Proposed Regulations are inconsistent with SB 1335 in this regard, as they do not implement this statutory mandate.	See response to W04-02 regarding the definition of “Recycling.”  By the express terms of PRC Section 40100, the definition contained in PRC Section 40180 applies to all of Division 30 of the PRC. Therefore, there is no omission that “must be read to have meaning.” To the contrary, the criteria set forth in PRC subsection 42370.2(d) must be read to have meaning, and “recycling” and “recycle” have fixed meanings under PRC Section 40108.  Had the legislature intended the existing definition of “Recycling” <i>not</i> to apply, a definition of “Recycling” would have been included in SB 1335, or alternatively, the existing definition of “Recycling” in PRC Section 40108 would have been amended by the bill. SB 1335 did not give CalRecycle authority to redefine this term.	No
17989(a)(22)	W04-10	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle has not demonstrated a basis for treating thermal technologies differently under this rule, and their exclusion is arbitrary, capricious, inconsistent with SB 1335, unsupported by substantial evidence and not reasonably necessary to effectuate the purpose of the Department’s statutory mandate. Advanced technologies are available to convert plastics to new products. These advanced recycling technologies are distinguishable from the types of waste disposal methods the definition of recycling in PRC § 40180 would exclude. Where advanced technology is available to create feedstocks for manufacturing new products, it should be included in the scope of recycling in this rule.	See response to W04-02 regarding the definition of “Recycling.”	No

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17989(a)(22)	W04-11	American Chemistry Council (ACC)	Tim	Shestek	<p>Although CalRecycle’s rulemaking authority extends to “filling up the details” of a statute, the Department cannot narrow the scope of a key term in a manner that does not further the statute’s purposes and frustrates other recycling goals enacted by the legislature. Such a construction exceeds the Department’s authority and is inconsistent with SB 1335 and/or its statutory purposes and therefore, unlawful. We request that CalRecycle replace the definition of “recycling” in Section 17989(a)(22) of the Proposed Regulations, at Page 4, Line 105, with the following:</p> <p>the activities in which materials that would otherwise become solid waste are collected, sorted, cleansed, treated, and processed into specification-grade commodities, and consumed as raw-material feedstocks, in lieu of virgin materials, in the manufacture of new, reconstituted, or refurbished products. Recycling does not include incineration or burning waste for energy recovery.</p> <p>This revised definition fulfills SB 1335’s mandate to include recycling technologies that produce feedstocks for new products. This definition is narrow enough to eliminate waste disposal methods such as incineration or combusting waste to produce energy. The revised definition allows plastics to be recycled by the technologies available today, while encouraging future innovation.</p>	See response to W04-09 regarding the definition of “Recycling.”	No
17989(a)(22)	W04-12	American Chemistry Council (ACC)	Tim	Shestek	<p>The Proposed Regulations Stifle Innovation in Plastics Recycling and Limit Development of the Circular Economy. By limiting plastics recycling to specific technologies, the definition of “recycling” proposed by CalRecycle would stifle innovation and limit opportunities to build a robust and innovative recycling economy. As defined in the Proposed Regulations, for packaging to be considered recyclable, it must be recycled using only limited technologies. Reliance on the definition of recycling in PRC § 40180 will likely cut short exciting innovation that can convert post-use plastics, including foodservice packaging, into a wide range of feedstocks and products.</p>	See response to W04-02 regarding the definition of “Recycling.”	No

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17989(a)(22)	W04-13	American Chemistry Council (ACC)	Tim	Shestek	<p>Advanced recycling technologies use a combination of heat, pressure, catalysts and/or solvents to convert post-use plastics and other materials into their basic building blocks. These basic building blocks can make new plastics again, and also have the versatility to create feedstocks to make useful chemicals and high-value end products.</p> <p>There is a diverse value of advanced recycling and its potential to divert post-use plastics from disposal and to convert plastics to many different types of new plastics, chemicals and other useful products.</p>	See response to W04-02 regarding the definition of “Recycling.”	No
17989(a)(22)	W04-25	American Chemistry Council (ACC)	Tim	Shestek	<p>The legislature’s intention in enacting SB 1335 was to advance California’s efforts to achieve the State’s 75 percent recycling goal. Including advanced technologies in the scope of what is “recyclable” is fully consistent with and essential to fulfilling that stated purpose.</p> <p>The latest statewide recycling data shows that California’s 2017 statewide recycling rate for paper and plastics is 40 percent. Of this 40 percent, 14 percent of total material generated was done through source reduction and mechanical recycling and another 14 percent was exported. California should not limit the definition of “recyclable” to a narrow set of existing mechanical recycling technologies that have demonstrated limitations. If the definition of recycling is revised to include advanced technologies, there is potential to significantly increase the recycling rate for plastics in California.</p> <p>Nearly all the State’s current recycling is conducted via conventional mechanical recycling. Mechanical recycling can successfully produce a variety of plastic products, usually durable products, such as crates, pallets, railroad ties and backyard decking. However, mechanically recycled plastics pose a challenge for food contact packaging and fluctuations in market demand. There are limits in the number of times some materials can be recycled through mechanical practices.</p> <p>In order to achieve the State’s 75 percent recycling target, innovation via advanced recycling technologies will be critical. Advanced technologies will allow additional types of plastics to be recycled. By narrowly defining what is “recyclable” in the Proposed Regulations, California would be shutting down this potentially fruitful avenue toward achieving its recycling goals.</p>	<p>See responses to W04-02 regarding the definition of “Recycling.”</p> <p>CalRecycle developed the “Recyclable” criteria in accordance with the guidance provided by PRC Section 42370.2(d). The statute included six provisions that required consideration by CalRecycle, none of which directly concern processes or technologies, such as advanced chemical recycling. The recyclable criteria are consistent with existing statutes; thus, no change is warranted.</p>	No



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17989(a)(22)	W04-54	American Chemistry Council (ACC)	Tim	Shestek	<p>This comment suggests replacing the definition in the regulatory text: (22) “Recycling” has the same meaning as defined in PRC Section 40180, as follows:</p> <p><del>(22) “Recycling” has the same meaning as defined in PRC Section 40180. means the activities in which materials that would otherwise become solid waste are collected, sorted, cleansed, treated, and processed into specification-grade commodities, and consumed as raw-material feedstocks, in lieu of virgin materials, in the manufacture of new, reconstituted, or refurbished products. Recycling does not include incineration or burning waste for energy recovery.</del></p>	<p>See response to W04-02 regarding the definition of “Recycling.”</p> <p>This proposed definition is not consistent with the existing statutory definition in PRC Section 40180 which states:</p> <p>“Recycle” or “recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. “Recycling” does not include transformation, as defined in Section 40201 or EMSW conversion.</p>	No
17989(a)(22)	W10-01	California Manufacturers & Technology Association (CMTA)	Mayte	Sanchez	<p>We must respectfully object to the scope of what would be considered “recycling” and “recyclable” within the proposed regulation. The proposed definitions unnecessarily and inappropriately restrict recycling technology options. Specific to the definition of “recycling,” the regulations exclude certain advanced technologies used in recycling paper and plastic foodservice and other types of packaging. In doing so, it ignores a key statutory factor that provides for consideration of whether that packaging material ultimately becomes a feedstock used in new foodservice and other product applications. Further, the legislature could have specifically defined “recycling” in line with Public Resources Code Section 40180 but opted not to do so, indicating deficiencies in the current statutory definition that were not deemed sufficient for the purpose of the scope of what is deemed recycling and associated technologies. The reference statutory definition specifically excludes technologies beyond mechanical recycling, which is unwarranted, unnecessary and in appropriate for the purpose of the rulemaking and addressing legislative intent. The proposed regulation should be revised to include novel, technologically advanced recycling technologies that will be key to helping the state address their diversion and recycling goals, especially amid the impacts of the COVID-19 pandemic and economic impacts on government, businesses and municipalities alike.</p>	<p>See response to W04-02 regarding the definition of “Recycling.”</p>	No

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17989(a)(22)	W17-01	Dolco Packaging, Tekni-Plex	George D.	Braddon	SB1335 only contemplates mechanical recycling, but it should include other processes in order to promote more recycling. We act as a local collection site for the general public to drop off their single use polystyrene recyclables which are collected and chemically recycled into feed stock that can be used in our products. We see first-hand how these processes enable increased recycling and we urge you to include all processes in the definition of recycling.	See response to W04-02 regarding the definition of "Recycling."	No
17989(a)(22)	W18-10	Foodservice Packaging Institute (FPI)	Brian	Sernulka	All forms of recycling should be allowed too. This would include any new advanced technologies as it would help the state meet its 75% waste diversion goal.	See response to W04-02 regarding the definition of "Recycling."	No
17989(a)(23)	W26-08	Recology	Christina	Wolfe	This definition would exclude MRFs that are permitted as a transfer/processor.	<p>"Recycling facility" has the same meaning as "Recycling center," as defined in California Code of Regulations subsection 17402.5(d), which, among other requirements, states that a facility shall only receive items separated for reuse, generate less than 10 percent residual solid waste, and generate less than 1 percent putrescible wastes. This definition of recycling facility would exclude MRFs permitted as transfer/processing facilities.</p> <p>The purpose of this term in the regulations is to be used in conjunction with the term "transfer/processing facility" to identify places where materials from a takeback program can be sent to be considered recycling. Thus a MRF permitted as a transfer/processing facility would be included in the options for where materials may be sent to be considered recycling.</p>	No

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17989(a)(24)	W09-04	California Compost Coalition (CCC)	Neil	Edgar	The use of “organics” is not defined in this regulatory package. Please define “organics” or use “mixed materials” or “food materials” which are less vague, and for which definitions already exist in Title 14.	<p>CalRecycle agrees that including the existing definitions of “Organic waste” and “Mixed materials” (codified in the PRC and Title 14, Division 7, Chapter 3.1 Compostable Materials Handling Operations and Facilities Regulatory Requirements, respectively) will provide additional clarity to the meaning of these terms. Thus, the following definitions were added to the proposed regulations:</p> <p><u>“Organic waste” has the same meaning as defined in PRC Section 42649.8 subsection (d).</u></p> <p><u>“Mixed material” has the same meaning as defined in Division 7, Chapter 3.1, Article 1, Section 179852, subsection (a)(26).</u></p> <p>In addition, the definition of “Recycling program” has been modified to ensure consistency with the new definition of “Organic waste.” Specifically, “<i>organics</i> collection services” was revised to “<i>organic waste</i> collection services” as shown:</p> <p><u>“Recycling program” means a diversion program, as defined in PRC Section 40127, that is established by a California jurisdiction for the purpose of providing recycling or organics waste collection services to residents or businesses...</u></p>	Yes
17989(a)(24)	W16-10	Compost Manufacturing Alliance (CMA)	Janet	Thoman	The word “organics” is undefined- suggest replacing with “food materials.”	<p>CalRecycle disagrees with the commenter’s suggestion to replace “organics” with “food materials.”</p> <p>“Food materials” is a narrower scope than “organics” and could lead to the exclusion of organics recycling programs that collect food service packaging with other organics, but do not collect food. The department finds this narrower definition unnecessary as the intent of the compostable criteria is not to exclude programs that may collect food service packaging with organics that are not necessarily food. However, to provide additional clarity, CalRecycle added the definition for “organic waste” in the Second Draft Proposed Regulations. See response to W09-04 regarding the addition of a definition for “Organic waste.”</p>	Yes

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17989(a)(24) and (27)	W26-09	Recology	Christine	Wolfe	<p>The definition of “recycling program” should be clarified to read: “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, <u>state agency, or special district.</u>”</p> <p>Why would a recycling program exclude a takeback program? If a state facility has a takeback program, it should work with the existing recycling collection program to pick up and deliver those items to a processing facility.</p>	<p>CalRecycle disagrees with the commenter’s suggestion to add “state agency or special district” to the definition of “Recycling program.”</p> <p>“Jurisdiction,” as defined in subsection 17989(a)(13), encompasses regional agencies; thus, certain special districts are already included in the definition.</p> <p>Services authorized by a “state agency” (in its broadest sense) are not included in the definition of “Recycling program” because they do not establish recycling programs for residents or businesses.</p> <p>Takeback programs are not included in the definition of “Recycling program” because they do not pertain to every instance when that term is used in this regulation. However, takeback programs do pertain to subsection 17989.4(a)(3)(B); “takeback programs” is defined separately in subsection 17989(a)(27) of the proposed regulation.</p>	No
17989(a)(25)	PH02-03	Biodegradable Products Institute (BPI)	Bruce A.	Magnani	There are no standard specifications that use 60 days for disintegration (or biodegradation), so this would constitute establishment of a new standard without any scientific foundation.	See response to W08-10 regarding the 60-day timeframe.	Yes
17989(a)(25)	PH02-04	Biodegradable Products Institute (BPI)	Bruce A.	Magnani	“Safe” needs to be validated with inherent biodegradation and ecotoxicity testing as prescribed in the ASTM standards, which already constitute the definition of “compostable” in the State of California. (PRC Division 30, Part 3, Chapter 5.7, Section 42355-42358.5).	See response to W08-11 regarding safe biodegradation.	Yes
17989(a)(25)	PH06-06	Clean Seas Lobbying Coalition	Genevieve	Abedon	We support the 90 percent biodegradation within 60 days instead of ASTM standards which are 84-180 days. Composters throughout the state turn compost much faster than 84-180 days.	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>See response W08-09 regarding the definition of “Safe and timely manner.”</p>	No
17989(a)(25)	PH09-01	Recology	Christine	Wolfe	Recology supports the definition of safe and timely manner and thinks it fairly balances the operational realities at compost facilities with the need to allow for maturation of the compostable packaging market.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No



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17989(a)(25)	W08-09	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	This definition is incorrect and should be corrected, as disintegration is the key test for measuring what is “timely” for a composter, not biodegradation (which is an invisible process).	<p>Due to extensive stakeholder feedback, CalRecycle agrees that the definition of “Safe and timely manner” needs further clarification in order to specify the difference between “disintegration” and “biodegradation,” and to clarify the number of days within which a food service packaging item must pass specific requirements in the applicable ASTM standards.</p> <p>The definition has been revised as follows:  “Safe and timely manner” means a food service packaging item <del>achieves 90 percent biodegradation within 60 days in the active compost process, as defined in Division 7, Chapter 3.1, Article 4, 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:</del></p> <p>(A)ASTM D6400 – 19: Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities,<del>or</del>  (1)<u>ASTM D6400 – 19 section 6.2 and 6.3 shall be achieved within 60 consecutive days after the test is initiated.</u></p> <p>(B)ASTM D6868 – 19: Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities.  (1)<u>ASTM D6868 – 19 sections 6.2 and 6.3 shall be achieved within 60 consecutive days after the test is initiated.</u></p> <p>This revision also addresses concerns related to the use of the terms “disintegration” and “biodegradation.” In both ASTM standards, Section 6.2 specifies the pass/fail criteria for <i>disintegration</i> of compostable food service packaging. Similarly, in both ASTM standards, Section 6.3 specifies the pass/fail criteria for <i>biodegradation</i> of compostable food service packaging.</p>	Yes

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Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
17989(a)(25)	W08-10	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	There are no standard specifications that use 60 days for disintegration (or biodegradation), so this would constitute establishment of a new standard without any scientific foundation.	See response to W08-09 regarding the definition of “Safe and timely manner.”  As noted in the ISOR, the 60-day timeframe required to demonstrate sufficient biodegradation was selected because it aligns with typical processing timeframes at California composting facilities. This timeframe also aligns with the FTC Green Guides (16 CFR Part 260) definition of “Safe and timely manner,” meaning “in approximately the same time as the materials with which it is composted.”	Yes
17989(a)(25)	W08-11	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>“Safe” needs to be validated with inherent biodegradation and ecotoxicity testing as prescribed in the ASTM standards, which already constitute the definition of “compostable” in the State of California. (PRC Division 30, Part 3, Chapter 5.7, Section 42355-42358.5).</p> <p>This comment suggests the following revision to the proposed regulation: “Safe and timely manner” means a food service packaging item <u>meets all of the requirements of ASTM D6400 or ASTM D6868 standards achieves 90 percent biodegradation within 60 days in the active compost process</u>, as defined in <u>the PRC Division 30, Part 3, Chapter 5.7, Section 42355-42358.5. Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(1)...</u></p>	<p>CalRecycle disagrees with the commenter’s suggestion to define “Safe and timely manner” by adding references to the ASTM D6400 and D6868 standards and the PRC plastic product labeling statutes. This change is not necessary because Subsection 17989(a)(28) of the proposed regulations already includes the requirement that compostable food service packaging items meet the requirements of ASTM D6400-19 or D6868-19, which include ecotoxicity testing. Both ASTM standards require the resultant compost from the disintegration and biodegradation testing to support a 90 percent germination rate for two species of vascular plants. In addition, the rate of biodegradation is a critical factor in determining if a compostable food service product can be composted in a safe and timely manner.</p> <p>See responses to W08-10 regarding the 60-day timeframe, W08-07 regarding a suggested definition of “Compostable” and W08-09 regarding the definition of “Safe and timely manner.”</p>	No

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17989(a)(25)	W09-05	California Compost Coalition (CCC)	Neil	Edgar	<p>CCC is fully supportive of setting a more restrictive disintegration time period, one which better reflects the realities of compost manufacturing instead of the lab standards found in ASTM D6400 and D6868. Our members have experience attempting to compost a number of packaging types, few of which meet the processing timeline needed to efficiently create saleable, finished products; the processing time for compost manufacturing is always well below the 180-day standard for complete degradation found in the ASTM regimen.</p> <p>Additionally, we are aware that compostability depends greatly on the type of composting technology employed at an individual facility, as well as the manner in which composting is conducted. Because a certain packaging type may meet a shorter degradability standard at one facility, it has little or no bearing on what may occur at a different site, with different conditions and technology application.</p>	This comment does not suggest any specific changes to the proposed regulation or raise an issue related to the rulemaking process.	No
17989(a)(25)	W09-06	California Compost Coalition (CCC)	Neil	Edgar	We recommend that testing be conducted at both windrow composting facilities as well as aerated static pile facilities to assure that 90 percent disintegration occurs within 60 days in the varying active composting processes.	<p>CalRecycle determined there are no standards that specify conditions for field testing of compostable plastic items at California’s windrow composting or aerated static pile facilities. Therefore, the proposed regulations do not require field testing at these facilities.</p> <p>With regard to assuring that food service packaging items reach 90 percent disintegration within 60 days, the definition of “Safe and timely manner” was revised to specify that a food service packaging item must achieve the requirements of ASTM D6400-19 or D6868-19, Section 6.2 Disintegration During Composting, within 60 days. See response to W08-09 regarding the definition of “Safe and timely manner.”</p>	No

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17989(a)(25)	W16-14	Compost Manufacturing Alliance (CMA)	Janet	Thoman	<p>Various items, such as pulp-only paper napkins, wood stir sticks, uncoated/untreated paper and other inherently acceptable items by constitution should be addressed as meeting natural feedstock standards where ASTM standards may not apply/be necessary. That said, we suggest adding one more section:</p> <p><u>(D) The item consists of untreated/uncoated natural wood or cellulosic material that is derived from the same materials as yard waste/food waste feedstocks in composition.</u></p>	<p>CalRecycle disagrees that a change to this definition is necessary because the ASTM standards only apply to plastic or plastic-coated materials, and not to the items described in the comment. Therefore, “inherently acceptable items” identified by the comment would not be subject to the “safe and timely manner” requirement, as defined. To the extent that one of the ASTM standards applies, ASTM D6868-19 contains a section that allows “materials of natural origin” to automatically fulfill biodegradation criteria by showing over 95 percent of their carbon comes from bio-based resources, using ASTM Test Method D6866-18.</p> <p>“Materials of natural origin” is defined in ASTM 6868-19 as follows:</p> <p>Chemically unmodified lingo-cellulosic packaging materials and constituents of natural origin such as wood, wood fiber, cotton fiber, starch, paper pulp, or jute.</p>	No
17989(a)(25)	W16-15	Compost Manufacturing Alliance (CMA)	Janet	Thoman	<p>As the only known compost facility field testing entity in the U.S., CMA is available to answer additional questions to further clarify the crucial importance of real-world processing relative to significant gaps between predictive laboratory standards and real-world composting results. Laboratory standards offer important science to determine product safety but fall short in terms of disintegration at facilities. Citing only lab standards has become insufficient to support compost facilities in growing their publicly collected food scrap programs, and CMA urges the State to initiate the implementation of field/operational standards. These proposed regulations must thoughtfully consider the needs of the facilities being asked to accept a much higher volume of these materials under these proposed rules.</p>	<p>See response to W09-06 regarding field testing.</p>	No
17989(a)(25)	W25-08	Plastics Industry Association (PLASTICS)	Shannon	Crawford	<p>“Safe and timely manner” is too restrictive. This definition requires a quicker timeline than found within the standards referenced. By simultaneously creating more stringent requirements and referencing a national consensus standard, CalRecycle creates inconsistent performance standards, and can create confusion as to the actual expectations for passing the standard. This is counter to the intention of the standard cited. If CalRecycle feels that the standard should have more stringent requirements, they should seek this change within the ANSI accredited standards-setting process rather than subvert the process.</p>	<p>See responses to W08-09 regarding the definition of “Safe and timely manner” and W08-10 regarding the 60-day timeframe.</p> <p>CalRecycle does not agree that seeking the development of a new standard via ANSI is necessary. CalRecycle is a member of ASTM International, the standard-setting organization with the authority to make changes to ASTM standards. The testing timeframes, not the test procedures, are inadequate to reflect the composting processes at California facilities. The proposed regulations do not alter the testing procedures or requirements in ASTM D6400-19 or D6868-19, including the ecotoxicity tests.</p>	No



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17989(a)(25)	W26-10	Recology, Inc.	Christine	Wolfe	<p>Our processes are designed around safe and timely breakdown of the majority of our feedstock and to meet strict environmental and public health standards set by the Department, the State Water Resources Control Board, and local air districts. It is unrealistic to expect that compost facilities will redesign their process to accommodate a small fraction by volume of material. However, Recology recognizes that there is potential for compostable packaging to achieve better performance outcomes at compost facilities as the market matures.</p> <p>Recology believes this standard strikes that balance, which generally reflects operational conditions and financial realities at compost facilities while providing flexibility for food service packaging items that may not break down in one cycle. At our facilities on aerated static pile systems, the active phase of composting lasts approximately 30 days. Additional operational and capital expenses are required to reintroduce material into active compost to encourage further biodegradation.</p>	<p>CalRecycle agrees that the 60-day timeframe associated with the definition of “Safe and timely manner” generally reflects operational conditions throughout California while limiting any burden associated with accepting compostable food service packaging.</p> <p>Revisions were made to this definition to address stakeholder feedback. See response to W08-09 regarding the definition of “Safe and timely manner.”</p>	Yes
17989(a)(25)	W28-06	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	<p>We appreciate language requiring verification by a third-party certification entity that compostable food service packaging biodegrades in a “safe and timely manner.” What entities are currently qualified to conduct the relevant testing? How does third-party certification relate to processing of the same material through in-vessel digestion?</p>	<p>This comment does not suggest any specific changes to the proposed regulations or raise any issues related to the rulemaking process.</p> <p>Regarding the commenter’s questions:</p> <ol style="list-style-type: none"> <li>1. Entities currently qualified to conduct the relevant testing are either ISO/IEC accredited laboratories or entities that have executed a contract with an ISO/IEC 17025 accredited laboratory. See response to W08-12 regarding the definition of “Third-party certification entity.”</li> <li>2. The third-party certification does not relate to processing of compostable materials through in-vessel digestion because anaerobic digestion was removed from the definition of “Compost facility” in the Second Draft Proposed Regulations. See response to W16-03 regarding the definition of “Compost facility.”</li> </ol>	No

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17989(a)(25)	W29-08	San Francisco Department of the Environment (SF Environment)	Hilary	Near	We appreciate the attempt to clarify the term “safe and timely manner” of composting. However, we are concerned that an additional performance requirement is proposed beyond third party certification to meet ASTM D6400 and D6868 standards. We recommend removing the requirement to achieve 90 percent biodegradation within 60 days. We recognize that facilities vary widely. It does not take into account the complexity of industrial composting nor take advantage of the existing third party certification system that demonstrates sufficient biodegradation, disintegration, and ecotoxicity under lab conditions that are a reasonable proxy for industrial composting.	See response to W08-10 regarding the 60-day timeframe.	No
17989(a)(25)	W29-09	San Francisco Department of the Environment (SF Environment)	Hilary	Near	If there is an additional requirement, we recommend that the facility that accepts compostable food service packaging from a state facility be requested to document that it accepts the material, and that it is incorporated as a feedstock rather than screened out or otherwise removed before composting.	CalRecycle does not have authority under SB 1335 to require compost facilities to provide reports, nor does it have the authority to mandate that facilities accept any particular material or items. See response to W04-21 regarding reporting and response to W07-01 regarding acceptance by compost facilities.  To the extent this comment asserts that CalRecycle should verify that an item is actually composted by particular facilities before it is placed on the List, see response to W26-04.	No
17989(a)(25)	W29-10	San Francisco Department of the Environment (SF Environment)	Hilary	Near	The requirement could mirror those outlined in SB 1383 proposed regulations; compostable plastics are allowed to be placed in the green container if the facility accepting it has “provided written notification annually to the jurisdiction stating that the facility can process and recover that material.”	CalRecycle does not have authority under SB 1335 to mandate waste collection requirements for local waste management programs. However, pursuant to SB 1383 regulations (CCR Section 18984), effective January 1, 2022, compost facilities that accept compostable plastics are required to provide annual written notification to CalRecycle stating that the facility can process and recover these materials, and this information will be available for staff to review.	No
17989(a)(25)	PH02-02	Biodegradable Products Institute (BPI)	Bruce A.	Magnani	This definition is incorrect and should be corrected, as disintegration is the key test for measuring what is “timely” for a composter, not biodegradation.	See response to W08-09 regarding the definition of “Safe and timely manner.”	Yes

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17989(a)(28)	PH06-07	Clean Seas Lobbying Coalition	Genevieve	Abedon	We urge you to specify that the Biodegradable Products Institute (BPI) be the third-party certification entity as it is currently the best and safest certification, will assure that PFAS remain at less than 100 ppm, and local ordinances are starting to move in that direction; add “and is certified by either the Biodegradable Products Institute or a third-party certification entity that is determined by the department to have requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute”. This may also mean that this definition must be changed per the BPI approved laboratories.	See response to W08-12 regarding the definition of “Third-party certification entity.”	Yes
17989(a)(28)	W08-12	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>This definition is incorrect and should be corrected, as labs are not third-party certifiers, they are service providers paid directly by companies to perform specific tests. A third-party certifier would review these lab tests reports, along with formulas, and determine whether the right set of tests were in fact done and that the tests were done correctly. The certifier then issues a certification logo and maintains lists of products that are certified. Labs do not provide this service, nor should they.</p> <p>This comment suggests the following revision to the proposed regulations: “Third-party certification entity” means an independent body that verifies a company’s product formulas, along with test reports conducted at laboratories, issues a logo for verification, and maintains a database of certified products.</p>	<p>Based on stakeholder feedback, CalRecycle revised the definition of “Third-party certification entity” as follows:</p> <p>“Third-party certification entity” means <u>either of the following:</u>  <del>(A) an</del> <u>An independent laboratory that is ISO/IEC 17025 accredited by an International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA) signatory, and performs applicable testing methods to certify a food service packaging item. “ISO/IEC 17025” means the International Organization for Standardization/International Electrotechnical Commission general requirements for the competence of testing and calibration laboratories, or</u>  <u>(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.</u></p> <p>CalRecycle disagrees that laboratories cannot be defined as third-party certification entities because an ISO/IEC 17025 accredited laboratory is able to conduct tests and attest, or certify, that a food service packaging item meets the applicable testing requirements specified in the regulation. In addition, ISO/IEC 17025 accredited laboratories certify the performance requirements of reusable grocery bags. See PRC Section 42282(c).</p>	Yes
17989(a)(28)	W15-09	Clean Seas Lobbying Coalition	Genevieve	Abedon	This may also mean that this definition must be changed per the BPI approved laboratories.	See response W08-12 regarding the definition of “Third-party certification entity.”	Yes

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17989(a)(28)	W16-16	Compost Manufacturing Alliance (CMA)	Janet	Thoman	<p>This section is confusing, as third-party compostable certification entities, are not laboratories. The ISO 17025 standard cited applies to laboratories. Certifiers can enforce that the actual ASTM testing must be performed by ISO 17025 compliant labs, while the document review and field testing are done by the certifiers, not the laboratory. We suggest the following changes in the language for compostability testing.</p> <p>“Third-party certification entity” means a recognized review body that oversees and certifies compostable products for acceptance at participating compost facilities by incorporating qualified review of ASTM D6400 and D6868 results, AND has performed or gained adequate field experience and/or other data to support a compostable products’ ability to disintegrate adequately within a composting system. Independent laboratories conducting ASTM D6400 and D6868 analysis must be ISO/IEC 137 17025 accredited by an International Laboratory Accreditation Cooperation 138 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.</p>	See response W08-12 regarding the definition of “Third-party certification entity.”	Yes

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<b>§17989.1. List of Approved Food Service Packaging.</b>							
17989.1	PH06-13	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (h): There are no criteria defined at this point about how CalRecycle will determine the removal of food packaging items off the approved list once it's listed unless the manufacturer doesn't submit the notice. Add criteria and process for removing food service packaging from the list of approved items.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes
17989.1	W04-26	American Chemistry Council (ACC)	Tim	Shestek	Section 17989.1 lacks necessary clarity and specificity regarding the frequency in which CalRecycle intends to re-evaluate and update the List of Approved Food Service Packaging after initial publication.	See response to W04-28 regarding the frequency of applications review.	No



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17989.1	W04-27	American Chemistry Council (ACC)	Tim	Shestek	Section 17989.1 is also arbitrary and improperly establishes a burdensome and duplicative application process, and authorizes the Department to remove food packaging items from the List even if they are still considered to be “reusable”, “recyclable” or “compostable” under the applicable regulatory criteria. These provisions are inconsistent with SB 1335, exceed the Department’s authority, and likely violate the food service packaging manufacturers’ due process rights.	See response to W13-09 regarding the process for removing an item or material from the List.  See response to W04-29 regarding CalRecycle’s authority to regularly evaluate the List.	Yes
17989.1	W06-09	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	Material recycling markets are notoriously volatile and unpredictable. We encourage CalRecycle to integrate flexibility into List determinations so that abrupt changes are not made during periodic down markets. Removing a recyclability determination from a material that is experiencing a short-term market disruption or price drop may jeopardize long-term efforts and investment needed to sustain and strengthen recycling infrastructure and end markets.	To the extent this comment asserts that recyclability determinations should not be based on short-term market conditions, no change is necessary because the recyclability criteria do not directly rely on the prices of resins/commodities/bales over any specific timeframe, and any relevance of such conditions are established by statute. For example, the regularity of collection and aggregation of materials into bales is a factor in the department’s evaluation, consistent with statutory guidance, such that temporary disruptions and price fluctuations could be relevant to the extent they affect the number of facilities collecting materials for recycling and will be evaluated against past collection thresholds. The statute mandates that the department consider such an effect.  To the extent that this comment asserts that the recyclability criteria could support immediate removal of items from the List based on abrupt market changes, the Second Draft Proposed Regulations adequately addresses that concern. The regulation has been revised to provide that an item or material will not be removed from the List without following a specified process. That process involves a notice period and opportunity to comment. In addition, the process for reevaluation of the List not less than once every five years pursuant to PRC subsection 42370.3(b) requires a 180-day notice period and therefore cannot result in immediate removal of an item based on short-term market conditions.  See response to W13-09 regarding the process for removing an item or material from the List.	No
17989.1	W15-15	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (h): There are no criteria defined at this point about how CalRecycle will determine the removal of food packaging items off the approved list once it is listed unless the manufacturer doesn’t submit the notice. Add criteria and process for removing food service packaging from the list of approved items.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes

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17989.1	W25-07	Plastics Industry Association (PLASTICS)	Shannon	Crawford	An alternative offered by CalRecycle would have regionalized the compliant material lists which “may prevent disruptions to small, local programs and allow the continued use of certain materials in areas that have developed the infrastructure to process it.” CalRecycle determined this alternative “would create a confusing and fragmented recycling system.” Recycling is already fragmented. The benefit would have been the allowance of additional materials to serve the needs of Californians.	See W15-31 regarding consideration of a regional or local approach.	No
17989.1	W26-11	Recology, Inc.	Christine	Wolfe	The Department should have a clear statement on its website stating the public health and litter criteria that packaging must meet. Transparency around material health should be a critical aspect of decision making for consumers, state agencies, the Department, and processing facilities.	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>CalRecycle agrees with the commenter on the importance of transparency regarding the public health and litter impact criteria and has built in disclosure requirements for food service packaging manufacturers.</p> <p>Each draft and the final version of the regulations that are adopted pursuant to this rulemaking process will be available on CalRecycle’s public website. Additionally, the proposed regulation requires that the List be posted on the department’s website, and the list will include the names of any Proposition 65 list chemicals present in approved food service packaging items.</p>	No
17989.1	W26-12	Recology, Inc.	Christine	Wolfe	The Department should create a process by which recyclers, transfer/processors, and composters to provide input should material not perform as expected once listed.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes
17989.1	W26-18	Recology, Inc.	Christine	Wolfe	The Department should create a process by which recyclers, transfer/processors, and composters to provide input should material not perform as expected once listed.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes

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17989.1	W28-07	Resource Recovery Coalition of California	Veronica	Pardo	We seek clarity on the process by which the department will ensure each food service packaging item meets the established “recyclable” or “compostable” criteria. How will the department know if the relevant facilities regularly accept and process this material?	<p>The proposed regulations place the onus on the applicant to demonstrate compliance with the criteria outlined in the Article, including whether a food service packaging item meets the applicable recyclable and compostable statewide collection and sorting/aggregation or acceptance thresholds.</p> <p>A food service packaging manufacturer must submit an application that includes all the necessary information specified by the regulations. CalRecycle will review each application for completeness, pursuant to subsection 17989.6(f)(1), and will determine if the food service packaging item meets the applicable criteria pursuant to subsection 17989.6(f)(2).</p> <p>To the extent possible and to reduce the burden on manufacturers, CalRecycle will publish a list of materials that have been identified as meeting the recyclable or compostable criteria requirements in subsection 17989.4(a)(3)(A) or 17989.5(a)(1) and (2), respectively, as applicable. The department will use various data sources, including the Recycling and Disposal Reporting System (RDRS), the Electronic Annual Report (EAR), staff research and, when appropriate, third-party sources. Applications submitted for recyclable and compostable food service packaging items will still be reviewed on a case-by-case basis, but applicants may refer to the Materials List as applicable.</p> <p>To clarify the process the department will follow to determine which materials meet the requirements of subsections 17989.4(a)(3)(A) or 17989.5(a)(1) and (2), CalRecycle revised subsection 17989.1(b) as follows:  <u>“(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 subsections 17989.5(a)(1) and (2). The department shall consider the materials included in this section when making recyclability and compostability determinations for food service packaging items. Food service packaging manufacturers may reference the materials identified in this section when submitting applications pursuant to subsections 17989.6(d)(4) and (e)(1) and (2).”</u></p>	Yes
17989.1(a)(6)	W04-55	American Chemistry Council (ACC) and Contributors	Tim	Shestek	Comment suggested removing subsection 17989.1(a)(6) in its entirety.	See response to W04-33 regarding the Proposition 65 list.	No

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17989.1(a) (6)	PH06-08	Clean Seas Lobbying Coalition	Genevieve	Abedon	Strike "As applicable."	CalRecycle agrees with the commenter's suggestion and removed "as applicable" (as shown below) to avoid confusion.  Subsection 17989.1(a)(6) has been revised as follows:  " <del>As applicable,</del> †The Names of chemicals contained in the food service packaging item, and their Chemical Abstract Service Registry Numbers (CASRN), that are included on the Prop 65 list."	Yes
17989.1(a) (6)	PH06-09	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest that in addition to the Proposition 65 list, you also add the Department of Toxic Substances Control's (DTSC) Candidate Chemicals list since it is already mentioned in Public Health and Litter Impacts Criteria, and is important for avoiding toxic chemicals in food contact materials.	See response to W15-16 regarding DTSC's Candidate Chemicals List.	No
17989.1(a) (6)	W15-10	Clean Seas Lobbying Coalition	Genevieve	Abedon	Strike "As applicable."	See response to PH06-08 regarding the inclusion of Proposition 65 chemicals on the List.	Yes
17989.1(a) (6)	W15-11	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest that in addition to the Proposition 65 list, you also add DTSC's Candidate Chemicals list since it is already mentioned in Public Health and Litter Impacts Criteria, and is important for avoiding toxic chemicals in food contact materials.	See response to W15-16 regarding DTSC's Candidate Chemicals List.	No
17989.1(b)	PH06-10	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding "(3) Items included on the List and identified as compostable must comply with Biodegradable Products Institute (BPI) certification."	See response to W13-08 regarding BPI certification of compostable food service packaging items.	No
17989.1(b)	W15-12	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding "(3) Items included on the List and identified as compostable must comply with Biodegradable Products Institute (BPI) certification."	See response W13-08 regarding BPI certification of compostable food service packaging items.	No

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17989.1(c)	W04-28	American Chemistry Council (ACC)	Tim	Shestek	<p>Section 17989.1(c) states vaguely that “[f]ollowing publication of the initial List, the department shall evaluate applications and update the List with additional food service packaging items on an ongoing basis.” Section 17989.1(g) more specifically states that a food service packaging manufacturer is required to submit a new application within 180 days of receiving notification from the Department that it is “evaluating the List to determine whether each of the approved food service packaging items is reusable, recyclable, or compostable” and that the Department may remove a food service packaging item from the List if an application is not received within 180 days.”</p> <p>Leaving the cadence of when CalRecycle will consider new applications within CalRecycle’s discretion could create a lengthy gap between List revisions and result in packaging that otherwise meets the recyclable criteria being omitted from the List. CalRecycle should revise proposed Section 17989.1(c) to state that the List will be updated at least every 180 days, to coincide with the 180 day cycle in Section 17989.1(g). This will provide necessary clarity on the frequency in which the List will be reevaluated and updated and will allow the regulated community an opportunity to apply to CalRecycle to advance new opportunities for recycling as technologies and infrastructure evolve.</p>	<p>CalRecycle disagrees with the commenter that the proposed regulations could result in applications not being considered between List revisions. PRC subsection 42370.3(b) requires the department to regularly, but no less than once every five years, evaluate the List to determine if a food service packaging item is reusable, recyclable, or compostable. The proposed regulation clarifies in subsection 17989.6(f) that the department will continuously evaluate applications in the order they are received and that the food service packaging items determined to meet the applicable criteria will be added to the List on an ongoing basis.</p> <p>This continuous evaluation process accounts for the evolution of food service packaging and advancement of recycling technologies and gives the department additional opportunities to determine compatibility of items with the state’s recycling and composting infrastructure. Food service packaging manufacturers may submit applications for previously evaluated items in future years and for new types of food service packaging as they are developed. The commenter’s suggestion to modify this subsection so that it incorporates a minimum frequency of updates to coincide with the process described in subsection 17989.1(g) is unnecessary because this subsection concerns ongoing consideration of new applications, not CalRecycle’s periodic reevaluation of the List pursuant to PRC subsection 42370.3(b).</p>	No
17989.1(c)	W04-56	American Chemistry Council (ACC)	Tim	Shestek	<p>Comment recommended the following revisions to subsection 17989.1(c):</p> <p>(c) Following publication of the initial List, the department shall evaluate applications and update the List with additional food service packaging items on an ongoing basis, but no less often than every 180 days.</p>	See response to W04-28 regarding the frequency of applications review.	No
17989.1(c)	W10-04	California Manufacturers & Technology Association (CMTA)	Mayte	Sanchez	<p>The proposed regulation lacks clarity and specificity for the frequency of re-evaluation and updates to the List after the initial publication. While in one section of the proposed regulation it indicates the Department will do so on an “ongoing basis,” other portions reference a 180 day timeframe for the Department to remove a foodservice packaging item if the manufacturer does not provide a new application within 180 days of receiving a notification that the Department is reevaluating the List.</p>	See response to W04-28 regarding the frequency of applications review.	No



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17989.1(e)	PH06-11	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding aesthetic change as well since, for example, dyes can come in contact with food and can contain toxic chemicals.	CalRecycle disagrees with the commenter's suggestion to require a manufacturer to notify the department of an "aesthetic change" to a food service packaging item on the List. "Aesthetic change" is defined in Section 17989 and clarifies that aesthetic changes do not affect the material composition. A change in dyes that have a different composition to those already used would constitute a change in the material composition.	No
17989.1(e)	W15-13	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding aesthetic change as well since, for example, dyes can come in contact with food and can contain toxic chemicals.	See response to PH06-11 regarding aesthetic changes.	No
17989.1(f)	PH05-02	Californians Against Waste (CAW)	Nick	Lapis	Although the current regulations allow for the Department to remove an item from the List, we recommend a formal process for a third party to submit a request to remove an item from the List. If a recycler or composter is having recurring problems with a certain type of packaging, they should have the right to appeal rather than wait five years for the Department to review the List.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes
17989.1(f)	PH05-03	Californians Against Waste (CAW)	Nick	Lapis	The regulations should be amended to allow items to be removed from the List based on the recommendation of the Statewide Commission on Recycling Markets and Curbside Recycling. Part of the commission's charge is to "identify products that are recyclable or compostable, as defined pursuant to Section 42370.2, and regularly collected in curbside recycling programs."	See response to W13-10 regarding recommendations from the Statewide Commission on Recycling Markets and Curbside Recycling.	No
17989.1(f)	W04-30	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle should give the manufacture prior notice and an opportunity to respond to CalRecycle's concerns before CalRecycle removes the packaging from the list, per Section 17989.1(f), Lines 182-184.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes
17989.1(f)	W04-57	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests the following revision to the proposed regulation: (f) If the department determines that an approved food service packaging item does not meet the requirements of this Article, the department shall notify the manufacturer and remove the food service packaging item from the List <u>only after providing the manufacturer with 60 days' notice and an opportunity to respond to the department's determination.</u>	See response to W13-09 regarding the process for removing an item or material from the List.	Yes

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17989.1(f)	W13-09	Californians Against Waste (CAW)	Nick	Lapis	We recommend a formal process for a third party to submit a request to remove an item from the List. Similar to the process in the current regulations to get an item approved, proper documentation that demonstrates the reasoning can be required. If a recycler or composter is having recurring problems with a certain type of packaging, they should have the right to appeal rather than wait five years for the Department to review the List.	<p>CalRecycle agrees with the commenter's recommendation that the process to remove a food service packaging item from the List needs clarification.</p> <p>Due to extensive stakeholder feedback, CalRecycle revised the proposed regulation as follows:</p> <p><u>§17989.1 (f)(e): If the department determines that an approved food service packaging item or material on the published List does not no longer meets the requirements of this Article, the department shall notify the manufacturer and remove the food service packaging item from the List:</u></p> <p><u>(1) Notify the food service packaging manufacturer, or person acting on its behalf, of the reason(s) for the proposed removal of their food service packaging item and allow them no fewer than 30 days to submit written comments.</u></p> <p><u>(2) Notify the public of the reason(s) for the proposed removal of a food service packaging material and allow no fewer than 30 days to submit written comments.</u></p> <p><u>(3) Evaluate the comments received pursuant to subsections 17989.1 (e)(1) and (2) prior to issuing its final determination.</u></p> <p><u>(4) Remove the food service packaging item and/or material from the List or make no changes to the List.</u></p>	Yes
17989.1(f)	W13-10	Californians Against Waste (CAW)	Nick	Lapis	The regulations should be amended to allow items to be removed from the List based on the recommendation of the Statewide Commission on Recycling Markets and Curbside Recycling. Part of the commission's charge is to "identify products that are recyclable or compostable, as defined pursuant to Section 42370.2, and regularly collected in curbside recycling programs."	CalRecycle disagrees with the commenter's suggestion to allow the removal of food service packaging items from the List based on the recommendation of the Statewide Commission on Recycling Markets and Curbside Recycling. The department, as directed by statute, will directly oversee the implementation and administration of this program. Related to this comment, the department revised the Second Draft Proposed Regulations to specify the process it will follow when considering the removal of a material or item from the List. See response to W13-09.	No
17989.1(f)	W31-03	Surfrider Foundation	Miho	Ligare	There are no criteria defined at this point about how CalRecycle will determine the removal of food packaging items off the List once listed. We recommend adding a section on the process of how food service packaging may be removed from the List.	See response to W13-09 regarding the process for removing an item or material from the List.	Yes

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17989.1(g)	PH06-12	Clean Seas Lobbying Coalition	Genevieve	Abedon	Strike “may” and replace with “shall.”	CalRecycle disagrees with the commenter’s recommendation to require food service packaging items to be removed from the List if no new application is received within the 5-year review cycle. The proposed regulation requires food service packaging manufacturers to submit updated application information to the department to ensure that the food service packaging items on the List still meet the applicable criteria; however, there may be circumstances when food service packaging items remain on the List without such additional information because the information in the original application is not outdated or otherwise inadequate. Therefore, allowing flexibility to keep an item on the List is consistent with the statute.	No
17989.1(g)	W04-29	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle should strike the language in Section 17989.1(g), which provides that the Department may “remove” a food service packaging item from the List if a manufacturer fails to submit a “new application” within 180 days of the Department’s re-evaluation notification. SB 1335 does not confer the Department with this type of authority and it is otherwise in excess of and/or in conflict with the Department’s authority under SB 1335, inasmuch as the statute only authorizes the Department to remove a food service packaging item from the List if it finds that the packaging is not reusable, recyclable, or compostable. Requiring a new application in these circumstances infringes on the manufacturer’s due process rights.	<p>CalRecycle disagrees with the commenter’s suggestion that subsection 17989.1(g) is inconsistent with statute and infringes on the food service packaging manufacturer’s due process rights.</p> <p>With respect to CalRecycle’s authority, SB 1335 expressly confers on the department the authority to “establish a process... for determining the types of food service packaging that are reusable, recyclable, or compostable.” It also grants CalRecycle the authority to reevaluate the List and to remove items from it. As such, the proposed regulation exercises CalRecycle’s authority by establishing the process for doing so. Pursuant to its discretion over the specifics of that process, CalRecycle reasonably requires the best information available to the manufacturer to ensure that the food service packaging items on the List still meet the applicable criteria within the regulations.</p> <p>With respect to due process, the mandatory <i>six-month</i> notice period for application resubmittal is a due process safeguard, not a burden. Regardless of whether a new application is submitted, as explained in subsection (g)(1), CalRecycle will only remove an item from the List if it determines that an item on it is not “reusable, recyclable, or compostable”; that subsection states that “the item <i>may</i> be removed from the list,” not that it “shall” be removed, if a new application is not submitted. The 180-day period allows the manufacturer to submit new information to the department for it to consider as it reevaluates the list, which would otherwise risk removal of the manufacturer’s item without the benefit of such information.</p>	No

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17989.1(g)	W04-58	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests the following revision to the proposed regulation: <del>If a new application is not received within 180 days the food service packaging item may be removed from the List.</del>	See response to W04-29 regarding CalRecycle's authority to regularly evaluate the List.	No
17989.1(g)	W10-05	California Manufacturers & Technology Association (CMTA)	Mayte	Sanchez	SB 1335 does not provide for the Department to remove foodservice packaging from the List if it has been deemed reusable, recyclable or compostable whether or not the manufacturer responds within 180 days for the Department's purpose of reevaluating the List.	Contrary to the commenter's assertion, SB 1335 (specifically, PRC section 42370.3(b)) expressly does authorize CalRecycle to remove from the List food service packaging that it had previously deemed reusable, recyclable, or compostable.  See also response to W04-29 regarding CalRecycle's authority to regularly evaluate the List.	No
17989.1(g)	W14-06	Carton Council	Derric	Brown	The regulations state that a manufacturer shall submit a new application within 180 days of being notified by the department that it is evaluating the List, and does not specify a maximum time period for CalRecycle to issue its new determinations. This could result in long delays and uncertainty for manufacturers who may be considering new, significant investments in packaging redesign or recycling infrastructure and market support.	Regarding potential delays in CalRecycle's determination regarding removal of a food service packaging item, PRC section 42370.4(b)(4) and section 17989.7(a)(4) of the proposed regulation protect manufacturers against such delay. Food service packaging items can continue to be distributed to food service facilities that were under contract to purchase the items before they were removed from the List.  To the extent this comment asserts that the proposed regulations generally do not clearly establish certain procedures for removal of items from the List, CalRecycle agrees and has made changes in the Second Draft Proposed Regulation, which establishes a 30-day notice and comment period before CalRecycle removes a food service packaging item from the list based on its determination. See response to W13-09 regarding the process for removing an item or material from the List.	Yes
17989.1(g)	W15-14	Clean Seas Lobbying Coalition	Genevieve	Abedon	Strike "may" and replace with "shall."	See response to PH06-12 regarding revisions to Section 17989.1(g).	No

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<b>§17989.2. Public Health and Litter Impacts Criteria.</b>							
17989.2	PH01-05	American Chemistry Council (ACC)	Tim	Shestek	ACC is strongly opposed to the "public health and litter impact" criteria. SB 1335 only authorizes CalRecycle to develop three specified criteria which define whether food service packaging is "reusable," "recyclable," or "compostable." This fourth set of criteria exceeds CalRecycle's authority and should be deleted in full. CalRecycle does not have the authority or the expertise to adopt the type of material restrictions and chemical disclosure obligations that CalRecycle is seeking to adopt through the use of this unauthorized criteria.	PRC subsection 42370.2(g) grants CalRecycle the authority to take into account potential impacts of food service packaging on litter, public health, and wildlife, in developing these regulations.  Section 17989.2 establishes criteria to minimize public health and litter impacts and details the steps CalRecycle will take to consult with specified entities and perform its evaluation of potential impacts of food service packaging.	No

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17989.2	PH01-06	American Chemistry Council (ACC)	Tim	Shestek	The proposed criteria arbitrarily identify certain chemistries for restrictions or disclosures without adequate scientific bases.	<p>CalRecycle disagrees that the proposed public health impact criteria are arbitrary and without scientific basis. CalRecycle provided a summary in the ISOR of the potential impacts on public health and wildlife that provide the justification for the chemical restrictions and disclosures established in Section 17989.2.</p> <p>The justification for restricting PFASs, as measured by total fluorine, was provided in the ISOR (pages 16-17), and is based on the persistence of these chemicals and their association with the potential to cause harm to humans and wildlife, such as by reproductive and developmental toxicity, carcinogenicity, and liver toxicity. Further, in accordance with Health and Safety Code Section 57004, CalRecycle requested an external scientific peer review of the scientific basis for proposing a 100 ppm limit in fluorine, which is a suitable proxy for determining the presence of PFASs in food service packaging. The department received the results of the external scientific peer review on June 25, 2020, and the reviewers concurred and supported the scientific basis for CalRecycle's conclusions.</p> <p>See response to W01-03 regarding the class of PFASs.</p> <p>The justification for requiring Proposition 65 disclosure is included in the ISOR (pages 16-17); it includes the names of chemicals that are known to the State of California to cause cancer, birth defects, or other reproductive harm. For additional information see response to W04-33 regarding the Proposition 65 list.</p>	No



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17989.2	PH06-22	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest specifying that the Biodegradable Products Institute (BPI) be the third-party certification entity as it is currently the best and safest certification, will assure that PFAS remain at less than 100 ppm, and local ordinances are starting to move in that direction; add “and is certified by either the Biodegradable Products Institute (BPI) or a third-party certification entity that is determined by the department to have requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute (BPI).”	<p>CalRecycle disagrees with the commenter’s suggestion to specify BPI as the only third-party certification entity or to require compliance with BPI certification. BPI is not the sole entity that is capable of verifying total fluorine levels or certifying the test results, as required by the regulation. Laboratories with ISO/IEC 17025:2017 accreditation, or entities that are under contract with these accredited laboratories can also certify test results based on the requirements of these proposed regulations.</p> <p>CalRecycle also disagrees with the commenter’s suggestion to add a requirement that compostable food service packaging items be “certified” by either BPI or a third-party certification entity that is equivalent to BPI. BPI or other certification includes charges for additional services, such as PFAS testing and review of Safety Data Sheets for compostable food service packaging, that are beyond the scope of the regulation and can cost as much as \$20,000. Statute does not require “certification” of compostable food service packaging items; third-party certification entities as defined in the regulations only “certify” test results as required to meet specified criteria.</p> <p>However, CalRecycle recognizes that BPI is widely known by industry to perform certification services and has added BPI as an example of a third-party certification entity in the Second Draft Proposed Regulations. See response to W08-12 regarding the definition of “Third-party certification entity.”</p>	No
17989.2	W03-01	American Chemistry Council (ACC)	Jay	West	SB 1335 only permits the Department to develop three sets of criteria in its regulations: “reusable”, “recyclable” and “compostable.” The public health and litter criteria exceed CalRecycle’s authority and should be removed.	<p>The commenter incorrectly reads the statute as prohibiting CalRecycle from establishing criteria to implement PRC section 42370.2(g).</p> <p>See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.</p>	No
17989.2	W04-03	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The “public health and litter impact” criteria exceed the Department’s authority, are inconsistent with SB 1335 and arbitrarily identify certain chemistries without adequate scientific bases. CalRecycle does not have the expertise or authority to adopt the type of material restrictions and chemical disclosure obligations proposed here. The criteria should be removed in full.	<p>See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.</p> <p>See response to PH01-06 regarding the scientific basis for addressing PFASs.</p>	No

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17989.2	W04-31	American Chemistry Council (ACC) and Contributors	Tim	Shestek	Section 17989.2 arbitrarily and unlawfully seeks to impose material restrictions and chemical disclosure obligations through the guise of “public health and litter impacts criteria.” The requirements contained in this section are beyond the scope of CalRecycle’s competency or authority and are not explicitly or impliedly authorized by SB 1335. This section should be deleted in its entirety. Section 17989.2 is inconsistent with SB 1335 and exceeds CalRecycle’s rulemaking authority.	See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.  See response to PH01-06 regarding the scientific basis for the public health and litter criteria.	No
17989.2	W04-59	American Chemistry Council (ACC) and Contributors	Tim	Shestek	This comment suggested removing Section 17989.2 in its entirety.	See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.	No
17989.2	W05-07	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The proposed text on public health impacts ignores the statutory text and duplicates regulatory initiatives, infringing on the jurisdiction of other regulatory authorities.	See response to W10-06 regarding regulatory duplication.	No
17989.2	W10-06	California Manufacturers & Technology Association (CMTA)	Mayte	Sanchez	The public health and litter impact criteria proposed in the regulation go beyond the authority granted within SB 1335. The proposed regulation targets chemistries that may be used in foodservice packaging on an unsubstantiated scientific basis. The Department does not have the requisite expertise among its staff to properly review and consider the scientific basis for these types of considerations. Such determinations are within the scope of the DTSC’s Safer Consumer Products (SCP) Program’s authority. To include these criteria within the regulation is duplicative of other regulatory program efforts at DTSC particularly as the SCP Program continues its review of foodservice packaging within its current work plan.	See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.  See response to PH01-06 regarding the scientific basis for addressing PFASs.  Regarding regulatory duplication, CalRecycle disagrees that the proposed regulation is duplicative of DTSC’s regulatory program efforts. The SB 1335 regulations include criteria related to end-of-life management and environmental impacts for the specific purpose of determining which types of food service packaging items are reusable, recyclable, or compostable and may be added to a published List and used by specified food service facilities.  These regulations serve a different purpose than DTSC’s SCP program, which requires the manufacturer of a “Priority Product” to evaluate alternatives and consider a range of impacts related to the manufacturing, use, and end-of-life of those products. The SCP program does not directly regulate the type of food service packaging that California food service facilities may use, and to the extent that it does affect such use, the DTSC program is complementary to these proposed regulations, not overlapping or duplicative.	No

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17989.2	W10-07	California Manufacturers & Technology Association (CMTA)	Mayte	Sanchez	<p>The proposed regulation does not account for regulation of food contact substances by the United States FDA. Existing regulation by the FDA requires review of a chemical in food contact substances before they may be sold or distributed in commerce. The associated section within the proposed regulation on these points is unnecessary and duplicative of existing regulatory authorities and should therefore be removed.</p> <p>The public health and litter impact criteria go beyond the authority granted within SB 1335.</p>	<p>See response to PH01-05 regarding CalRecycle’s authority to determine public health and litter impacts.</p> <p>USFDA has a different regulatory role and considers different factors in determining if food contact materials, other than those that are “Generally Recognized As Safe” or are previously sanctioned, are safe for their intended use. The proposed regulation, in contrast, is concerned with the potential for PFAS to contribute to litter, public health, and wildlife impacts of food service packaging materials at the end of life when composted or recycled. Additionally, USFDA does not consider impacts to wildlife as a result of indirect exposure from environmental releases. Thus, the proposed regulation is not duplicative of the chemical review process overseen by the USFDA.</p>	No
17989.2	W26-02	Recology, Inc.	Christine	Wolfe	<p>It is imperative that the Department ensure the health of our employees and our environment by preventing toxic additives in these packaging materials. Toxins need to be eliminated at the manufacturing level, not mitigated after they are introduced into the market, the waste stream, or the environment.</p>	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>To the extent this comment asserts that the proposed regulations do not address exposure to toxic additives, no change is required because this section of the proposed regulations does address that issue. See responses to PH01-06 regarding the scientific basis for addressing PFASs and W04-32 regarding the external scientific peer review of the scientific evidence and technical resources relied upon for the conclusions about PFASs.</p>	No

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17989.2(a) (1)–(4)	W04-32	American Chemistry Council (ACC) and Contributors	Tim	Shestek	This section also lacks a strong scientific foundation, as it arbitrarily identifies specific chemistries that may be used as a basis for disclosing or restricting certain packaging types, inappropriately seeks to utilize the Proposition 65 list as a basis for regulation, and despite a specific reference in the enacting statute does not appear to take into account the U.S. Food and Drug Administration’s regulation of food contact substances. Under existing FDA regulations, before a chemical used in food packaging can be sold or distributed in commerce, it must be reviewed by FDA to determine whether there is sufficient scientific data to demonstrate that it is safe for its intended use in packaging. FDA requires submission of extensive upfront test data regarding chemical composition, migration levels, and toxicity. FDA can withdraw its approval at any time if available data no longer demonstrates that the food contact substance is safe for its intended use. Although SB 1335 states that the Department should take into account “existing scientific information available from the United States Food and Drug Administration...,” it does not appear to have done so under the language in this section.	<p>CalRecycle disagrees that this section is arbitrary and lacks scientific foundation. The department conducted an external scientific peer review to evaluate the scientific evidence and technical resources relied upon in proposing a 100 ppm threshold for total fluorine, which is a suitable proxy for determining the presence of PFASs in food service packaging. The department received the results of the external scientific peer review on June 25, 2020, and the reviewers concurred and supported the scientific basis for CalRecycle’s conclusions.</p> <p>The required disclosure regarding Proposition 65 is appropriate because consideration of whether chemicals on the Proposition 65 list are present in a food service packaging item is consistent with the department’s express statutory authority to take into account public health impacts.</p> <p>Regarding USFDA regulations, PRC subsection 42370.2(g) grants CalRecycle the authority to consider information from USFDA, OEHHA, and DTSC. As such, the proposed regulation requires the department, when assessing a packaging item’s public health impacts, to consider whether a federal government agency (e.g., the USFDA) has identified the item to pose a potential risk to public health. This appropriately exercises the department’s authority under SB 1335 to consider “scientific information available from the United States Food and Drug Administration” when evaluating potential impacts on litter, public health, and wildlife.</p>	No
17989.2(a) (2)	W04-33	American Chemistry Council (ACC) and Contributors	Tim	Shestek	Apart from the unlawful nature of this chemical disclosure requirement, this requirement is also arbitrary as it does not achieve the Department’s stated objective of “minimizing public health and litter impacts.” Chemicals on the Proposition 65 list provide little to no information on how that chemical is used in manufacturing the product, the levels at which a person may be exposed and whether those exposure levels are cause for concern. How will the Department evaluate food packaging manufactured using chemicals that are on the Proposition 65 list, but where the final material itself does not contain the chemical or exposures are so low as to fall below the safe harbor level? How will the Department consider food service packaging items that have safe use determinations (“SUDs”)?	<p>CalRecycle disagrees with the commenter’s suggestion that subsection 17989.2(a)(2) is unlawful and does not meet the department’s objectives.</p> <p>To the extent that the commenter asserts that the Proposition 65 list does not provide useful information, CalRecycle disagrees. Chemicals included on OEHHA’s Proposition 65 list may be intentionally added or be a known contaminant in the manufacturing process used to make food service packaging items. This subsection enables CalRecycle to consider the presence of such chemicals in food service packaging items that may pose health risks when food service facilities use such items. This is an appropriate consideration pursuant to PRC subsection 42370.2(g), which grants CalRecycle the authority to consider potential impacts to litter, public health, and wildlife and grants the department the authority to consider information from USFDA, OEHHA, and DTSC. Moreover, Proposition 65</p>	No



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						<p>requires warnings for items where listed chemicals are present, regardless of whether manufacturers disclose such listing pursuant to the proposed regulations.</p> <p>Regarding how the department will evaluate low levels of the chemical in the product, the department will evaluate the use of Proposition 65 chemicals on a case-by-case basis and revise the List according to the requirements in Section 17989.2. The specific concentration of a Proposition 65 chemical present in an item is not among the application information required pursuant to Section 17989.6(a).</p> <p>Regarding the question about how the department will consider Safe Use Determination (SUDs), the disclosure requirement does not modify a manufacturer's obligations under Proposition 65, nor does it mean that an item containing a chemical on the Proposition 65 list cannot be considered reusable, recyclable, or compostable under the proposed regulation. CalRecycle does not require consideration of a SUD because it applies to implementation of the Proposition 65 program. OEHHA may issue a SUD (27 CCR Section 25204) based on its assessment of risk associated with the level of exposure associated with a specific business action or a specific product.</p> <p>Any SUD issued by OEHHA because of a risk determination does not negate or conflict with disclosure of the presence of the chemical in a food service packaging item. Regardless of a SUD, the presence of a Proposition 65 chemical could be relevant to the end-of-life management. The department would still apply the other criteria stated in this subsection; those criteria include whether a state agency has identified the item as having potential adverse public health impacts.</p>	
17989.2(a) (2)	W04-34	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Proposition 65 list is not a list of restricted chemicals and it would also be inappropriate for the Department to utilize the list to restrict certain food service packaging items.	The regulation requires disclosure of chemicals on the Proposition 65 list. It does not restrict the use of the chemicals in food service packaging items, nor does it categorically deem items ineligible for the List based on the presence of chemicals on the Proposition 65 list. .	No



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17989.2(a) (2)	W15-16	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding the DTSC Candidate Chemicals list here as well.	CalRecycle does not agree that it is necessary to require a disclosure for use of chemicals on the DTSC Candidate Chemicals List in the manufacture of food service packaging.  Statute specifically directed CalRecycle in PRC Section 42370.2(g)(3) to consider identification of "Priority Products" by DTSC, with no mention of "Candidate Chemicals." Subsection 17989.2(a)(4) of the proposed regulations therefore incorporates this requirement and provides that the department will consider DTSC's designation when determining whether an item should be on the List.	No
17989.2(a) (2)	W24-02	Plant Based Product Council (PBPC)	Jessica	Bowman	A more nuanced approach would allow the use of compostable products as the challenges these products face are tackled, and haulers and composting facilities are willing to accept them. Such an approach could be more location specific to the acceptance of a product by the local hauler and composting facility.	See response to W15-31 regarding consideration of a regional or local approach.	No
17989.2(a) (2)	W25-09	Plastics Industry Association (PLASTICS)	Shannon	Crawford	Section 17989.2(a)(2) of the proposed regulation requires that all chemicals included on California's Proposition 65 list that are used in the manufacture of food service packaging items be disclosed when applying for inclusion on the List. This requirement is overly broad. Most Proposition 65 listed chemicals that are used in food packaging applications are present at very low levels that do not contribute any meaningful exposure. The Proposition 65 list itself does not require disclosure of the presence of these substances under these low exposure conditions by defining safe harbor levels of exposure below which the substance is not of safety concern and does not trigger the warning requirement. It is unclear why disclosure of all substances listed under Proposition 65 is necessary when it is not necessary for the purpose for which the list was created. In this regard, this entire section should be removed.	See response to W04-33 regarding the Proposition 65 list.	No

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17989.2(a) (3)	PH06-14	Clean Seas Lobbying Coalition	Genevieve	Abedon	Our two main suggestions are to keep the regulations strong with regards to reusable food service packaging criteria, and ensure that any recyclable or compostable food service packaging does not contain toxic chemicals, including but not limited to per- and polyfluoroalkyl substances (PFAS.) Many chemicals in food packaging “persist in the environment after use, and are associated with harm to humans and to wildlife...” PFAS can not only harm human health when they migrate into food upon initial use, but have also been found to contaminate compost that can be applied to food systems.	<p>The regulation is aligned with existing statutes to ensure food service packaging items deemed to be recyclable or compostable do not contain unallowable levels of regulated metals (e.g., lead, mercury, cadmium, and hexavalent chromium which have been shown to be toxic at certain concentrations) and further restricts the allowable level of total fluorine, which is an indicator of the presence of PFASs.</p> <p>The term “toxic chemicals” is too vague to include as a blanket restriction; however, the proposed regulations establish a process for the department to employ if evidence is provided (e.g., risk of exposure to a chemical) that indicates a food service packaging item has the potential to impact public health or wildlife.</p>	No
17989.2(a) (3)	W01-01	3M	Mark T.	Anderson	FDA’s comprehensive and ongoing regulation of PFAS in food packaging adequately addresses any concerns regarding potential migration into foods and dietary exposure to PFAS. All PFAS used in food packaging are subject to comprehensive FDA regulation including rigorous premarket safety review and approval, as well as ongoing review of approved food packaging substances based on the latest available scientific literature. To the extent that CalRecycle is concerned that degradation products of PFAS approved by FDA may migrate into food and pose health risks, FDA has already considered those risks and made a determination of safety. FDA is also actively monitoring the emerging science on PFAS as well as leading its own evaluations and studies to ensure that their continued use in food packaging materials is safe.	<p>CalRecycle does not agree that current USFDA regulation adequately addresses concerns related to PFASs. See response to W10-07 regarding regulatory duplication.</p> <p>Furthermore, CalRecycle provided a summary of the potential hazard and exposure information for PFASs that were considered, including information from the USFDA, in the ISOR. The criteria in subsection 17989.2(a)(3) reflect the consideration of those potential impacts by imposing an additional requirement on food service packaging items to be considered recyclable or compostable. The ISOR includes information relating to exposure to PFASs from end-of-life management practices. See response to W04-32 regarding the external scientific peer review of the scientific evidence and technical resources relied upon for the conclusions about PFASs.</p> <p>See response to W01-03 regarding the class of PFASs, including their degradation products.</p>	No

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17989.2(a) (3)	W01-02	3M	Mark T.	Anderson	With the launch of EPA’s PFAS Action Plan in 2019, EPA is taking a proactive approach to evaluating and addressing the presence of PFASs in the environment. In March 2020, EPA published a proposed regulatory determination for PFOA and PFOS in the Federal Register. This is the first step in establishing a federal maximum contaminant level for those substances under the Safe Drinking Water Act. The Center for Disease Control and Agency for Toxic Substances and Disease Registry are in the midst of taking numerous actions to study potential human health risks from environmental exposures to PFAS. The National Defense Authorization Act (NDAA) includes a number of provisions that will increase research, reporting and monitoring obligations related to PFAS and accelerate the pace of certain initiatives already underway pursuant to EPA’s Action Plan. This substantial activity at the federal level is generating more information regarding any PFAS-related environmental impacts, such that CalRecycle regulation of PFAS in food packaging would be premature.	<p>To the extent this comment asserts that the proposed regulation is “premature” based on the availability of scientific basis, see response to PH01-06 regarding the scientific basis for addressing PFASs.</p> <p>To the extent this comment asserts that CalRecycle should not regulate PFASs before the federal government takes further action, CalRecycle disagrees. The statute expressly authorizes CalRecycle to consider criteria related to environmental impacts in fulfilling its mandate regarding determinations of whether items are reusable, recyclable, or compostable and thus acceptable for use by food service facilities. Given this clear authority and the specific direction by the legislature to adopt regulations, the proposed regulations are not premature.</p> <p>To the extent this comment asserts that the proposed regulation is duplicative, US EPA has a different regulatory role and considers different factors in determining public health impact criteria, including that US EPA does not regulate food contact materials. Therefore the proposed regulation is not duplicative of US EPA’s PFAS Action Plan.</p>	No

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17989.2(a) (3)	W01-03	3M	Mark T.	Anderson	CalRecycle should avoid a blanket prohibition on the use of all PFAS in food packaging materials. PFAS are an extremely broad grouping of chemicals. CalRecycle’s proposed regulations would prohibit PFAS (above an arbitrary threshold of 100 ppm) in plastic or fiber food packaging products that qualify as recyclable or compostable, irrespective of the specific PFAS compound used or the design/construction of the item. Because the characteristics and fates of a PFAS compound are dependent on a number of factors, CalRecycle should not adopt a one-size-fits-all approach for PFAS. Without clearly identifying the specific PFAS substances or specifying with any detail the types of food packaging, such prohibition would be overly broad. It may also result in unduly restricting the types of sustainable packaging that can be used in state food service contracts without a demonstrated public health or environmental benefit. 3M urges CalRecycle to carefully consider all of the factors that may contribute to any specific concerns CalRecycle has identified with respect to certain PFAS compounds, and to base its sustainable packaging definitions on sound science and reliable data.	<p>PRC subsection 42370.2(g) grants CalRecycle the authority to consider wildlife, public health and litter impacts. The Legislature specifically directed CalRecycle to consider “potential impacts,” not only “demonstrated public health or environmental benefit.”</p> <p>The class of PFASs are of potential concern to public health and wildlife due to their associated hazard traits. PFASs have highly stable carbon-fluorine bonds that make them and their degradation byproducts highly persistent in the environment. While some PFASs have been issued food contact notifications (FCN) from the USFDA, there may be some PFASs that degrade into other chemicals whose environmental fate, exposure, and toxicology may not have been considered in the FCN approval process. Therefore, CalRecycle is proposing to include the class of PFASs rather than specific PFASs to ensure protection of public health and wildlife, and to avoid regrettable substitutions if manufacturers change their formulations in the future.</p> <p>The justification for the 100 ppm threshold for total fluorine is provided in page 18 of the ISOR. The threshold is not based on risk assessment, but rather aligns with local ordinances seeking to limit PFASs in food packaging and other existing thresholds for compostable items.</p> <p>See response to PH01-06 regarding the scientific basis for addressing PFASs.</p>	No
17989.2(a) (3)	W02-01	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	The proposed rule would effectively prohibit all per- and polyfluoroalkyl substances (PFAS) in any food service packing materials.	To the extent this comment asserts that CalRecycle should not restrict items on the List to those that do not contain PFASs, see response to PH01-06 regarding the scientific basis for addressing PFASs and W01-03 regarding the class of PFASs.	No
17989.2(a) (3)	W02-02	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	ATCS supports a comprehensive approach to addressing PFAS that differentiates between substances and helps to ensure protection of human health and the environment. This includes appropriate, science-based policies and regulations.	See response to PH01-06 regarding the scientific basis for addressing PFASs and W01-03 regarding the class of PFASs.	No

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17989.2(a) (3)	W02-03	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	By proposing “public health and litter” criteria in Section 17989.2, CalRecycle oversteps the direction given by S.B. 1335. S.B. 1335 only permits the Department to develop three sets of criteria in its regulations: “reusable,” “recyclable” and “compostable.” The public health and litter criteria exceed CalRecycle’s authority and should be removed.	The commenter incorrectly reads the statute as prohibiting CalRecycle from establishing criteria to implement PRC section 42370.2(g).  See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.	No
17989.2(a) (3)	W02-04	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	ATCS believes the public health and litter criteria are not based on sound science and are therefore unfeasible.	See response to PH01-06 regarding the scientific basis for addressing PFASs. See response to W02-10 regarding total fluorine test methods.	No
17989.2(a) (3)	W02-05	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	The proposed rulemaking defines PFAS as a chemical that contains at least one fully fluorinated carbon atom. This overly broad definition of PFAS is inconsistent with a more specific and widely accepted definition that international regulators, the academic community, and industry have adopted. PFAS are a diverse family that includes a broad range of substances with different physical, chemical, and toxicological properties and uses containing fluorine and carbon. The vast majority of PFAS chemicals are neither used nor suitable for use in food service packaging items. The two sub-categories of PFAS that have been used in certain U.S. FDA regulated food contact applications include long chain (C8) and short chain (C6) chemicals.	See response to W03-02 regarding the definition of “Per- and polyfluoroalkyl substances” (PFASs) and W01-03 regarding the class of PFASs.	No
17989.2(a) (3)	W02-06	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	The food industry depends on “C6” chemistry to provide properties valued by customers. This functionality is especially useful for paper and paperboard packaging used with high-oil content and high-grease content foods. This treatment prevents oil and grease from leaking through food packages; increases the shelf life of some foods; and reduces the amount of plastic packaging required. In heated food applications, the treatment prevents the migration of hot oil through the package.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
17989.2(a) (3)	W02-07	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	Before a food contact substance can be sold or distributed in commerce it must be reviewed by FDA. FDA provides authorization for a food contact substance if it concludes that there is sufficient data to demonstrate the substance is safe for its intended use in packaging. Based on the substantial data, FDA determined PFAS currently used in food contact applications are safe for their intended use.	See response to W01-01 regarding USFDA regulation of PFASs and concerns over potential impacts.  See response to W10-07 regarding regulatory duplication.	No



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17989.2(a) (3)	W02-08	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	The C6 fluorochemicals currently used in food service packaging have been well studied and meet regulatory requirements. A large body of scientific evidence indicates that the primary degradation products associated with “C6” fluorinated polymers do not present significant adverse health or safety impacts. “C6” fluorinated polymers – the primary PFAS chemistries in food service packaging – do not present significant toxicity concerns.	See response to W01-03 regarding the class of PFASs.	No
17989.2(a) (3)	W02-09	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	California should defer to FDA's process - using science to determine whether PFAS in a food contact application are safe for their intended use.	See response to PH01-06 regarding the scientific basis for addressing PFASs.  See response to W01-01 regarding USFDA regulation of PFASs and concerns over potential impacts.	No
17989.2(a) (3)	W02-10	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	The proposed rule lacks a means to measure and monitor for PFAS chemicals. The proposed rulemaking would specifically prohibit recyclable or compostable food service packaging items made from plastic or fiber to contain PFASs, as measured by total fluorine at concentrations above 100 parts per million. Total Fluorine would provide a highly inaccurate estimate of PFAS in food packing. Testing for fluorine has commonly been used to conclude PFAS were used/present, but studies demonstrate that there is no consistency between fluorine levels and PFAS. These studies using detected fluorine levels when testing for PFAS do not indicate whether the PFAS are “long chain” or “short chain.”	CalRecycle disagrees with the comment that the proposed regulation lacks a means to measure and monitor the presence of PFASs. The total fluorine measurements screen for fluorine, which is a consistent chemical structure among PFASs, in food service packaging. Additionally, chemical-specific chromatographic-based methods have not yet been developed to identify the class of PFASs. Testing for total fluorine is a proxy for measuring the class of PFASs and their breakdown products. See response to W04-32 regarding the external scientific peer review of the scientific evidence and technical resources relied upon for the conclusions about PFASs.	No
17989.2(a) (3)	W02-11	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	All PFAS chemicals are not the same and should not be prohibited to an arbitrarily designated limit of 100 ppm without peer-reviewed, validated, or reliably reproducible testing methods for Total Fluorine in food packaging to demonstrate the justification of appropriateness for the proposed limit. ATCS recommends limiting the scope of restricted PFAS in food service packing items to only restrict PFOA and PFOS.	See response to W01-03 regarding the class of PFASs.	No
17989.2(a) (3)	W02-12	Alliance for Telomer Chemistry Stewardship (ATCS)	Erin	Dickison	PFOA and PFOS were added to Prop 65. ATCS is currently working with OEHHA to develop a safe use determination for PFOA in food packaging. OEHHA is also developing a Maximum Allowable Dose Level (MADL) for PFOA and PFOS. We recommend using that MADL for the allowable limits for PFOS and PFOA and food service packaging items.	CalRecycle disagrees with the commenter’s suggestion to use a Maximum Allowable Dose Level (MADL) for PFASs. OEHHA has not yet adopted a MADL for PFOS or PFOA and a MADL would be a chemical-specific level relevant to the Proposition 65 implementation. Further, such MADL(s) would not apply broadly to the class of PFASs, which is the scope of chemicals identified in these proposed regulations.	No

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17989.2(a) (3)	W03-02	American Chemistry Council (ACC)	Jay	West	We focus on the lack of clarity in defining PFAS in food packaging as a chemical that contains at least one fully fluorinated carbon atom. This overly broad definition of PFAS is inconsistent with a more specific and widely accepted definition that international regulators, the academic community and industry have adopted. The Organisation for Economic Cooperation and Development (OECD) defines PFAS as chemicals that contain one or more perfluoroalkyl moieties. OECD further divides PFAS into two groups, non-polymers and polymers. This clear distinction would be particularly relevant for this rulemaking because the PFAS of interest to the public and regulators are nonpolymer long-chain substances like PFOA and PFOS.	CalRecycle disagrees that the proposed definition is unclear. A fully fluorinated carbon atom is a carbon atom that is bonded to only fluorine and other carbon atoms. The definition in the proposed regulation was selected because it aligns with the definition of PFAS used in DTSC's Product-Chemical Profile for Perfluoroalkyl and Polyfluoroalkyl Substances (PFASs) in Carpets and Rugs (2018).  See response to W01-03 regarding the class of PFASs.	No
17989.2(a) (3)	W03-03	American Chemistry Council (ACC)	Jay	West	The proposed rule also lacks a means to measure and monitor for PFAS chemicals of concern and attempts to limit all PFAS by limiting the amount of total fluorine to 100 ppm or less. Total Fluorine would provide a highly inaccurate estimate of PFAS in food packaging because there are no peer-reviewed, validated or reliably reproducible testing methods for Total Fluorine in food packaging. This inability to certify an analytical method for testing total fluorine is identified in the supporting study from the CalRecycle Initial Statement of Reasons document.	See response to W02-10 regarding total fluorine test methods.	No
17989.2(a) (3)	W03-04	American Chemistry Council (ACC)	Jay	West	Total Fluorine would provide a highly inaccurate estimate of PFAS in food packaging because any Total Fluorine measurement would inappropriately include inorganic fluorine compounds and polymers of low concern in the concentration count. The supporting study from the CalRecycle Initial Statement of Reasons document also identified this as an issue when their analytical method found more fluorine than would be present if measuring for only PFAS.	CalRecycle disagrees with the concern that total fluorine would provide an inaccurate estimate of PFASs in food service packaging. Chemical-specific chromatographic-based methods have not yet been developed to quantify the amount of the entire class of PFASs that are contained in a food service packaging item. Testing for total fluorine is a proxy for measuring the class of PFASs and all their breakdown products.  While inorganic fluorine may also be present in a food service packaging item, CalRecycle's literature review found that products "likely containing fluorinated compounds" had higher levels of detected total fluorine than those with a "low fluorine designation." Thus, even if inorganic fluorine is present in a food service packaging item, total fluorine will likely occur below the 100 ppm limit. See response to W04-32 regarding the external scientific peer review of the scientific evidence and technical resources relied upon for the conclusions about PFASs.	No

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17989.2(a) (3)	W03-05	American Chemistry Council (ACC)	Jay	West	Fluoropolymers have well-established safety profiles and do not present a significant concern for human health or the environment. They are characterized by their long, carbon-only backbone with fluorine directly attached to the carbon atoms. Fluoropolymers are not considered long-or short-chain PFAS. Fluoropolymers meet the accepted OECD criteria to be considered “polymers of low concern” meaning they do not present a significant concern for to human health or the environment. The criteria for “polymers of low concern” have been developed by governmental and intergovernmental regulators to protect human health and the environment. Large, stable, inert polymeric molecules are too large to cross biological membranes and therefore do not present significant concerns for human health or the environment. Fluoropolymers are not water soluble and as a result are not found in water or drinking water. They cannot transform into PFOA or PFOS or other long-chain PFAS in the environment. Fluoropolymers have undergone significant regulatory evaluation, including substantial testing requirements and have been reviewed under various government regulatory programs.	See response to W01-03 regarding the class of PFASs.	No

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17989.2(a) (3)	W08-13	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>If the goal is for packaging to not contain PFAS, a test of 100ppm total fluorine alone is insufficient. BPI checks safety data sheets for all ingredients used in a product, and requires a signed statement that fluorinated chemicals are not intentionally used in the manufacturing process. We suggest you require a certification that verifies PFASs are not intentionally added.</p> <p>This comment suggests the following revision to the proposed regulation: A food service packaging item made from plastic or fiber and that is recyclable or compostable shall not contain PFASs, as measured by total fluorine at concentrations above 100 parts per million, <u>a signed statement by the manufacturer that there were “no intentionally added fluorinated chemicals”, and an independent review of safety data sheets for all ingredients, by a third-party certifier.</u></p>	<p>The department determined that the 100 ppm total fluorine threshold provides adequate and accurate results without causing an undue burden on food service packaging manufacturers.</p> <p>CalRecycle disagrees with the commenter’s recommendation that a manufacturer should provide a statement indicating that there are no intentionally added fluorinated chemicals. Requiring such a statement is unnecessary because it would not have any material effect. It would be infeasible to verify the manufacturers’ subjective intent, and regardless of whether fluorinated chemicals are added intentionally, the 100 ppm fluorine concentration threshold accomplishes CalRecycle’s aim of disqualifying items from being included on the List.</p> <p>The department also disagrees with the commenter’s suggestion to require safety data sheets (SDS) in addition to third-party certified test results verifying that the food service packaging item does not contain more than 100 ppm total fluorine. SDS review is an unnecessary criterion that would impose administrative costs to the food service facilities for compiling the application documents. SDS include information, such as chemical properties, protective measures for chemical handling, physical hazards, etc., that is specific to the chemical rather than to the food service packaging item. Such information would not provide additional information to the department necessary for it to demonstrate compliance with the public health and litter criteria.</p>	No
17989.2(a) (3)	W15-17	Clean Seas Lobbying Coalition	Genevieve	Abedon	Though 100ppm total fluorine is the Biodegradable Products Institute (BPI) standard for limiting PFAS in compostable items, we suggest adding “In addition, compostable materials will be Biodegradable Products Institute (BPI) certified or equivalent” here as well.	See response to PH06-22 regarding BPI certification of the total fluorine test.	No
17989.2(a) (3)	W16-17	Compost Manufacturing Alliance (CMA)	Janet	Thoman	The 100 ppm limit should exclude fluorine from inorganics and non-PFAS fluorine-containing organics.	See response to W02-10 regarding total fluorine test methods.	No

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17989.2(a) (3)	W16-18	Compost Manufacturing Alliance (CMA)	Janet	Thoman	The PFAS definition is extremely broad, more so than the broadest definitions for PFAS. There are multiple accepted definitions with the public definition seeming to expand the included group of chemicals constantly. What does 'fully fluorinated carbon atom mean'? Does that mean only carbon tetrafluoride is a PFAS? Does that mean a carbon connected to three other atoms such as oxygen, nitrogen and carbon with the last bond to fluorine in the group? If so, then many prescription drugs would meet the definition.	See responses to W03-02 regarding the definition of "Per- and polyfluoroalkyl substances" (PFASs) and W01-03 regarding the class of PFASs.	No
17989.2(a) (3)	W18-03	Foodservice Packaging Institute (FPI)	Brian	Sernulka	Senate Bill 1335 empowered CalRecycle to develop rulemaking around food service packaging in state facilities, and we believe CalRecycle has exceeded its regulatory authority by including a ban related to per- and polyfluorinated chemicals. These concerns should be addressed by the DTSC. It is not included in the purview of this legislation.	See response to PH01-05 regarding CalRecycle's authority to consider public health and litter impacts.  The proposed regulation does not ban the use of PFASs in food service packaging, but rather establishes a threshold for fluorine content in recyclable or compostable food service packaging items made of plastic or fiber to determine if PFASs are present. The statute bans the use of certain items at state food service facilities unless CalRecycle determines them to be reusable, recyclable, or compostable, and it also authorizes CalRecycle's to consider potential health impacts of food service packaging relevant to that determination.	No
17989.2(a) (3)	W29-01	San Francisco Department of the Environment (SF Environment)	Hilary	Near	We support the draft regulations' requirement for reusables, recyclables and compostables to not contain PFAS.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
17989.2(a) (4)	W04-35	American Chemistry Council (ACC) and Contributors	Tim	Shestek	This section contain terms and phrases that are vague or completely undefined. For example, phrases such as "another state or federal government organization," "potential to contribute to an adverse health impact," and "publications or reports" are all undefined.	CalRecycle disagrees that it is necessary to define these phrases because these words are commonly used and understood by the general public.  There is no rationale provided for limiting the types of organizations that may provide publications or reports to the department. CalRecycle will review information (e.g., publications and reports) to evaluate whether data is relevant, reliable, up-to-date, sourced, and applicable to food service packaging and potential impacts to litter, public health, and wildlife.	No



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17989.2(a) (4)	W04-36	American Chemistry Council (ACC) and Contributors	Tim	Shestek	This criterion lets any single government entity's finding drive the listing outcome no matter how outdated, flawed or inconsistent with scientific consensus it may be. These proposed provisions must be deleted in their entirety. At the very least, the criterion should be limited to the findings of select, credible, and up-to-date scientific authorities, specifically the FDA and the California Department of Public Health.	<p>CalRecycle disagrees with deleting this subsection, as it clarifies how the department will consider potential public health and wildlife impacts determined by federal and state entities and other organizations, as required in PRC subsection 42370.2(g). Contrary to the commenter's assertion, this subsection acknowledges that CalRecycle may consider determinations made by other authorities, but it does not provide that such determinations will "drive the listing outcome."</p> <p>See also response to W25-10.</p> <p>CalRecycle disagrees with the commenter's suggestion to restrict the findings to two specific agencies, the USFDA and CDPH. PRC subsection 42370.2(g) provides that the department may review findings from a variety of agencies, including the USFDA, the State Water Resources Control Board, OPC, DTSC, and the OEHHA. The department may also consider information from "organizations that regularly conduct litter cleanup activities." Therefore, there is no basis for restricting the department's evaluation to the two entities described in the comment.</p> <p>See response to W15-18 regarding CalRecycle's discretion to update the List if a food service packaging item is determined to have potential impacts to public health.</p>	No

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17989.2(a) (4)	W15-18	Clean Seas Lobbying Coalition	Genevieve	Abedon	We find the phrase “may not include or remove” confusing and suggest changing to “shall not include if it is not on the approved list, or shall remove if it is on the approved list.”	<p>Based on stakeholder feedback, CalRecycle agrees that clarification is needed with regard to the actions the department may take if a food service packaging item is determined to have potential public health impacts.</p> <p>This subsection has been revised as follows:  “(4) If a food service packaging item is identified by <del>another state agency, or another state or federal government agency or non-governmental organization</del> <u>as having to have the potential to contribute to an adverse public health impact (e.g., through publications or reports provided by the Office of Environmental Health Hazard Assessment’s Prop 65 program or the Department of Toxic Substances Control’s Safer Consumer Products Program)</u> the department may not include or remove the food service packaging item from the List <u>the department shall:</u>  <u>(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).</u>  <u>(B) Consult with the Office of Environmental Health Hazard Assessment and the Department of Toxic Substances Control,</u>  <u>(C) Follow the process described in subsection 17989.1(e) to determine if an item of material should be removed from the List.”</u></p>	Yes
17989.2(a) (4)	W25-10	Plastics Industry Association (PLASTICS)	Shannon	Crawford	This requirement is dangerously overbroad. The requirement does not specify which state or federal agencies could potentially set limitations that would be applicable. It provides examples of publications by OEHHA and the DTSC Safer Consumer Products Program, but the language would theoretically apply to all California state agencies and agencies of any other state or the federal government. Limitations not relevant to the use of substances in food packaging applications may be incorporated into the regulations inadvertently. Where relevant limitations are placed on substances used in food service packaging items by other California state agencies, agencies in other states, or agencies of the federal government, these limitations will automatically be adopted by manufacturers of food packaging materials; thus, this requirement is unnecessary. This requirement would only serve to impose irrelevant limitations on certain substances used in food service packaging items and we request that the requirement in Section 17989.2(a)(4) be removed.	<p>CalRecycle disagrees with the commenter’s suggestion that this subsection effectively incorporates limitations set by other agencies. Rather, this subsection clarifies how the department will consider potential public health and wildlife impacts identified by federal and state entities and other organizations, as authorized by PRC subsection 42370.2(g). It provides that CalRecycle will consider whether to reevaluate the food service packaging items to which such determinations apply, subject to the criteria and procedures otherwise set forth in proposed regulations, including the removal procedures set forth in subsection 17989.1(e).</p> <p>See response to PH01-05 regarding CalRecycle’s authority to consider public health impacts, and W15-18 regarding List updates due to public health and litter impacts.</p>	No

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17989.2(a) (4)	W26-13	Recology, Inc.	Christine	Wolfe	If a food service packaging item is identified by another state or federal organization to have the potential to contribute to an adverse health impact, the department must not include and must remove the food service packaging item from the List.	See response to W15-18 regarding List updates due to public health and litter impacts.  See response to W13-09 regarding the process for removing an item or material from the List.	Yes
17989.2(a) (4)	W28-08	Resource Recovery Coalition of California	Veronica	Pardo	We seek to better understand the provision in this section that prevents the department from removing potentially harmful food service packaging items from the List. It makes sense that the department would not add these items to the List, but what prevents the department from removing these items?	See response to W15-18 regarding List updates due to public health and litter impacts.  See response to W13-09 regarding the process for removing an item or material from the List.	Yes
17989.2(a) (4) and (5)	W25-14	Plastics Industry Association (PLASTICS)	Shannon	Crawford	Two parts of the “Public Health and Litter Impacts Criteria” mention that the Department may not “include or remove” items from the List based on an existing local ban or a public health impact identified by other governmental organizations. This ambiguity fails to provide a clear directive to consumers and manufactures about what can be marketed. We recommend that the Department remove sections 17989.2(a)(4) and (5), or at least remove “not include or” from these sections.	See response to W15-18 regarding List updates due to public health and litter impacts.  See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	PH02-05	Biodegradable Products Institute (BPI)	Bruce A.	Magnani	The proposed language is arbitrary by nature, and ambiguous in its construction. There is no rationale for the regulations to allow local bans, or limitations to set statewide policy. The language should be deleted in its entirety. This provision is delegating authority to local jurisdictions to determine what is included on the List. SB 1335 does not grant CalRecycle the authority to delegate this authority, nor is it appropriate state policy. Deleting this provision would not exempt covered facilities from complying with local ordinances and bans.	Contrary to the commenter’s assertion, this subsection acknowledges that CalRecycle may consider determinations made by local authorities, but it does not provide that such determinations will “set statewide policy” or delegate authority to do so. It provides that CalRecycle will consider whether to reevaluate food service packaging items, subject to the criteria and procedures otherwise set forth in proposed regulations, including the removal procedures set forth in subsection 17989.1(e), when there are local bans concerning the items.  See response to W08-15 regarding CalRecycle’s authority to consider litter.  See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	PH04-01	California Restaurant Association (CRA)	Katie	Hansen	We are concerned that Section 17989.3. (a)(5) encourages the continued politicization of food packaging types while at the same time disrupts the packaging market which drives up the cost and makes compliance difficult for food facilities. This section undermines the spirit of the compromise that was achieved in the passage of SB 1335.	This comment effectively alleges that the proposed regulation exceeds CalRecycle’s authority. CalRecycle disagrees. See response to W08-15 regarding CalRecycle’s authority to consider litter.	No

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17989.2(a) (5)	W04-37	American Chemistry Council (ACC) and Contributors	Tim	Shestek	This section is unreasonably vague, arbitrary in nature, and lacking in scientific foundation, This language should be deleted in its entirety.	CalRecycle disagrees with the assertion that this subsection is vague, arbitrary, and lacking in adequate scientific basis. This subsection does not provide that CalRecycle will adopt or endorse any scientific principle. See response PH02-05 regarding delegation of authority and the application of this subsection in relation to other provisions in the proposed regulation.  See also response to W08-15 regarding CalRecycle's authority to consider litter.  See also response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	W04-38	American Chemistry Council (ACC) and Contributors	Tim	Shestek	It is unclear how the Department will implement this provision due to shortcomings in the proposal. The type of "restrictions, at least in part due to ocean debris concerns" that would bar a packaging item from inclusion in the List are completely unspecified, and the vagueness limits our ability to provide informed and specific comments.	Contrary to the commenter's assertion, this subsection acknowledges that CalRecycle may consider determinations made by local authorities, but it does not provide that such determinations will "bar a packaging item from inclusion in the List." See response PH02-05 regarding delegation of authority and the application of this subsection in relation to other provisions in the proposed regulations.  See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	W04-39	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The intent of SB 1335 is to establish a foundation for determining the recyclability and compostability of food service packaging based on real world data and clear criteria that are enumerated in the statute. This provision is inconsistent with the language and intent of SB 1335 and exceeds CalRecycle's authority. Therefore, it should be deleted in full with the rest of Section 17989.2	See response to W08-15 regarding CalRecycle's authority to consider litter.	No

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17989.2(a) (5)	W08-14	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The proposed language is arbitrary by nature, and ambiguous in its construction. There is no rationale for the regulations to allow local bans, or limitations to set statewide policy. The language should be deleted in its entirety. This provision, by its inclusion, is delegating authority to local jurisdictions to determine what is included on the List.	<p>Based on stakeholder feedback, CalRecycle agrees that clarification is needed with regard to the department's discretion to evaluate and update the List if a food service packaging material is subject to a local ban.</p> <p>This subsection has been clarified as follows:            "(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 <del>may not include or remove food service packaging items made from that material from the List</del> shall:  <u>(A) Evaluate the ordinance(s) to determine if it is applicable to PRC subsection 42370.2(g).</u>  <u>(B) Follow the process described in subsection 17989.1(e) to determine if an item or material should be removed from the List.</u>"</p> <p>See response to W13-09 regarding the process for removing an item or material from the List.</p>	Yes
17989.2(a) (5)	W08-15	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	SB 1335 does not grant CalRecycle the authority to delegate this authority, nor is it appropriate state policy. Deleting this provision would not exempt covered facilities from complying with local ordinances and bans.	<p>CalRecycle disagrees with the commenter's suggestion to delete subsection 17989.2(a)(5). Contrary to the commenter's assertion, this subsection acknowledges that CalRecycle may consider determinations made by local authorities, but it does not provide that such determinations will "delegate . . . authority." See response PH02-05 regarding delegation of authority and the application of this subsection in relation to other provisions in the proposed regulation.</p> <p>Regarding the assertion that this subsection exceeds CalRecycle's authority, PRC subsection 42370.2(g) grants CalRecycle the authority to consider potential impacts on public health and wildlife, and from litter. This subsection clarifies statute by describing the process CalRecycle would follow to remove a food service packaging item from the List based on litter or marine concerns. Subsection 17989.2(a)(5) allows the department to review these ordinances (including the materials identified, and their finding on impacts from litter) on a case-by-case basis.</p>	No



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17989.2(a) (5)	W09-08	California Compost Coalition (CCC)	Neil S.R.	Edgar	<p>We recommend revising the language to provide clarity. Current language, “the department may not include or remove food service packaging items made from that material from the List” could be interpreted that the department may not include or may not remove packaging items, if it is subject to ban, fee or other restriction.</p> <p>This comment suggests the following revision to the proposed regulation:            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 <u>exclude</u> or remove food service packaging items made from that material from the List.</p>	See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	W11-02	California Restaurant Association (CRA)	Katie	Hansen	The focus of the regulations implementing SB 1335 should be on the composition of certain types of food packaging products and their ability to be recycled or composted, not what kinds of ordinances Cities and Counties choose to pass. Cities and Counties pass laws regarding food packaging based on what’s popular, not science. 17989.3(a)(5) encourages the continued politicization of food packaging types while at the same time disrupts the packaging market which drives up the cost and makes compliance difficult for food facilities. This section guts the very spirit of SB 1335, which sought to help provide a consistent, predictable, and science-based determination of compliant packaging materials.	This comment effectively alleges that the proposed regulation exceeds CalRecycle’s authority. See response to W08-15 regarding CalRecycle’s authority to consider litter.	No
17989.2(a) (5)	W15-19	Clean Seas Lobbying Coalition	Genevieve	Abedon	We find the phrase “may not include or remove” confusing and suggest changing to “shall not include if it is not on the approved list, or shall remove if it is on the approved list.”	See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	W16-19	Compost Manufacturing Alliance (CMA)	Janet	Thoman	We suggest adding wording in section (5) that clarifies what we believe is the intent of the section by this modification in the last line...the department may not include <u>and must</u> remove food service items made from that material from the List.	See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	W18-11	Foodservice Packaging Institute (FPI)	Brian	Sernulka	The proposed language around a county or city ban on a product further complicates a patchwork network of ordinances and regulations, which limits infrastructure development and recovery goals.	<p>See response to W08-14 regarding the process CalRecycle would follow to update the List.</p> <p>To the extent the assertion that the proposed regulation “further complicates” existing ordinances and regulations is an assertion it exceeds CalRecycle’s authority, see response to W08-15.</p>	Yes

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17989.2(a) (5)	W22-03	Ocean Protection Council (OPC)	Holly	Wyer	OPC staff supports the approach laid out in section 17989.2(a)(5) to ensure that the food service packaging materials included on the list do not create litter or ocean debris impacts.	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.	No
17989.2(a) (5)	W25-03	Plastics Industry Association (PLASTICS)	Shannon	Crawford	A benefit touted by CalRecycle in the Statement of Reasons is the reduction in litter this regulation will achieve. CalRecycle states “[i]ncreasing the use of recyclable food service packaging items will result in less food service packaging being littered and more being recycled. Materials that have robust recycling markets are more likely to be put into the waste management and recycling collection and handling system for proper management”. This seems more consistent with programs such as deposit laws. It is hard to understand the logic behind the assumption this regulation will reduce litter. CalRecycle does not offer evidence that “recyclable” items are littered less than non-recyclable ones. Product bans often result in the substitution of products that are littered, as seen in a study conducted by the city of San Francisco following its ban on EPS. According to the California Water Boards the “types of product bans enacted by an ordinance, such as take-out items, may involve a substitution of the banned item. Mere substitution would not result in reduced trash generation if such product substitution would be discarded in the same manner as the banned item.”	<p>This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.</p> <p>CalRecycle disagrees with the comment’s assertion that the proposed regulations are tantamount to “product bans” that may result in substitution products that are discarded in the same manner as the banned product. The proposed regulations do not ban certain products or force food service facilities to choose substitutes regardless of whether they can be reused, recycled, or composted. Rather, statute requires food service facilities to use food service packaging items that have been determined to meet the applicable regulatory criteria to be reused, recycled, or composted. This ensures that consumers have an opportunity and incentive to properly discard recyclable and compostable food service packaging items once used. CalRecycle reasonably expects that such increased opportunity and incentive will reduce the likelihood of food service packaging items being littered.</p>	No
17989.2(a) (5)	W25-04	Plastics Industry Association (PLASTICS)	Shannon	Crawford	Instead of banning materials to prevent litter, a better strategy would be enforcement of litter laws.	<p>This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.</p> <p>To the extent this comment asserts that the proposed regulation should directly concern “enforcement of litter laws,” no change is appropriate because such enforcement is not within CalRecycle’s authority under SB 1335.</p>	No
17989.2(a) (5)	W25-12	Plastics Industry Association (PLASTICS)	Shannon	Crawford	The proposed regulations would prevent food service material from being included on the list based on unverified claims made by cities or counties. A littered item does not mean it is a non-recyclable item as previously noted. Banning a material from the statewide list based on a litter problem in another part of the state does not guarantee that the alternative material would not be littered as well.	<p>See response to W25-03 regarding the necessity and rationale for this criterion.</p> <p>Contrary to the commenter’s assertion, this subsection acknowledges that CalRecycle may consider determinations made by local authorities, but it does not “ban[] a material from the statewide list.” See response PH02-05 regarding delegation of authority and the application of this subsection in relation to other provisions in the proposed regulation.</p>	Yes

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17989.2(a) (5)	W25-13	Plastics Industry Association (PLASTICS)	Shannon	Crawford	A conclusive and comprehensive litter study would need to be conducted to determine exactly what items are being littered and whether their recyclability plays any role in their improper disposal. This section should be removed.	To the extent this comment suggests that CalRecycle should conduct a litter study for the purpose of implementing SB 1335, the Legislature did not direct CalRecycle to do so or appropriate funding for such a study. This request is beyond the scope of this rulemaking.  See response to W08-15 regarding CalRecycle's authority to consider litter.	No
17989.2(a) (5)	W26-14	Recology, Inc.	Christine	Wolfe	The department should not be restricted from removing a food service packaging item made from a locally-banned material from the list, as suggested in Section 17989.3(a)(5).	See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes
17989.2(a) (5)	W29-12	San Francisco Department of the Environment (SF Environment)	Hillary	Near	It would be more practical to allow local jurisdictions and haulers to document their acceptance of compostable products generated by the state facility food provider. We are concerned that this standard would restrict state facilities within our jurisdiction from using compostable products that are widely accepted in our composting program. The compostable criteria as proposed creates burdens for compostable food ware that is not mirrored in recyclable food ware requirements.	See response to W15-31 regarding consideration of a regional or local approach.	No
17989.2(a) (5)	W31-05	Surfrider Foundation	Miho	Ligare	We are in support of section 17989.2 which takes litter and ocean debris concerns as criteria. When considering alternative products, regrettable substitutions must not be made that may have worse or the same impacts on our communities, human health, and the environment.	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.	No
17989.2(a) (5)	W25-11	Plastics Industry Association (PLASTICS)	Shannon	Crawford	Section 17989.2(a)(5) of the proposed regulations would prevent food service packaging items that are subject to a ban, fee for distribution, or other restrictions in city or county ordinances, in part because of concerns regarding litter or marine debris, from being included on the list. This requirement is overbroad and could lead to state food service facilities being unable to ensure the safe handling of food. For example, if single-use disposable cups, even those that are recyclable or compostable, are not permitted to be used in state food service facilities, only reusable cups would be permitted. This could lead to unsanitary conditions, wherein viruses are spread by the use of individuals' reusable cups on shared beverage dispensers. In the time of the COVID-19 pandemic, single-use products are necessary to reduce the spread of the disease. Preventing the use of recyclable or compostable single-use materials would prevent state food service facilities from ensuring that food is kept safe and would not be consistent with the overarching requirements of the regulation.	See response to W08-15 regarding CalRecycle's authority to consider litter.  See response to W08-14 regarding the process CalRecycle would follow to update the List.	Yes

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17989.2(a)(5)	W11-04	California Restaurant Association (CRA)	Katie	Hansen	17989.2(a)(5) does nothing to address litter control. Food service packaging bans and fees for distribution at the point of sale do nothing to address litter control.	See response to W25-03 regarding litter restrictions.	No
17989.2(a)(5)	W11-05	California Restaurant Association (CRA)	Katie	Hansen	The restaurant community shares the on-going concern over litter. The discriminatory approach of selecting and eliminating a type of food service product has proven an ineffective approach. Comprehensive efforts should be aimed at reducing ALL composition of litter, not individual products. This will allow an overall volume of material reaching the marine environment to be reduced. Bans may change the composition of litter, but they do not reduce the amount of litter as those who litter do not discriminate between materials. The CRA has a long-standing history of supporting and advocating for packaging mandates that require all food packaging materials to be recyclable or compostable, rather than discriminatorily picking winners and losers.	See response to W08-15 regarding CalRecycle's authority to consider litter and W25-03 regarding litter restrictions.	No
17989.2(a)(5)	W11-06	California Restaurant Association (CRA)	Katie	Hansen	17989.2(a)(5) should be removed from the Proposed Regulations.	CalRecycle disagrees that this subsection should be removed from the proposed regulation. This subsection is necessary to ensure that the department can reevaluate the status of a food service packaging item in light of local determinations that it is contributing to litter impacts.	No

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<b>§17989.3. Reusable Food Service Packaging Criteria.</b>							
17989.3	PH06-16	Clean Seas Lobbying Coalition	Genevieve	Abedon	In addition to saving what the departments estimates as \$300,000 in annual litter clean-up costs by reducing the number of non-reusables, non-recyclables, and non-compostables used at food service facilities, the transitions from disposables to reusables saves businesses money	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.	No
17989.3	W15-24	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (b) "The packaging is not conventionally disposed of," which in addition to a higher standard of at least 1,000 cycles, will ensure that we do not end up with regrettable substitutions such as the thicker reusable bags allowed under SB 270.	CalRecycle does not agree with the commenter's recommendation to add "conventionally disposed of" because that term is not clearly defined.  Related to the suggestion to require a higher number of wash cycles for reusable food service packaging items, CalRecycle agrees, but not with respect to requiring at least 1,000 cycles. See response to W15-20 regarding the number of wash cycles.	No
17989.3	W15-25	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding something in this section about encouraging reusable takeback programs so that those are captured in the regulations as well.	Expressly "encouraging reusable takeback programs" is beyond the scope and purpose of CalRecycle's rulemaking duties.	No



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17989.3	W15-26	Clean Seas Lobbying Coalition	Genevieve	Abedon	The department could consider a tracking and reporting requirement as opposed to a collection standard.	A rule mandating ongoing reporting requirements for the regulated entities would be inconsistent with statute. PRC subsection 42370.4(c)) places responsibility for ensuring compliance on food service facilities, and PRC Section 42370.5 requires food service facilities to provide supporting records to the department “upon request.” The statute does not contemplate food service facilities having to comply with burdensome ongoing reporting requirements.  See also response to PH06-21 regarding reporting and tracking, and W05-02 regarding verification of reuse.	No
17989.3	W22-02	Ocean Protection Council (OPC)	Holly	Wyer	CalRecycle could frame the reusability criteria around a qualitative criteria. The City of Berkeley passed a single-use foodware ordinance that included the following definition for reusable: All foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.	CalRecycle does not agree that qualitative criteria would be adequate to demonstrate that a food service packaging item is reusable. Such criteria would not establish well-defined standards or set clear expectations as to what will qualify as reusable. In contrast, Section 17989.3 establishes specific measurable and verifiable performance requirements that a food service packaging item must meet to demonstrate it is durable and reusable.  For example, subsection 17989.3(a)(1) states that cleaning and sanitizing processes must conform with the mechanical sanitization requirements outlined in Health and Safety Code Sections 114101 and 114099.7. These provisions define the surface temperature, cleaning solution compositions, and mechanical sanitization process that a food service packaging item must be able to withstand. In addition, the regulation clarifies the number of cycles the food service packaging item must be capable of being washed under these conditions. These criteria ensure food service packaging items are durable and will be reused for at least one year by food service facilities.	No
17989.3(a)	PH06-18	Clean Seas Lobbying Coalition	Genevieve	Abedon	Since most reusable products last upward of 200 uses and generally with steel, glass and ceramic over 1,000 uses, environmental benefits accrue rapidly with reusables.	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.	No
17989.3(a)	PH06-20	Clean Seas Lobbying Coalition	Genevieve	Abedon	We want to assure that the traditional dine-in reusables used in food service facilities such as ceramic, porcelain, glass and metal are not excluded from the list of approved items since many of these items likely don’t come with an express warranty or a third-party certification. We suggest that the department specifically list the inclusion of these materials in this section.	See response to W13-01 regarding automatic approval of reusable materials.	No



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17989.3(a)	PH06-21	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding something here about takeback programs for reusable food service packaging items so that those are captured here as well. Maybe along with some sort of tracking element.	<p>CalRecycle disagrees with the commenter’s suggestion to add a takeback program option for reusable items. The two options of either meeting the 780 wash cycle requirement or providing a one-year express, written warranty are sufficient for demonstrating that an item is reusable.</p> <p>See also response to W15-25 regarding encouraging takeback programs for reusable food service packaging items.</p> <p>CalRecycle does not agree with the suggestion to include a tracking element for food service facilities using reusable food service packaging items. See response to W05-02 regarding the verification of reuse.</p>	No
17989.3(a)	W04-60	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests the following revision to the proposed regulations: (a) A food service packaging item is “reusable” and shall be included on the List if the department determines it meets the requirements of Section 17989.2 and it either:	<p>CalRecycle disagrees with the commenter’s recommendation to exempt reusable food service packaging items from meeting the public health and litter criteria in Section 17989.2. These requirements ensure that reusable food service packaging items are held to the same standards as the recyclable and compostable criteria with regard to the department’s evaluation of potential adverse impacts of food service packaging to litter and public health and wildlife.</p>	No

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17989.3(a)	W05-02	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	There is no requirement to demonstrate that the packaging is actually reused by consumers for the minimum number of uses or the warranted period. This continues a pattern of flawed California policy which disadvantages recyclable products against products that are marketed as reusable without any substantiation that the alternative “reusable” products are actually reused or generate less waste.	<p>CalRecycle does not agree that the regulation needs to include a requirement for food service facilities to demonstrate that reusable food service packaging items are reused. Purchasing reusable items requires an upfront investment, and a food service facility has a financial incentive to collect, wash, and reuse its inventory of durable reusable food service packaging items. In any event, CalRecycle does not have authority under SB 1335 to require individual food service facilities to reuse food service packaging items or to report to CalRecycle the degree to which they do so. The suggested requirement is also unworkable because SB 1335 prohibits all food service facilities from purchasing food packaging items that are not already on the List, so the extent to which particular facilities reuse an item cannot be a condition for including the items on the List to begin with.</p> <p>To the extent that this comment suggests that CalRecycle consider environmental impacts of a food service packaging item, no change to this subsection is necessary because section 17989.2 establishes how CalRecycle will consider information concerning such impacts, which could relate to actual reuse rates and litter. Under Section 17989.2, CalRecycle will consider, for example, whether an item has been identified as having the potential to contribute to an adverse public health impact or has been restricted by a city or county due to litter or ocean debris concerns. See responses to comments W04-36, W15-18, and W08-14 regarding clarifying revisions to Section 17989.2.</p>	No

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17989.3(a)	W13-03	Californians Against Waste (CAW)	Nick	Lapis	The department should consider limiting “reusable” products to ones that are collected, washed, and reused by a vendor and those brought in by customers. Only products that are being reused should meet the criteria for reusable.	<p>CalRecycle declines to include the suggested requirement. Such a requirement is unnecessary because a food service facility has a financial incentive to collect, wash, and reuse its inventory of durable reusable food service packaging items. The regulation intentionally does not preclude a food service facility, such as a café or dining hall from operating washing equipment and managing its reusable items onsite. Reusable food service packaging items can be managed onsite, by a vendor, or brought back by a customer.</p> <p>Furthermore, CalRecycle does not have statutory authority to mandate a requirement for food service facilities to accept food service packaging items brought to the premises by a customer. AB 619 (Chiu, Chapter 93, Statutes of 2019) specifies that customers may provide or return their own clean, reusable containers to a food service facility to be filled if certain conditions are met. This law establishes the conditions for food facilities that meet the definition established in HSC subsection 113789(a) and does not conflict with the requirements set forth by SB 1335 or these regulations.</p>	No
17989.3(a)	W29-03	San Francisco Department of the Environment (SF Environment)	Hilary	Near	Along with increasing the expected number of uses of an item, we recommend augmenting the definition so that each facility that chooses reusable food packaging can verify an on or off-site reuse system in place to actually reuse that item.	See response to W05-02 regarding the verification of reuse.	No
17989.3(a)	W29-07	San Francisco Department of the Environment (SF Environment)	Hilary	Near	We can hope that the cost of more durable cups that claim reusability would incentivize the facilities to set up and use a reusable. However, without ensuring that the reusable products are reused, state facilities run the risk of investing in more expensive, recyclable food service packaging. To further ensure that products designed and accepted by the state are actually reused, we recommend requiring any regulated food service facility that chooses a reusable food service packaging to demonstrate a compliant reuse system and be verified annually per the authority granted by SB 1355 Section 42370.5.	See response to W05-02 regarding the verification of reuse.	No

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17989.3(a)(1)	PH05-04	Californians Against Waste (CAW)	Nick	Lapis	The criteria of withstanding 125 uses leaves an obvious loophole for materials that are considered regrettable substitutions, as evidenced by the thick plastic film bags that have replaced flimsy bags under SB 270. We recommend looking at more stringent definitions of 'reusable' that can withstand a higher number of uses in order to avoid packaging that uses more material but is treated by customers as disposable.	See response to W15-20 regarding the number of wash cycles.	Yes
17989.3(a)(1)	PH05-05	Californians Against Waste (CAW)	Nick	Lapis	The department might also consider limiting "reusable" products to ones that are collected and washed onsite or brought in by a customer.	See response to W13-03 regarding restricted types of reusable food service packaging.	No
17989.3(a)(1)	PH06-15	Clean Seas Lobbying Coalition	Genevieve	Abedon	Without a strong set of criteria, any product manufacturer could claim that their product can be reused, even if it is conventionally disposed of after a single-use, as evidence by the thicker "reusable" plastic bags that are permissible under SB 270.	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.	
17989.3(a)(1)	PH06-17	Clean Seas Lobbying Coalition	Genevieve	Abedon	125 cycles is too low. Plastic cups can be made thicker and some can withstand the proposed level of ware-washing 125 cycles. We urge a much higher standard of at least 1,000 cycles, as has been proposed in San Francisco and Washington state, so as to avoid the likelihood that manufacturers will simply use more material, and that customers will treat "reusable" items as disposable.	See response to W15-20 regarding the number of wash cycles.	Yes
17989.3(a)(1)	PH06-19	Clean Seas Lobbying Coalition	Genevieve	Abedon	Do third-party certification entities for reusables exist? If so, we suggest that the entity should be specifically named and/or approved by the department.	See response to W15-41 regarding third-party certification entities for reusable food service packaging items.	No
17989.3(a)(1)	PH12-01	Surfrider Foundation	Miho	Ligare	Surfrider suggests using the definition in San Francisco's local foodware bill - "designed and manufactured to maintain its shape and structure, and to be materially durable for repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse."	Related to the commenter's recommendation to institute a higher number of wash cycles for reusable food service packaging items, CalRecycle agrees, but not with respect to the 1,000 cycles suggested. See response to W15-20 regarding the number of wash cycles.  CalRecycle disagrees with the commenter's suggestion with regard to washing conditions because the California Retail Food Code, part of the California Health and Safety Code (HSC), provides more thorough guidelines for the mechanical sanitization of food service packaging items that are consistent with mechanical sanitation requirements on food service facilities. HSC Section 114099.7 specifies allowable sanitizing chemicals and their concentrations and contact times and describes how the equipment must be used.	No

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17989.3(a)(1)	W05-01	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The proposed text arbitrarily places a lower regulatory burden on reusable products. Unlike recyclable or compostable products, which must show that they are actually recycled or composted through collection systems, reusable products are merely required to show that they are marketed for at least 125 uses or warranted for durability of a one-year period. No analysis is required as to the life-cycle or other adverse impact of the competing product.	<p>The regulation does not address marketing of reusable food service packaging; rather, the reusable criteria specify the conditions for demonstrating that an item is durable.</p> <p>See response to W05-02 regarding verification of reuse and W14-07 regarding life cycle analyses.</p> <p>Regarding the differences in approach for reusable items compared to recyclable and compostable items, that difference is a reflection of the statute, which sets forth only two, relatively narrow minimum criteria for CalRecycle to consider for reusable packaging. In contrast, the statute sets forth numerous and complex minimum criteria that CalRecycle must consider, including factors related to waste collection and processing infrastructure and performance requirements, with respect to recyclable and compostable packaging.</p>	No
17989.3(a)(1)	W06-04	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	We recommend that the regulations reference the existing internationally recognized Sustainable Packaging Reuse standard defined by ISO 18603:2013 Packaging and the Environment – Reuse. This standard requires systems be in place and “packaging” designed to enable collection, sanitation, refill, and reuse for the purpose it was designed.	CalRecycle disagrees with the recommendation to add ISO 18603:2013 to the regulation because it applies broadly to a wide array of packaging types and is not specific or applicable to durability of food service packaging items that are subject to SB 1335 and these regulations.	No
17989.3(a)(1)	W06-05	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	“Number of cycles,” arbitrarily assigned in the proposed regulations at 125 to meet the reusable definition, is not a requirement in Section 42370.2 (c) of SB 1335 that requires CalRecycle to consider if the packaging is durable and washable for multiple uses.	<p>The wash cycle performance requirement in the proposed regulation includes specified conditions for cleaning and sanitizing processes that will determine if a food service packaging item is “sufficiently durable and washable to allow for multiple use,” as specified in PRC section 42370.2(c)(2).</p> <p>The proposed number of 125 wash cycles was based on a European standard for reusable food service ware, as detailed in the Initial Statement of Reasons. However, CalRecycle agrees that a higher number of wash cycles is necessary to demonstrate durability and revised the regulation to include a requirement of 780 wash cycles.</p> <p>See response to W15-20 regarding the number of wash cycles.</p>	Yes



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17989.3(a)(1)	W06-06	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	AMERIPEN's research and real-world experience demonstrates that lifecycle impacts will depend on more variables than reuse cycles and number of cycles will be encouraged by good business practice.	See response to W14-07 regarding life cycle analyses.  To the extent this comment asserts that the standard set in Section 17989.3(a)(1) is insufficient to establish reusability, such an assertion is incorrect because that standard reflects the minimum considerations required under PRC Section 42370.2(c): whether an item is "conventionally disposed of after a single use" and whether it is "sufficiently durable and washable to allow for multiple uses."	No
17989.3(a)(1)	W13-02	Californians Against Waste (CAW)	Nick	Lapis	The criteria of withstanding 125 uses leaves an obvious loophole for materials that are considered regrettable substitutions, as evidenced by the thick plastic film bags that have replaced flimsy bags under SB 270. It is likely that many forms of disposable thermoformed plastic could meet this standard even though they are not reusable. We recommend looking at more stringent definitions of 'reusable' that can withstand a higher number of uses in order to avoid packaging that uses more material but is treated by customers as disposable.	See response to W15-20 regarding the number of wash cycles.	Yes

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17989.3(a)(1)	W15-20	Clean Seas Lobbying Coalition	Genevieve	Abedon	125 cycles is too low. Plastic cups can be made thicker and some can withstand the proposed level of ware-washing 125 cycles. Thus, we urge a much higher standard of at least 1,000 cycles, as has been proposed in San Francisco and Washington state, so as to avoid the likelihood that manufacturers will simply use more material, and that customers will treat “reusable” items as disposable. Since most reusable products last upward of 200 uses and generally with steel, glass and ceramic over 1,000 uses, environmental benefits accrue rapidly with reusables.	<p>CalRecycle agrees with the commenter’s suggestion to institute a higher number of wash cycles for reusable food service packaging items, in order to ensure that only durable materials will meet this criterion. However, CalRecycle does not agree with the 1,000 cycles suggested.</p> <p>Subsection 17989.3(a)(1) has been revised as follows:</p> <p>"(1) Maintains its shape, structure, and function after <del>780</del> 425 cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section 114101 and 114099.7 respectively, as demonstrated by a third-party certification entity."</p> <p>CalRecycle was unable to verify any data sources or performance-based metrics that were used as a basis for requiring 1,000 cycles. Therefore, staff calculated that a food service packaging item used and washed 3 times per day, for 260 business days, would total 780 cycles (equating to one year of reusing the food service packaging item).</p> <p>The number of cycles was calculated for a one-year time period to align with the alternative option in the reusable criteria to demonstrate that a food service packaging item is durable enough to withstand one year of use, similar to being covered by a one-year warranty. A one-year warranty is a common term issued for reusable food service packaging items.</p>	Yes
17989.3(a)(1)	W15-21	Clean Seas Lobbying Coalition	Genevieve	Abedon	Do third-party certification entities for reusables exist? If so, we suggest that the entity should be specifically named and/or approved by the department.	See response to W15-41 regarding third-party certification entities for reusable food service packaging items.	No

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17989.3(a)(1)	W22-01	Ocean Protection Council (OPC)	Holly	Wyer	OPC staff recognizes that “reusable bags,” as defined by SB 270, must be reused at least 125 times, however OPC staff would encourage CalRecycle to consider raising the minimum number of cleaning cycles and reuse for food service packaging to at least 260. It is likely that a reusable food packaging item would be washed every day it is used. There are roughly 260 weekdays in a year, and food service facilities in state buildings would likely be using and washing their reusable food packaging each day that they are open. A stricter requirement for reuse would more accurately reflect the amount of washing and reusing required of food service packaging by the regulated community. A requirement of maintaining shape, structure, and function after 260 cycles in a cleaning and sanitizing process would also be more in line with section 17989.3(a)(2), which provides the alternative requirement of a 1-year manufacturer’s warranty for the food service packaging.	See response to W15-20 regarding the number of wash cycles.  CalRecycle decided on 780 wash cycles based on three uses per day for the 260 business days suggested by OPC.	Yes
17989.3(a)(1)	W29-02	San Francisco Department of the Environment (SF Environment)	Hillary	Near	The proposed 125 uses level is too low. The minimum should be 1,000 uses. Many plastic food service packaging items commonly used as single-use or nonreusable could last hundreds of washes. Without a proper reuse system in place, these items will not fulfill their intended reuse regardless of manufacturer claims. In practice, customers may perceive plastic cups as not reusable without the accompanying reuse system to capture them. A reusable plastic foodware company sells foodware that they claim can go through the dishwasher “hundreds, if not thousands of times.” Returning to the original text of SB 1335, the number of uses needs to be high enough to restrict packaging that is “conventionally disposed of after a single use.”	See response to W15-20 regarding the number of wash cycles.	Yes
17989.3(a)(1)	W29-05	San Francisco Department of the Environment (SF Environment)	Hilary	Near	To ensure that the products are designed for reuse, we recommend an accepted reusable product meet the standard of being able to be used, washed and sanitized at least 1,000 times as well as requiring the manufacturer to warranty the performance during a year of frequent reuse.	CalRecycle does not agree that both criteria should be required. The regulation provides flexibility for applicants to demonstrate that a reusable food service packaging item is durable and designed for reuse. Third-party certification of test results will verify whether a food service packaging item withstands the required number of wash cycles (which has been revised to equate to one year), while a warranty demonstrates that the manufacturer will take financial responsibility and replace a product that fails to perform its intended purpose within one year.  See response to W15-20 regarding the number of wash cycles.	No

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17989.3(a)(1)	W29-06	San Francisco Department of the Environment (SF Environment)	Hilary	Near	Expand the requirement to read “maintains its shape, structure, and function after 1,000 cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section 114101 and 114099.7, respectively, as demonstrated by a third-party certification entity and used again on-site or as part of a reuse system to collect, clean and reuse as provided by the facility or a third party provider.”	Related to this comment, see changes made to the regulations in response to W15-20 regarding the number of wash cycles.  See response to W05-02 regarding the verification of reuse.	No
17989.3(a)(1)	W31-06	Surfrider Foundation	Miho	Ligare	Without a strong set of criteria, any product manufacturer could claim that their product can be reused, even if it is conventionally disposed of after a single-use, as evidence by the thicker “reusable” plastic bags that are permissible under SB 270. We are in support of using third party certification as an option but not a requirement, and an express warranty from the manufacturer should suffice unless and until a certification is developed. The use of certification programs should be implemented in a way that is not cost-prohibitive to small foodware manufacturers.	Pursuant to the proposed reusable criteria, a food service packaging manufacturer may submit either a one-year express warranty or test results from a third-party certification entity to demonstrate compliance with subsection 17989.3(a)(1). The third-party certification is not required with regard to the submittal of a manufacturer’s warranty. To the extent that this comment suggests that the proposed regulation should incorporate a “certification program,” CalRecycle declines to do so. As the commenter points out, no such program exists.	No
17989.3(a)(1)	W31-08	Surfrider Foundation	Miho	Ligare	The reusable criteria should promote higher quality reusable food service packaging than currently stated. Surfrider suggests using the definition in San Francisco’s bill, “designed and manufactured to maintain its shape and structure, and to be materially durable for repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse.”	See response to W15-20 regarding the number of wash cycles.	Yes
17989.3(a)(1)	W31-09	Surfrider Foundation	Miho	Ligare	We also recommend the addition of take-back programs under this criteria.	See response to W15-25 regarding encouraging takeback programs for reusable food service packaging items.	No
17989.3(a)(1)	W32-01	Upstream Solutions	Miriam	Gordon	Life cycle evaluations make a strong case for reusables being a better choice. The break-even point will vary among product types. Since most reusable products last upward of 200 uses and generally over 1,000 uses, environmental benefits accrue rapidly with reusables.	See response to W14-07 regarding life cycle analyses.	No

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17989.3(a)(1)	W32-02	Upstream Solutions	Miriam	Gordon	We find no precedent for a numeric standard defining “reusable” in any legislation. The Berkeley Single-Use Foodware and Litter Reduction Ordinance specified that reusable foodware is “... manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.” Similar definitions appear in other local ordinances in California that prohibit disposables and/or impose a mandatory customer charge for single-use.	The statute does not require CalRecycle to consider whether there is precedent in other legislation for use of a numeric standard to define “reusable.” PRC subsection 42370.2(c)(2) specifically requires CalRecycle to consider whether items “allow for multiple uses,” and a numeric standard for the number of wash cycles was proposed to implement that criterion. Moreover, the regulation includes washing and sanitizing requirements. See response to W15-20 regarding number of wash cycles.  Additionally, PRC Section 42370.7 does not preempt local jurisdictions from adopting ordinances that are more restrictive than SB 1335.	No
17989.3(a)(1)	W32-03	Upstream Solutions	Miriam	Gordon	ISO Standards exist for reusable products and packaging. ISO 18603:2013 and 14021:2016 are the relevant standards. We are unable to evaluate these standards owing to their inaccessibility.	See response to W06-04 regarding ISO 18603:2013.  CalRecycle disagrees with the commenter’s suggestion to require reusable food service packaging items to meet the ISO 14021:2016 standard because it is limited to self-declared environmental labels on products while the proposed regulations are performance-based.  See response to W09-01 regarding labeling requirements.	No
17989.3(a)(1)	W32-04	Upstream Solutions	Miriam	Gordon	Without existing standards for food packaging, we consider the experience resulting from California’s plastic bag laws. Some consumers treat these products as single-use. Fabric bags are not typically littered. This indicates that a more important factor than number of wash cycles is consumer perception. A good test for reusability would be one that evaluates consumer perception and whether or not consumers will treat a product as reusable. Plastic and paper packaging items have been considered disposable. Whereas, metal, glass, and ceramics have been treated as reusable by consumers. Plastic can be made thicker and withstand the proposed level of ware-washing- 125 cycles. If treated as disposable, the environmental impacts will be greater as these are products that are more materially intensive than the disposables they replace.  Therefore, we recommend conducting a study of consumer perception of various forms of food packaging and whether or not they are reusable. We recommend testing various types and thicknesses of plastic, in light of the problems cited above with reusable plastic bags.	This comment does not suggest specific changes to the proposed regulations or raise issues related to the rulemaking process.  To the extent this comment suggests that CalRecycle should conduct a study of consumer perception for the purpose of implementing SB 1335, the Legislature did not direct CalRecycle to do so or appropriate funding for such a study. This request is beyond the scope of this rulemaking.	No



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17989.3(a)(1)	W32-05	Upstream Solutions	Miriam	Gordon	We recommend a higher standard of 1,000 uses in order to preclude plastic due to the likelihood that consumers will treat plastic products as disposable. Ceramic, porcelain, glass, stainless steel, and other metals will easily meet the 1,000 use design criteria, but plastic will not. This is the criteria currently proposed in San Francisco and Washington.	<p>CalRecycle has revised the number of wash cycles required for reusable food service packaging items in order to ensure that only durable materials will meet this criterion. See response to W15-20 regarding the number of wash cycles.</p> <p>CalRecycle disagrees with the commenter's suggestion to institute a standard that precludes plastic. This reusability criterion is based on the durability of a material to withstand the required number of wash cycles, regardless of material type.</p>	Yes
17989.3(a)(2)	PH05-06	Californians Against Waste (CAW)	Nick	Lapis	We understand and support the requirements for third-party certification or express warranty guarantee for reusable packaging. However, we are concerned that the proposed criteria for reusable food service packaging unintentionally overlooks the fact that most typical durable foodware that you would find at most restaurants or cafeterias meet neither of the requirements. It is unlikely that the myriad of manufacturers that sell to restaurant supply businesses will go through a third party certification process or take the other steps outlined in this section. We recommend the language be amended to allow for ceramic, glass and metal products to be automatically approved.	See response to W13-01 regarding automatic approval of reusable materials.	No
17989.3(a)(2)	W13-01	Californians Against Waste (CAW)	Nick	Lapis	We understand and support the requirements for third-party certification or express warranty guarantee for reusable packaging. However, we are concerned that the proposed criteria for reusable food service packaging unintentionally overlooks the fact that most typical durable foodware that you would find at most restaurants or cafeterias meet neither of the requirements. It is unlikely that the myriad of manufacturers that sell to restaurant supply businesses will go through a third party certification process or take the other steps outlined in this section. We recommend the language be amended to allow for ceramic, porcelain, glass and metal products to be automatically considered reusable, with the exception of foil products.	<p>CalRecycle staff did not find evidence that validates a "typical" reusable foodservice packaging item (made with ceramic, porcelain, glass, or metal materials) will always meet the durability requirements in subsection 17989.3(a)(1), regardless of product design.</p> <p>Staff reviewed standard test methods applicable to material performance and claims made by reusable food service packaging manufacturers and vendors in catalogs and websites. This research revealed that universal performance standards are not used for ceramic, porcelain, glass and metal reusable food service packaging. Instead, manufacturers establish unique durability standards for their products and conduct internal or customized tests.</p> <p>Further, staff identified multiple food service packaging products that are sold with one-year warranties. Based on these findings, the department determined revisions were not warranted.</p>	No

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17989.3(a)(2)	W15-22	Clean Seas Lobbying Coalition	Genevieve	Abedon	We would like to better understand where one year was chosen. We feel a better minimum would be at least 2 years.	CalRecycle staff contacted vendors and reviewed food service packaging items offered for sale in catalogs and on the Internet and found that a one-year warranty is a common warranty duration for reusable food service packaging items. In addition, the one-year warranty is aligned with the alternative option in subsection 17989.3(a)(1), which is based on the number of wash cycles intended to approximate one year of reuse. Therefore, a one-year warranty criterion is both practical and sufficient to serve the statute's purpose.  See response to W15-20 regarding the number of wash cycles.	No
17989.3(a)(2)	W15-23	Clean Seas Lobbying Coalition	Genevieve	Abedon	We want to assure that the traditional dine-in reusables used in food service facilities such as ceramic, porcelain, glass and metal are not excluded from the list of approved items since many of these items likely don't come with an express warranty or a third-party certification. We suggest that the department specifically list the inclusion of these materials in this section.	See response to W13-01 regarding automatic approval of reusable materials.	No
17989.3(a)(2)	W29-04	San Francisco Department of the Environment (SF Environment)	Hilary	Near	We appreciate the addition of an annual warranty for reusable food packaging.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No

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<b>§17989.4. Recyclable Food Service Packaging Criteria.</b>							
17989.4	PH10-01	RePlanet Packaging	Ralph	Chandler	<p>The Recyclable Food Service Packaging Criteria does not include a standard for post-consumer minimum content as a qualifying criteria. It is widely recognized that simply collecting, sorting, and processing material for recycling falls short if there are no markets for the material once it is processed. We recommend a PCR minimum content standard of 50%. This standard could be revisited periodically and adjusted upwards to further spur ever greater levels of recycling and market development. If it is CalRecycle’s goal to establish a sustainable program for Food Service Packaging, it must not overlook the importance of allowing packages that achieve a significant level of PCR content in the production of new food packaging to qualify as an acceptable package under the proposed program.</p> <p>This comment suggests the following revision to the proposed regulations: (A) The food service packaging material is manufactured to include a minimum of fifty (50) percent post-consumer recycled content, or ... To comport with Sec. 17989.1, we are also recommending an addition to line 188 to read:... to determine whether each of the approved food service packaging items is reusable, recyclable packaging, compostable or satisfies the minimum recycled content percentages for the package under evaluation.</p>	See response to W27-01 regarding minimum post-consumer recycled content requirements.	No
17989.4	PH11-02	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	It is critical that recyclable food service packaging be clean and free of food material. Food material is a contaminate that hinders our ability to market recyclable material as feedstock to be used in the production of new products. We recommend the following language addition, “(3) The food service packaging is clean and free of food material.”	See response to W28-09 regarding “clean and free of food material.”	No

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17989.4	W13-04	Californians Against Waste	Nick	Lapis	Contradictory to the definition of 'recyclable' in the statutory language of SB 1335, the proposed requirements for 'recyclable' food service packaging does not include the need for materials to have end markets. Simply requiring materials to be sorted and baled does not ensure true recyclability, as has been demonstrated by bales that had been shipped overseas before being disposed of. We recommend expanding the criteria to more closely align with the statutory language under PRC 42370.2. (d), including verification of compliance with PRC 42370.2. (d)(4)-(6). This information can be ascertained on an ongoing basis through consultation with the Statewide Commission on Recycling Markets and Curbside Recycling, and through data collected pursuant to SB 901.	This comment incorrectly asserts that SB 1335 defines "recyclable"; to the contrary, SB 1335 provides minimum considerations relevant to whether an item is recyclable and authorizes CalRecycle to develop regulations for making such a determination. See response to PH05-07 regarding end markets.	No
17989.4	W14-03	Carton Council	Derric	Brown	We recommend that CalRecycle be responsible for determining which packaging has sufficient markets and is viable to collect and process, and then require covered generators and programs to include all packaging determined by CalRecycle to be "recyclable." As currently drafted, the recyclability criteria places too much decision-making authority on materials recovery facility operators to determine whether and to what extent to sort and bale different packaging materials. In some cases, MRF operators may elect not to sort and process packaging materials even though they have viable, valuable markets. For most materials, the option to establish a takeback program would be far less efficient and less successful than using established municipal/MRF recycling programs.	See response to PH05-07 regarding end markets.  CalRecycle does not have statutory authority to impose requirements on entities to use or accept food service packaging materials or items. Material Recovery Facilities (MRFs) have sole discretion to determine what types of materials and products can be captured and processed by their systems and sold as a commodity to existing markets. CalRecycle encourages food service packaging manufacturers to work with the waste industry, jurisdictions, and other key stakeholders along the food service packaging recycling supply chain to ensure their products are recyclable in California's infrastructure.  Regarding takeback programs, the proposed regulations do not require food service packaging manufacturers to use this option. Rather, the department included takeback programs as an alternative method for food service packaging items that may not meet the recyclable criteria in subsection 17989.4(a)(3)(A).	No

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17989.4	W15-29	Clean Seas Lobbying Coalition	Genevieve	Abedon	In order for food service packaging to be effectively recycled in California, it must meet, at minimum, all of the criteria outlined in statute (PRC Section 42370.2(d)(1)-(6)), including ensuring viable markets.	<p>PRC subsection 42370.2(d) specifies the minimum criteria the department shall <i>consider</i>. The statute does not direct the department to include each criterion, verbatim, as a requirement that items must satisfy. The statute affords the department discretion as to how the factors listed in PRC section 42370.2(d) should be implemented. The specific requirements in the regulation, taken together, fulfill the department's mandate because they reflect all of the minimum considerations stated in the statute.</p> <p>The recyclable criteria in the proposed regulations reflect the extent to which CalRecycle considered industry practices, recycled material markets, and available data sources that can be used to verify the collection, processing, and disposition of recycled materials at end of life. When markets exist, material recovery facilities collect and aggregate materials into bales to be sold. When markets do not exist, the materials are typically disposed.</p> <p>See also response to PH05-07 regarding end markets.</p>	No
17989.4	W15-30	Clean Seas Lobbying Coalition	Genevieve	Abedon	We also suggest adding to this: "Establishing minimum postconsumer recycled content requirements for food service packaging in order to create or enhance markets for recycled material."	See response to W27-01 regarding minimum post-consumer recycled content requirements.	No
17989.4	W26-15	Recology	Christine	Wolfe	Contamination of recyclable material with putrescible material, especially food waste, is an important consideration in marketing recyclables. As such, we recommend the following language addition, "(3) The food service packaging is clean and free of food material."	See response to W28-09 regarding "clean and free of food material."	No



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17989.4	W27-01	RePlanet Packaging	Ralph	Chandler	<p>The Recyclable Food Service Packaging Criteria does not include a standard for post-consumer minimum content as a qualifying criterion. We recommend adding a PCR content standard of 50%.</p> <p>It is widely recognized that simply collecting, sorting, and processing material for recycling falls short if there are no markets for the material once it is processed. This standard could be revisited periodically and adjusted upwards to further spur ever greater levels of recycling and market development.</p> <p>If it is CalRecycle’s goal to establish a sustainable program for Food Service Packaging, it must not overlook the importance of allowing packages that achieve a significant level of PCR content in the production of new food packaging to qualify as an acceptable package under the proposed program.</p> <p>This comment suggests the following revision to the proposed regulations: (A) <u>The food service packaging material is manufactured to include a minimum of fifty (50) percent post-consumer recycled content</u>, or ...            To comport with Sec. 17989.1, we are also recommending an addition to line 188 to read:... to determine whether each of the approved food service packaging items is reusable, recyclable packaging, compostable <u>or satisfies the minimum recycled content percentages for the package under evaluation.</u></p>	<p>A post-consumer recycled content criterion would be inappropriate because the statute requires a determination that an item is “recyclable,” not “recycled.” That word choice affects the meaning of the statute because the latter is more restrictive than the former. Because the Legislature’s word choice is presumed to be intentional, requiring post-consumer content (i.e., that an item was “recycled”) exceeds the intended scope of the statute.</p> <p>CalRecycle also disagrees that a post-consumer recycled content criterion is necessary to establish that an item has a post-consumer market. Such a criterion is unnecessary because a minimum postconsumer content mandate alone would not be an indicator of a sustained materials market. In addition, CalRecycle is unable to enforce such a mandate for food service packaging.</p> <p>However, the regulation does require that a specified threshold of food service packaging items are sorted and aggregated into a “single named material bale,” which would indicate that there are markets for the recycled materials and the existence of bales can be verified.</p>	No
17989.4	W28-09	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	<p>A key issue of concern for our members is the cleanliness of recyclable food service packaging. Food material is a contaminate that hinders our ability to market this material as feedstock to be used in the production of new products. Accordingly, we strongly recommend the following language addition, “(3) The food service packaging is clean and free of food material.”</p>	<p>The department acknowledges that cleanliness is an integral aspect of processing materials for recycling; however, evaluating the condition of food service packaging items at time of disposal is not possible. Therefore, the proposed regulation requires that food service packaging materials must be sorted and aggregated into a single named material bale (which is common industry practice) at a specified threshold. This criterion is an indicator of the types of materials and products that can be recaptured for recycling.</p> <p>Due to international restrictions, which have imposed allowable levels of contamination in bales, it is unlikely a material recovery facility (MRF) or processor will include food service packaging material contaminated with food or other residuals, into a single named material bale.</p>	No

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17989.4	W28-10	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	Fiber material contaminated with food material simply cannot be recycled, and is better suited for composting. It is critical that state food service facilities educate their customers on keeping food service packaging free of contaminants and provide the proper signage to ensure that packaging is disposed of appropriately and in the proper bins.	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.  To the extent this comment suggests that the regulations require food service facilities to implement certain educational programs or use certain signage, the statute does not authorize CalRecycle to impose such requirements.	No
17989.4	W28-11	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	We question how the takeback programs will ensure recyclable packaging is kept clean and free of putrescible food materials? The regulations should include language to ensure that this recyclable packaging is clean.	The proposed regulation requires that a takeback program transport collected food service packaging items to a transfer/processing or recycling facility for aggregation into a single named material bale. This requirement is consistent with the statutory provision directing the department to consider “whether the food service packaging material is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value.”  See response to W28-09 regarding “clean and free of food material.”	No
17989.4	W29-13	San Francisco Department of the Environment (SF Environment)	Hilary	Near	The definition of recyclable food service packaging material is not sufficient. It is recommended that the definition should also include that the material be marketed as a feedstock in the production of new products, not just baled by at least 75 percent of transfer/processors.	See response to PH05-07 regarding end markets.	No
17989.4	W31-10	Surfrider Foundation	Miho	Ligare	The materials that are listed must have markets that meet industry standards and will be reliably recycled into new identifiable products.	See response to PH05-07 regarding end markets.	No
17989.4(a)	W04-61	American Chemistry Council (ACC)	Tim	Shestek	Comment suggested removing the requirement of meeting Section 17989.2 from subsection 17989.4(a). (a) A food service packaging item is “recyclable” and shall be included on the List if the department determines it meets the requirements of Section 17989.2 and all the following criteria:	CalRecycle disagrees with the commenter’s proposal to remove the requirement that recyclable food service packaging items meet the public health and litter impact criteria in Section 17989.2. This requirement ensures recyclable food service packaging items will minimize public health and litter impacts.  See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.	No

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17989.4(a)	W06-03	AMERIPEN	Dan	Felton	SB 1335 states that food service packaging must be recyclable, reusable or compostable and requires CalRecycle to consider criteria provided in PRC Section 42370.2(d). We have concerns with the 75 percent collection and processing threshold in the proposed regulations. It sets an arbitrary number that is outside the control of food service packaging manufacturers. Under the proposed regulations, it appears that CalRecycle will rely heavily upon recycling program and takeback operators to make decisions about packaging and drive the thresholds, rather than CalRecycle being responsible for determining what packaging is actually “recyclable” depending on collection and recycling system capabilities and markets. Is that the right approach? We recommend that CalRecycle consider the threshold of what is determined “recyclable” by using the FTC Green Guides instead of depending solely on collection and recycling system capabilities and markets.	See response to W10-03 regarding collection and sortation thresholds.  Regarding the assertion that the thresholds concern factors outside the control of food service packaging manufacturers, see response W10-02.	Yes
17989.4(a)	W10-03	California Manufacturers & Technology Association (CMTA)	Mayte	Sanchez	Among the criteria that are included within the statutory directives of SB 1335 is required criteria that focuses on such things as whether the foodservice packaging is “eligible to be labeled as “recyclable” under the uniform standards contained in Sections 17580-17581 of the Business & Professions Code. Notably, the referenced standards incorporate that United States Federal Trade Commission’s Green Guides and its associated standards without any boundary conditions or qualifications where recycling is available to a large majority of the population where the packaging is sold. The proposed regulations are in direct conflict with this referenced factor and its relevant criteria.	See response to W04-50 regarding how California law and regulations do not conflict with or duplicate the FTC Green Guides.  As explained below, the department considered the FTC criteria referenced in Sections 17580 through 17581 of the Business & Professions Code, as required by PRC subsection 42370.2(d)(1). The statutory language of SB 1335, however, does not restrict CalRecycle from imposing additional “conditions or qualifications” when determining whether an item is recyclable. Rather, considering whether an item can be lawfully marketed as “recyclable” is only one out of six criteria that the department must consider pursuant to PRC subsection 42370.2(d).  CalRecycle revised the proposed regulation from a collection and sortation threshold of 75 percent to a phased approach of at least 60 percent prior to December 31, 2025 and at least 75 percent effective January 1, 2026, and thereafter.  The determination of 60 percent was informed by the FTC threshold of 60 percent of the population having access to collection; it therefore satisfies the statutory direction, per PRC Section 42370.2(d)(1), to consider the FTC criteria. Since this threshold is simply based on access to collection, CalRecycle determined that the FTC criteria on its own does not satisfy the recyclability criteria per PRC Section 42370.2(d)(2)-(6). However, the department incorporated the 60 percent metric as	Yes

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						<p>part of the proposed collection and sortation criteria, consistent with statutory intent for determining if a food service packaging item is recyclable. The determination of 75 percent for the collection and aggregation threshold was informed by the AB 341 (Chesbro, Chapter 476, Statutes of 2011) goal for not less than 75 percent of solid waste generated to be source reduced, recycled, or composted by the year 2020. While this goal, on its own, does not satisfy statutory criteria for recyclability, the department incorporated the 75 percent metric as part of the proposed phased collection and sortation criteria, consistent with statutory intent for determining if a food service packaging items is recyclable.</p> <p>This phased approach was developed to encourage improvements in the state’s recycling infrastructure and to provide food service packaging manufacturers additional time to work with recyclers and composters to redesign products to be more compatible with existing operations.</p>	
17989.4(a)	W15-34	Clean Seas Lobbying Coalition	Genevieve	Abedon	<p>So-called “advanced recycling” refers to a few different chemical processing technologies that the plastics industry hails as a solution to the plastics crisis, and that feeds the narrative that we can recycle our way out of this mess.</p> <p>To ensure that we don’t see these technologies, we suggest that the following is added to the criteria, (4) “Does not include (or the collection and recycling rate may not be met by utilizing) processes or technologies determined by the department to perpetuate the generation of waste or cause harm to the environment or public health. To be considered, any new recycling technologies or processes must be proven not to cause harm to humans, animals, environment or ecosystems, and to result in a decrease in the use of virgin feedstocks for any new packaging or products, as determined by the department.</p>	<p>CalRecycle does not agree that it is necessary to add the commenter’s proposed criteria explicitly restricting advanced recycling technologies. The proposed public health and litter criteria in Section 17989.2 already incorporates the concept that food service packaging items must minimize certain environmental and public health impacts. Therefore, it would be redundant to include the proposed language excluding advanced recycling. Additionally, the recyclable criteria in section 17989.4 includes collection and sorting/aggregation thresholds that make it very unlikely for materials to qualify for the List if they are only recyclable through the application of “advanced recycling” technologies that have not been widely adopted.</p> <p>See responses to W04-02 and W04-09 regarding the definition of “Recycling.”</p>	No
17989.4(a)(1)	PH06-23	Clean Seas Lobbying Coalition	Genevieve	Abedon	<p>The 2 inch by 2-inch dimension is too small for some material types, particularly plastics, to be effectively recycled. Our understanding is that while 2” x 2” is the size required to ensure items will not fall through the screen at recycling facilities, these items are often too lightweight and blow off the sorting equipment into the paper stream and contaminate the recycled paper. Some municipalities require plastic containers to be at least 6 ounces to be recycled.</p>	<p>See response to W15-27 regarding minimum size requirements.</p>	No



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17989.4(a)(1)	W15-27	Clean Seas Lobbying Coalition	Genevieve	Abedon	The 2 inch by 2-inch dimension is too small for some material types, particularly plastics, to be effectively recycled. Our understanding is that while 2" x 2" is the size required to ensure items will not fall through the screen at recycling facilities, these items are often too lightweight and blow off the sorting equipment into the paper stream and contaminate the recycled paper. Some municipalities require plastic containers to be at least 6 ounces to be recycled.	The minimum size requirement is based on The Association of Plastic Recyclers (APR) "Design Guide for Plastics Recyclability" that states items smaller than two inches in two dimensions are typically lost from industry standard screen sizes and are considered contaminants and disposed. While APR encourages technology developments to capture smaller plastics, currently these items are not recovered. Thus, the proposed minimum size requirement is consistent with recognized industry standards for capturing plastic materials for recycling.	No
17989.4(a)(1)	W28-12	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	We appreciate the inclusion of a 2 inch or greater minimum size requirement for food service packaging items, but a larger dimension (at least 4 inch in one dimension) would increase the capture rate for the optic sorters at material recovery facilities processing recyclable plastic.	See response to W15-27 regarding minimum size requirements.	No
17989.4(a)(2)	PH06-24	Clean Seas Lobbying Coalition	Genevieve	Abedon	The regulations should also prohibit packaging composed of materials that will fragment. In order for food service packaging to be effectively recycled in California, it must meet, at minimum, all of the criteria outlined in statute (PRC Section 42370.2(d), including ensuring viable markets.	See response to W09-10 regarding materials that fragment and PH05-07 regarding end markets.	No
17989.4(a)(2)	W09-09	California Compost Coalition (CCC)	Neil	Edgar	Please clarify how the language pertains to a product which is composed of 100% polylactic acid (PLA). We would not consider PLA to be an "additive", yet the product may fragment and would be a detriment to recyclable plastic collection and recovery.	<p>To the extent this comment suggests that the regulation specifically identify polylactic acid (PLA) as non-recyclable, CalRecycle declines to make that change.</p> <p>Degradable plastic polymers, such as PLA, are commonly used as feedstock to produce plastic packaging that is designed to be composted. Oxo-biodegradable additives are a type of additive used to accelerate or initiate the fragmentation of a food service packaging item that may be made with fossil-based plastics or biopolymers, such as PLA.</p> <p>Currently, PLA is not collected for recycling and is largely considered a contaminant in the plastic recycling stream. However, if the state's collection and recycling infrastructure is further developed in the future to effectively collect, sort, and aggregate PLA into a defined recycled commodity stream, and if a market existed to support recapturing these materials for reuse, then theoretically PLA could be deemed recyclable. Any food service packaging material or item could be deemed recyclable depending on markets and evolving infrastructure and technology. CalRecycle will evaluate each type of food service packaging item on a case-by-case basis.</p>	No



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17989.4(a)(2)	W09-10	California Compost Coalition (CCC)	Neil	Edgar	We would recommend rephrasing this section as “shall not contain additives, nor be composed of materials, which initiate or accelerate fragmentation.”	CalRecycle disagrees with the proposed language because it may cause food service packaging items made from otherwise recyclable material, such as fiber, to not meet the “recyclable” criteria. Fiber food service packaging items contain cellulose-based materials that inherently fragment the item but are not problematic to the recycling stream.	No
17989.4(a)(2)	W15-28	Clean Seas Lobbying Coalition	Genevieve	Abedon	The regulations should also prohibit packaging composed of materials that will fragment.	See response to W09-10 regarding materials that fragment.	No
17989.4(a)(2)	W25-15	Plastics Industry Association	Shannon	Crawford	SB 1335 does not mention that the use of additives should be a consideration when developing regulations.	PRC subsection 42370.2(d) specifies the minimum criteria the department shall consider. The statute does not prohibit the department from considering other criteria not explicitly listed in PRC subsections 42370.2(d)(1)-(6).  APR’s “Design Guide for Plastics Recyclability” states that degradable additives may shorten the useful life of the recycled product and compromise quality and durability. Thus, the presence of these additives in recycled content feedstock can jeopardize the integrity of a plastic product which requires stability (such as strapping or rope). The proposed criterion is consistent with recognized industry standards regarding the recyclability of plastics containing additives that cause fragmentation.	No
17989.4(a)(2)	W25-16	Plastics Industry Association	Shannon	Crawford	17989.4(a)(2) implies that an additive that initiates or accelerates fragmentation has a detrimental impact on the recyclability of the product. This is unproven by CalRecycle. If such a restriction should be made, it should be narrowly drafted to restrict those additives that have been shown to have a detrimental impact on recycling. This regulation would rid food service providers from taking advantage of this important technology and even fails to consider any exceptions for additives the Department could determine are not detrimental to the state’s goals. We recommend that this criterion be removed.	CalRecycle disagrees with the commenter's recommendation to restrict specific additives and/or consider exceptions for specific additives. The purpose of this criterion is to ensure that food service packaging containing degradable additives do not negatively impact the quality or durability of a recycled end product, consistent with accepted industry standards stated in the APR Design Guide. Furthermore, evaluating "exceptions" would be overly burdensome for the department to verify on a regular basis and would not be transparent to all stakeholders. This criterion is consistent with accepted industry guidance per the APR "Design Guide to Plastics Recyclability."	No
17989.4(a)(2)	W28-15	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	We also seek clarity on how the criteria that a food service packaging item shall not contain additives that initiate or accelerate fragmentation applies to a material composed of 100% polylactic acid (PLA)? PLA may not be considered an “additive”, yet the product would fragment and contaminate recyclable plastic material. We recommend rephrasing this section as “shall not contain additives, nor be composed of materials, which initiate or accelerate fragmentation.”	See response to W09-10 regarding materials that fragment.	No

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17989.4(a)(3)	PH04-02	California Restaurant Association (CRA)	Katie	Hansen	We are concerned that the 75 percent threshold is too high and when combined with section 17989.3(a)(5) it will result in fewer food service packaging items for food facilities to use on the List of Approved Food Service Packaging.	See response to W10-03 regarding phased collection and sortation thresholds.	Yes
17989.4(a)(3)	PH04-03	California Restaurant Association (CRA)	Katie	Hansen	The 75% threshold will lead to an increase in costs for food facilities and potential difficulty in obtaining the needed quantity of food service packaging items if there are only one or two approved vendors in each category on the list.	See response to W10-03 regarding phased collection and sortation thresholds.  Regarding cost increases, the Economic and Fiscal Impact Statement found that some food service facilities will not experience cost increases as they already use or are required to use reusable, recyclable, or compostable food service packaging. CalRecycle determined that the average cost of compliant food service packaging items will be \$0.02 more per item, compared to noncompliant food service packaging items.  The proposed regulatory requirements provide flexibility for food service facilities to choose the reusable, recyclable, or compostable food service packaging items that meet their needs. The intent of the statute (and regulation) is to create demand and stimulate markets that will result in increased use of reusable, recyclable, and compostable food service packaging items. Finally, the proposed regulatory text, in accordance with statute, contains provisions for the use of noncompliant food service packaging inventories under certain conditions.	Yes
17989.4(a)(3)	W04-14	American Chemistry Council (ACC)	Tim	Shestek	The Department Should Remove the Arbitrary 75 Percent Litmus Test and Baling and Sorting Limitations Included In the “Recyclable” Criteria. What is “recyclable” is further limited in the Proposed Regulations by arbitrary limitations on the meanings of “regularly” collected and recycled and procedures for baling and sorting.	See response to W10-03 regarding phased collection and sortation thresholds.	Yes
17989.4(a)(3)	W04-15	American Chemistry Council (ACC)	Tim	Shestek	The collection, baling, and sorting aspects of the Department’s proposed recyclable criteria are inconsistent with the plain language and intent of SB 1335, exceed the authority conferred by the legislature, are arbitrary and otherwise lack a rational purpose. We urge CalRecycle to revise Section 17989.4 of the Proposed Regulations to reasonably accommodate the realities of recycling and align with SB 1335’s legislative mandates.	PRC subsections 42370.2(d)(2) and (3) direct the department to consider criteria for determining regular collection, sorting, and aggregation of food service packaging. This subsection clarifies how the department will make a determination with regard to these criteria.	No

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17989.4(a)(3)	W04-16	American Chemistry Council (ACC)	Tim	Shestek	The Department arbitrarily selects 75 percent as the threshold at which recycling programs must sort and bale a material in order for the material to be eligible to be deemed “recyclable.” In support of selecting this 75 percent litmus test, the only rationale provided by the Department is that the “minimum criteria of 75 percent of recycling programs and transfer/processors is necessary to align this subsection with the state’s recycling goal for not less than 75 percent of solid waste generated to be source reduced, recycled, or composted by the year 2020 as established by AB 341.” However, the State’s overall recycling goals have no bearing on whether a particular type of food service packaging is recyclable. Nor are the State’s overall recycling goals listed by the legislature in SB 1335 as one of criteria that CalRecycle must consider in defining whether a particular type of food service packaging is recyclable. In fact, the State’s ambitious overall recycling goals actually weigh in favor including more types of food service packaging (even if individual types may have a lower recycling rate) in what is “recyclable” in order to increase overall recycling rates. Therefore, it appears that the Department has failed to comply with the controlling legislative mandates in selecting the 75 percent threshold for inclusion in the Proposed Regulation’s “recyclable” criteria.	See response to W10-03 regarding phased collection and sortation thresholds.	Yes
17989.4(a)(3)	W04-19	American Chemistry Council (ACC)	Tim	Shestek	The Department arbitrarily limits “recyclable” at Section 17989.4(a)(3) by drawing a distinction between mixed plastic and mixed paper bales without any discernable legal justification or evidentiary support for doing so. Under the Proposed Regulations, mixed plastics that are collected and bundled for purposes of recycling would not be considered “recyclable.” Specifically, under the proposal, plastic packaging must be processed into a single named material bale to be “recyclable,” while, in contrast, a bale of paper may contain mixed paper materials. The proposal’s distinction between mixed paper and plastic bales, and the decision to allow processing and recycling of the former but not the latter, is arbitrary, capricious, unsupported by substantial evidence, inconsistent with SB 1335 and otherwise exceeds the Department’s rulemaking authority.	CalRecycle disagrees with the commenter’s recommendation to remove the proposed regulatory text. Mixed paper bales are considered a single named bale because, unlike mixed plastics, the paper items comprising a mixed paper bale are placed into a pulper for recycling as one unit. In contrast, mixed plastic bales require separation and further processing into individual resin types prior to recycling. Mixed plastic and mixed paper bales have fundamentally different reprocessing requirements that affect their commodity values and the proposed regulations appropriately reflect this difference. This approach is consistent with statutory language (PRC subsection 42370.2(d)) requiring the department to consider, among other criteria, whether a type of food service packaging is regularly sorted and aggregated into defined streams for recycling processes. Mixed plastics bales do not meet the criteria for “defined streams for recycling processes” due to the necessary separation of the bale into resins that are recycled and resins that are subsequently landfilled.	No

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17989.4(a)(3)	W05-03	American Forest and Paper Association (AF&PA)	Elizabeth	Bartheld	Defining “recyclability” as 75 percent access to collection threatens existing collection programs and stifles innovation by creating a high barrier to entry.	See response to W10-03 regarding phased collection and sortation thresholds.	Yes
17989.4(a)(3)	W05-04	American Forest and Paper Association (AF&PA)	Elizabeth	Bartheld	Certain foodservice products are collected for recycling in jurisdictions, and should be defined as recyclable in jurisdictions where they are accepted. The relatively small volumes of foodservice packaging in the larger recovered paper stream create challenges for recycling. It is likely that collection programs for new materials or products would launch in jurisdictions smaller than 75 percent of the entire state of California. The regulations should allow for innovative local collection programs in jurisdictions where scale can make recycling more viable than on a statewide basis. The current draft of the regulations creates a nearly insurmountable barrier to entry by requiring 75 percent access as a threshold for market access. With a large and diverse set of municipal recycling programs, and haulers and materials recovery facilities (MRFs) that support them, recycling projects are more likely to be successful if allowed to proceed on a jurisdictional basis. A foodservice packaging product should be listed as recyclable if it is accepted for recycling in the jurisdiction in which it is distributed. Incredibly, CalRecycle’s proposed text does not allow this.	See response to W15-31 regarding a regional or local approach.	No
17989.4(a)(3)	W05-05	American Forest and Paper Association (AF&PA)	Elizabeth	Bartheld	MRF operators should not be the final arbiters of what is recyclable. MRFs are but one stakeholder in the recycling supply chain, and equal credit should be given to the views of end markets, such as the paper mills we represent, that consume recovered material as feedstock for remanufacture into new products. Recycling allows for reuse of renewable fiber in new products. California has a policy goal to achieve 75 percent recycling, and should not create regulatory barriers that will function to discourage recycling.	See response to PH05-07 regarding end markets.	No



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17989.4(a)(3)	W10-02	California Manufacturers & Technology Association (CMTA)	Mayte	Sanchez	Relative to the proposed regulatory definition of “recyclable,” the proposed regulation institutes a host of limiting factors that are outside of the control of foodservice packaging manufacturers. The proposed regulation limits recyclability to packaging that is collected and recycled as well as providing parameters for baling and sorting. These parameters are inconsistent with and exceed the authority provided to the Department within SB 1335. Further, these parameters ignore the fact that such parameters cannot be controlled by manufacturing practices and sustainability approaches, but are instead left up to determinations of the waste system about what to sort, process and recycle.	<p>This comment does not propose a specific change to the regulatory text or raise issues related to the rulemaking process.</p> <p>To the extent this comment asserts that the regulation should not contain baling and sorting parameters, see response to W04-15 regarding baling and sorting requirements.</p> <p>To the extent this comment argues that SB 1335 requires recyclability to depend on factors within the control of food service packaging manufacturers, it is incorrect. PRC Section 42730.2(d) sets forth six minimum factors that CalRecycle must consider, and all six of them concern the realities of the statewide “waste system.”</p>	No
17989.4(a)(3)	W11-07	California Restaurant Association (CRA)	Katie	Hansen	We are concerned that the 75 percent threshold is too high and when combined with section 17989.3(a)(5) it will result in fewer food service packaging items for food facilities to use on the List of Approved Food Service Packaging.	See response to W10-03 regarding collection and sortation thresholds.	Yes
17989.4(a)(3)	W11-08	California Restaurant Association (CRA)	Katie	Hansen	The 75 percent threshold will lead to an increase in costs for food facilities and potential difficulty in obtaining the needed quantity of food service packaging items if there are only one or two approved vendors in each category on the list.	See response to PH04-03 regarding costs and quantities of food service packaging.	No
17989.4(a)(3)	W18-09	Foodservice Packaging Institute (FPI)	Brian	Sernulka	The threshold of 75 percent isn’t based on any current access rates for either recycling or composting. This threshold will largely ban single-use foodservice items. Companies have made large investments into the recovery of products that could be removed from the marketplace.	See response to W10-03 regarding collection and sortation thresholds.	Yes
17989.4(a)(3)(A)	PH05-07	Californians Against Waste (CAW)	Nick	Lapis	Contradictory to the definition of ‘recyclable’ in the statutory language of SB 1335, the proposed requirements for ‘recyclable’ food service packaging does not include the need for materials to have end markets. Simply requiring materials to be sorted and baled does not ensure true recyclability, as has been demonstrated by bales that had been shipped overseas before being disposed of. We recommend expanding the criteria to more closely align with the statutory language under PRC 42370.2(d).	<p>PRC subsection 42370.2(d) specifies the minimum criteria the department shall consider. The statute does not require the department to include all of these provisions, verbatim, in the regulation, and the department may also consider other criteria not explicitly listed in PRC subsections 42370.2(d)(1)-(6).</p> <p>CalRecycle does not have statutory authority to institute reporting requirements or the ability to require entities outside the state to provide verification of end markets or final disposition of materials. Therefore, the recyclable criteria require that specified amounts of food service packaging materials be sorted and aggregated into a single named material bale to demonstrate the presence of end markets.</p>	No



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17989.4(a)(3) (A)	PH06-25	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest that the Department clarify if the percentage is meant to be calculated at the statewide or local level, and allowing such packaging to be used by facilities who are serviced by a recycler that accepts and processes the material.	Based on stakeholder feedback, Section 17989.4 was revised in the Second Draft Proposed Regulations to clarify that all calculations must be made at the statewide level.  This subsection was revised as follows: <del>“The Prior to December 31, 2025, the</del> food service packaging material is collected by <u>at least 7560</u> percent of recycling programs <u>statewide</u> and <u>are</u> sorted and aggregated into a single named material bale by at least <u>7560</u> percent of <u>large volume transfer/processors, processing facilities in the state.</u> ”	Yes
17989.4(a)(3) (A)	W04-17	American Chemistry Council	Tim	Shestek	SB 1335 requires the Department to consider all the criteria listed in PRC § 42370.2(d) in determining what constitutes “recyclable” food service packaging. These required criteria include considering “[w]hether the type of foodservice packaging is eligible to be labeled as ‘recyclable’” under the uniform standards contained in Sections 17580-81 of the Business and Professions Code. The “uniform standards” in those sections incorporate the U.S. Federal Trade Commission’s (“FTC”) Guidelines for Environmental Marketing Claims (i.e., the “FTC Green Guides”) by reference. Under the FTC Green Guides, which the legislature has mandated that the Department consider in developing its “recyclable” criteria, materials are eligible to be labeled as “recyclable” without qualification if recycling facilities that will collect and recycle the product or packaging are accessible to a “substantial majority” – defined as 60 percent – of the population where the item is sold. It appears that the Department has not only failed to consider all of the statutory criteria mandated by SB 1335, but it has also developed Proposed Regulations which are inconsistent with said criteria, and which lack a rational basis or evidentiary support. Section 17989.4 should be revised to incorporate consideration of the FTC’s Green Guides, as required by SB 1335, and provide that a food service packaging item is “regulatory collected and recycled” if it is collected by at least “60 percent of recycling or takeback programs” serving at least “60 percent of the population.”	See response to W10-03 regarding phased collection and sortation thresholds.  See response to W06-02 regarding consideration of the FTC Green Guides.	Yes
17989.4(a)(3) (A)	W04-20	American Chemistry Council (ACC)	Tim	Shestek	The level at which reporting entities should report an item as “recyclable” to the Department should not be mandated by the Department.	See response to W04-21 regarding reporting.	No

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17989.4(a)(3) (A)	W04-21	American Chemistry Council (ACC)	Tim	Shestek	The buyer of the bale should determine whether the bale is recyclable, allowing the realities of the market to determine what is recyclable, and allowing for advancements in recycling technologies and infrastructure.	SB 1335 did not give CalRecycle authority to implement reporting requirements. Therefore, the department is unable to require end users (the “buyer of the bale”) to report data via this regulation.  Pursuant to PRC section 41821, jurisdictions are required to self-report information regarding recycling program collection via the Electronic Annual Report (EAR). In addition, AB 901 (Gordon, Chapter 746, Statutes of 2015) requires recycling and disposal entities, including transfer/processing facilities, to report materials sold and transferred via the Recycling and Disposal Reporting System (RDRS). These data sources may be used to satisfy the requirements of this subsection or verify information in food service packaging applications.	No
17989.4(a)(3) (A)	W04-22	American Chemistry Council (ACC)	Tim	Shestek	Mixed plastics can be recycled by advanced recycling technologies to produce new and useful products. The ability to process mixed plastics comprised of different resins in rigid, foam and flexible form while reducing costs from additional sortation represents an exciting innovation that should be encouraged in California, not discouraged.  Limiting what is “recyclable” to only bales of single material plastics is not reflective of current recycling technologies and limits future innovation. Generally, most advanced recycling facilities can take mixed #3 - #7 plastics as well as multi-layer pouches and flexibles films, while some facilities focus on specific types of plastics. It is likely that advances in technology will further expand the opportunities for recycling facilities to accept mixed plastics.  We request that these arbitrary and inappropriate distinctions and limitations be stricken by removing the clause that reads “and are sorted and aggregated into a single named material bale by at least 75 percent of transfer/processors.”	See response to W25-19 regarding single named material bales.	No

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17989.4(a)(3) (A)	W04-62	American Chemistry Council	Tim	Shestek	This comment suggests this section be revised as follows: (A) The food service packaging material is collected by <u>at least 60-75 percent of recycling or takeback programs serving at least 60 percent of the population.</u> <del>and are sorted and aggregated into a single named material bale by at least 75 percent of transfer/processors, or</del>	<p>See response to W10-03 regarding collection and sortation thresholds.</p> <p>CalRecycle does not agree with the suggestion to specify that recycling programs serve at least 60 percent of the population. The recyclable criteria are designed to assess the percentage of materials that are actually collected for recycling, not simply the percentage of the population that has access to recycling programs.</p> <p>CalRecycle does not agree that it is necessary to combine recycling and takeback program requirements in this subsection. Takeback programs are managed directly by a food service facility, a food service packaging manufacturer, or a vendor over a period of time; such programs are not comparable to collection and sortation of a food service packaging material through a recycling program. Therefore, it is appropriate to maintain distinct requirements related to each respective type of program.</p> <p>The suggested change is inappropriate for multiple additional reasons. First, it would disregard whether a food service packaging item is sorted and aggregated, which is a required consideration pursuant to PRC Section 42370.2(d)(3).</p> <p>Second, the change would be at odds with PRC Section 42370.2(d)(1), which requires CalRecycle to consider whether an item could lawfully be marketed as “recyclable.” The change would allow items to be considered recyclable even where significantly less than half of the state’s population actually has access to the programs that recycle them. The FTC Green Guides, which establish defenses to deceptiveness allegations pursuant to Business and Professions Code Section 17580.5(b), would provide no justification for labeling such items as “recyclable.” The Green Guides instruct that recycling claims are justified where “recycling facilities are available to a substantial majority of consumers or communities.” Therefore, although this consideration is only one of the many identified in PRC Section 42370.2(d), it counsels against the suggested change.</p> <p>Third, the suggested change is impractical. For example, the change would require a uniform definition of what it means for a program to “serve” a particular subpopulation. It also would</p>	<p>Yes – Thresholds</p> <p>No – Takeback programs</p>

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						require reliable, up-to-date data across all programs statewide to measure the size of the subpopulation served by each program and account for any overlapping subpopulations. Furthermore, there may be a large number of different combinations of programs that, in the aggregate, serve 60 percent of the population, which would further complicate the application of the proposed change because the determination of what constitutes “60 percent” of such programs would vary based on the particular combination considered. These complications would result in a criterion that would be difficult or impossible to apply uniformly.	
17989.4(a)(3) (A)	W15-31	Clean Seas Lobbying Coalition	Genevieve	Abedon	While we understand the intent is to create a statewide standard, we want to ensure that regional acceptance/non-acceptance and local infrastructure are considered. We urge the Department to reconsider a version of the local/regional approach proposed in Alternative 2.	<p>CalRecycle does not agree that it is necessary or practicable to include criteria that allow for regional or local collection and processing rates. As noted in the Economic and Fiscal Impact Statement, CalRecycle considered this option but rejected it because it would significantly increase administrative costs and impose an undue burden on food service facilities and food service packaging manufacturers.</p> <p>Food service packaging items are not marketed to be recyclable or compostable in isolated areas of the state; thus, it is misleading to infer these products can be properly managed at end of life when only a few facilities in the state can actually process them. If materials are recyclable or compostable in certain areas of the state, but not in others, consumers may unknowingly contaminate recycling and composting streams by improperly disposing of food service packaging. Therefore, consumers and food service facilities need to be accurately informed about how food service packaging can truly be managed at end of life, particularly when charged a higher amount for a product advertised to be better for the environment.</p> <p>The proposed criteria are designed to establish a consistent statewide framework for determining if food service packaging is compatible with California’s existing domestic recycling and composting systems. This approach will help ensure marketing claims are more truthful and will result in less contamination of recycling and composting streams and increased recycling and composting of food service packaging, as intended by the statute.</p> <p>See response to W04-63 regarding takeback programs for recyclables.</p>	No

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17989.4(a)(3) (A)	W25-17	Plastics Industry Association (PLASTICS)	Shannon	Crawford	The requirement that a material be collected by 75 percent of recycling programs to be defined as recyclable is not acceptable. There could be valid reasons why an item is not collected in a recycling program despite a demand for that material. Defining an item recyclable should not be based on whether or not 75 percent of state recycling programs collect that material. This threshold goes far beyond what the Federal Trade Commission has set as a standard for using the term recyclable. Banning an item for not meeting this criterion would be ill-informed particularly for those food service facilities operating within a market or near a recycling facility/program that does indeed collect a banned material.	See response to W10-03 regarding phased collection and sortation thresholds.	Yes
17989.4(a)(3) (A)	W25-18	Plastics Industry Association (PLASTICS)	Shannon	Crawford	The 75 percent threshold is arbitrary. It does nothing to ensure that this portion of recycling programs is a significant portion of the state population which would actually help the state achieve its waste reduction goals. Setting such a high collection quota would restrict a number of food packaging items that are in high use by many food service facilities. The alternatives that they would need to resort to would be worse for these operators' bottom line and for the environment. Moreover, federal guides for the use of environmental marketing claims only require that qualifying language be used if less than 60 percent of consumers have access to such recycling programs – a much more reasonable expectation for what is considered recyclable. We request that this requirement be removed or changed.	See response to W10-03 regarding phased collection and sortation thresholds.	Yes



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17989.4(a)(3) (A)	W25-19	Plastics Industry Association (PLASTICS)	Shannon	Crawford	<p>The proposed regulation would prohibit plastics made from resins #3-7, which are often sorted into multi-material bales, from being used as compliant materials for state agencies. CalRecycle reasons that there are no markets for #3-7 in California because China was accepting this material for the state almost exclusively. However, this change occurred over two years ago and markets for these materials are coming online. These materials provide important environmental benefits even though they are not often sorted into “single named material bales.” According to The Recycling Partnership, domestic markets for #3-7 plastic bales are growing, and cutting off this supply of material would inhibit the important recycling industry. If a goal of this regulation is to increase recovery and recycling of materials, then cutting off the use of these recyclable materials is counterintuitive.</p> <p>Additionally, secondary sorting of plastics is currently operational in California; however, no allowance is given in this regulation for secondary sorting. These depend on mixed bales of plastics and is able to sell these materials. Additionally, PLASTICS led a demonstration project using this technology in Oregon last summer. This project proved out the feasibility of incorporating secondary sorting into the recycling stream and demonstrated that this concept can be realized in other regions. We request that this part of the regulation be removed.</p>	CalRecycle disagrees with removing the requirement for a single named material bale. The requirement for sorting and aggregating food service packaging into a single named material bale aligns with PRC subsection 42370.2(d)(6), which requires the department to consider whether a food service packaging material is recycled in sufficient quantity and quality to maintain a market value. Single named material bales, such as polyethylene terephthalate (PET) plastic or corrugated cardboard, generally have higher market value due to relatively little contamination when processed by the state’s existing collection, sorting, and recycling infrastructure. In contrast, the value of mixed material bales, such as plastics #3-7, is currently lower due to the high costs of secondary sorting to screen out contaminants. Export markets for mixed material bales have largely vanished in the past several years due to multiple policies instituted by China that restrict imports of contaminated plastic and fiber bales, forcing more of these materials to remain in California where the market value of single named material bales is generally greater than mixed bales.	No
17989.4(a)(3) (A)	W28-14	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	Perhaps state facilities could regionally secure contracts to move food service packaging that may not qualify under the 75% metric statewide. Some regions may utilize a secondary MRF system to capture additional material. Potentially there could be another list for food service packaging that demonstrates appropriate regional acceptance rates. This approach may be more suitable as it relates to compostable criteria as most compost facilities do not currently accept compostable plastics.	See response to W15-31 regarding a regional or local approach.	No
17989.4(a)(3) (B)	PH06-26	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest a higher percentage of 90 percent, and that the Department clarify if the percentage is meant to be calculated at the statewide or local level. We also suggest separating requirements for takeback programs for reusable food service packaging and recyclable food service packaging.	<p>See response to W15-32 regarding a 90 percent collection and aggregation threshold.</p> <p>See response to PH06-25 regarding calculation of the statewide collection threshold.</p> <p>Regarding requirements for takeback programs, there are no takeback programs outlined in the proposed regulation for reusable items. See response to W15-33.</p>	<p>No – 90 percent collection</p> <p>Yes – Statewide calculation</p>

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17989.4(a)(3)(B)	W04-63	American Chemistry Council (ACC)	Tim	Shestek	This comment recommends removing subsection 17989.4(a)(3)(B) in its entirety.	CalRecycle disagrees with the recommendation to remove the takeback program criteria. The intent of the proposed regulatory language is to provide an alternative method for food service packaging manufacturers to demonstrate that a food service packaging item that may not meet the recyclable criteria in subsection 17989.4(a)(3)(A) is recovered via a takeback program for reuse or recycling, and to allow for a local approach. The department recognizes that takeback programs for food service packaging items can establish niche, local markets for materials that cannot be managed statewide. To ensure consistency between criteria, takeback programs are required to meet the same collection threshold as recycling programs.	No
17989.4(a)(3)(B)	W15-32	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest a higher percentage of 90 percent.	CalRecycle disagrees with revising the minimum collection percentage for takeback programs to 90 percent. The commenter provides no justification for the increase to 90 percent and the department lacks data to conclude that food service packaging materials are recycled at such a high rate. Furthermore, it is possible that revising this requirement to a higher percentage would exclude takeback programs that still collect a significant majority of food service packaging items.  See response to W10-03 regarding phased collection and sortation thresholds.	No
17989.4(a)(3)(B)	W15-33	Clean Seas Lobbying Coalition	Genevieve	Abedon	We also suggest separating requirements for takeback programs for reusable food service packaging and recyclable food service packaging.	There are no takeback programs outlined in the proposed regulation for reusable items. Takeback program requirements are found in the recyclable criteria in Section 17989.4.  The reference to “reuse” in subsection 17989.4(a)(3)(B) reflects the fact that a qualifying takeback program may reuse items upon collecting them if the item has not yet reached its end of life.	

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17989.4(a)(3)(B)(ii)	W04-23	American Chemistry Council (ACC)	Tim	Shestek	We also request that the clause which reads “and all food service items collected by the takeback program shall be transported to a transfer/processor or recycling facility for aggregation into a single named material bale” be stricken.	CalRecycle disagrees with removing the requirement for all food service items collected by a takeback program to be transported to a recycling facility and aggregated into a single named material bale because this necessarily demonstrates there is an end market for the materials at end of life. The requirement for sorting and aggregating food service packaging into a single named material bale aligns with PRC subsection 42370.2(d)(6), which requires the department to consider whether a food service packaging material is recycled in sufficient quantity and quality to maintain a market value.  See response to W25-19 regarding single named material bales.	No
17989.4(a)(3)(C)	PH05-08	Californians Against Waste (CAW)	Nick	Lapis	We are concerned with the provision that states that “mixed paper bales are considered a single named material bale.” The legislation specifically required material to be “aggregated into defined streams for recycling processes” as opposed to mixed material bales. Many products have claimed to be recyclable despite actually being a contaminant in a mixed paper stream. This provision would encourage the use of non-recyclable coatings, multi-layer materials, adhesives, or labels that are not recyclable, contrary	See response to W04-19 regarding mixed paper versus mixed plastics bales.  The commenter is incorrect that the statute “specifically required material to be ‘aggregated into defined streams for recycling processes.’” To the contrary, PRC 42370.2(d) only identifies this criterion as one factor that CalRecycle “shall consider”; in other words, the Legislature used language that specifically does <i>not</i> define the criterion as a dispositive consideration. Moreover, the list of criteria in PRC 42370(d) is a non-exhaustive list and does not prohibit CalRecycle from considering other factors.	No
17989.4(a)(3)(C)	W04-24	American Chemistry Council (ACC)	Tim	Shestek	Section 17989.4(a)(3)(C), which allows mixed paper bales to be classed as single named material, should also be deleted.	See response to W04-19 regarding mixed paper versus mixed plastics bales.	No
17989.4(a)(3)(C)	W04-64	American Chemistry Council (ACC)	Tim	Shestek	The comment suggests removing subsection 17989.4(a)(3)(C).	See response to W04-19 regarding mixed paper versus mixed plastics bales.	No
17989.4(a)(3)(C)	W13-05	Californians Against Waste (CAW)	Nick	Lapis	We are concerned with the provision that states that “mixed paper bales are considered a single named material bale.” The legislation specifically required material to be “aggregated into defined streams for recycling processes” as opposed to mixed material bales. Many products have claimed to be recyclable despite actually being a contaminant in a mixed paper stream. This provision would encourage the use of non-recyclable coatings, multi-layer materials, adhesives, or labels that are not recyclable, contrary to both the intent and letter of the law.	See response to W04-19 regarding mixed paper versus mixed plastics bales.	No

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17989.4(a)(3) (C)	W25-20	Plastics Industry Association	Shannon	Crawford	The proposed regulation does not set equal requirements for the various substrates that are used for food packaging. This section places an undue burden on plastic while paper does not need to meet the same requirement of being sorted into "single named material bales." The variety of paper types vary for specific reasons just as the variety of plastic resin types vary and serve distinct purposes. If the recyclability of plastic is to be based on the ability for it to be sorted into individual bales of each resin type, paper, too, shall need to be sorted into individual bale types. The ability for mixing the variety of paper types into a single bale for "downcycling" should also be afforded to the variety of plastic resins. As mentioned above mixed plastic bales have a market at secondary sorting facilities.	See response to W04-19 regarding mixed paper bales vs. mixed plastics bales.	No
17989.4(a)(3) (C)	W28-13	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	We question the rationale for why food service packaging must be sorted and aggregated into a single named material bale? The regulatory language notes that mixed paper bales are considered a single named material bale for the purposes of this Article, but there is no mention of #3-#7 plastics. Some facilities are currently collecting and processing mixed plastic bales or sending this material for further processing at a secondary MRF.	See response to W25-19 regarding single named material bales.	No

Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
<b>§17989.5. Compostable Food Service Packaging Criteria.</b>							
17989.5	PH03-01	California Compost Coalition (CCC)	Neil	Edgar	Packaging and products made from compostable materials are not welcome at a majority of compost manufacturing facilities, especially those products which are not directly associated with food scrap recovery. Compostable plastics frequently are a contamination problem for recycling facility operators and remanufacturers. One of the key issues for both composting and recycling facility operators is a lack of clear identification of materials, which leads to cross contamination. These regulations, and the impacted industries, could benefit greatly from a standard which could require listed packaging to be "readily and easily identifiable" as either compostable or recyclable so that source separation options are obvious to both consumers and facility operators, providing a pathway to reduced contamination.	See response to W09-01 regarding labeling.	No



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17989.5	PH12-02	Surfrider Foundation	Miho	Ligare	The total available composting capacity in the state is 1.9 million tons, which falls short of the capacity needed to support diversion rates required for the criteria. We recommend CalRecycle come up with criteria that can be reasonably met in the whole state. However, any lower diversion rates recommended should be matched with a corresponding increase in the rate of reusable.	See response to W07-02 regarding collection and acceptance thresholds.  See response to W31-11 regarding a rate for reusables.	Yes
17989.5	W09-12	California Compost Coalition (CCC)	Neil	Edgar	The use of “organics” is not defined in this regulatory package. Please define “organics” or use “mixed materials” or “food materials” which are less vague, and for which definitions already exist in Title 14.	See response to W09-04 regarding the addition of definitions for “Organic waste” and “Mixed materials.”	Yes
17989.5	W13-08	Californians Against Waste (CAW)	Nick	Lapis	The Department should require compostable products to be certified by the Biodegradable Products Institute (BPI) or a recognized third-party independent verification body with requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute (BPI). Otherwise, the department risks receiving fraudulent “proof” of compliance with the relevant ASTM standards and prohibitions on toxic additives from unverifiable overseas labs.	CalRecycle disagrees with the commenter’s suggestion to add a requirement that compostable food service packaging items be “certified” by either BPI or a third-party independent verification body that is equivalent to or more stringent than BPI. BPI is not the sole entity that is capable of performing ASTM tests or certifying the test results, as required by the regulation. Laboratories with ISO/IEC 17025:2017 accreditation, or entities that are under contract with these accredited laboratories, can also certify test results based on the requirements of these proposed regulations. BPI or other certification includes charges for additional services beyond the scope of the regulation and can cost as much as \$20,000. Statute does not require “certification” of compostable food service packaging items; third-party certification entities as defined in the regulations only “certify” test results as required to meet specified criteria.  Food service packaging manufacturers are required to include test results demonstrating compliance with the applicable criteria from a third-party certification entity for the food service packaging items in an application. All of the information provided in an application will be evaluated by CalRecycle to determine if a food service packaging item meets the applicable criteria required by the Article.  CalRecycle recognizes that BPI is widely known by industry to perform the ASTM tests; thus, the department added BPI as an example of a “Third-party certification entity” in the Second Draft Proposed Regulations. See response to W08-12 regarding the definition of “Third-party certification entity.”	No



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17989.5	W15-35	Clean Seas Lobbying Coalition	Genevieve	Abedon	We support stringent requirements for what products are considered compostable under these regulations. We feel it's better to have standards that no products currently on the market can meet than to implement standards that allow for inferior or potentially harmful products to be considered compostable. We support driving innovation in a direction that gets us to a place that meets more stringent standards, particularly with California being on the forefront of environmental protection and regulation and being a model that others follow.	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.	No

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Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
17989.5	W15-36	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest consistency when referring to “organics recycling programs” and/or “compost facilities,” and to clearly define these, and other terms, used in the regulations.	<p>See responses to W16-03 regarding the definition of “Compost facility,” which was revised, and W09-04 regarding the addition of a definition for “Recycling program.”</p> <p>The respective definitions of “Compost facility” and “Organics recycling program” are intentionally distinct in order to differentiate between two sets of entities that collect and or process organic waste.</p> <p>“Organics recycling program” refers to entities that collect organic waste (e.g., city and/or county waste management haulers) for the purposes of calculating the percentage of recycling programs statewide that “collect” food service packaging materials for composting. For this reason, organics recycling programs are described within the definition of “Recycling program.”</p> <p>“Compost facility” refers to a specific type of facility that accepts and processes compostable materials, such as food waste and food soiled paper. These facilities are counted towards the required percentage of composting facilities that “accept” compostable food service packaging materials, pursuant to the definition in subsection 17989 (a)(1).</p> <p>The following definitions were added to the regulation to ensure these terms are used consistently and are clearly understood by the regulated community:</p> <p><u>“Composting” has the same meaning as defined in PRC Section 40116.1.</u></p> <p><u>“Mixed materials” has the same meaning as defined in Division 7, Chapter 3.1 Article 1, Section 17852, subsection (a)(26).</u></p> <p><u>“Organic waste” has the same meaning as defined in PRC Section 42649.8 subsection (d).</u></p>	Yes

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Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
17989.5	W16-01	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	The composters that are asked to take the products are free to decline products that cause greater contamination and cost in their facilities. Many products that meet the standards as set out in the proposed rules do not actually disintegrate in commercial composting processes. After spending State funds to purchase purportedly compostable products, those products may be refused by the composter or sifted out at the end of the composting process. In both cases, the product simply ends up being landfilled through a more circuitous route than simply throwing it away at the outset.	To the extent this comment suggests that the proposed regulations should more clearly address the issue of disintegration in commercial composting facilities, the Second Draft Proposed Regulations do so; see responses to W26-16 regarding toxic contaminants in compost and W08-09 regarding the definition of “Safe and timely manner.”	Yes
17989.5	W16-24	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	CMA encourages consideration of adding a field standard requirement (in addition to having products meet ASTM standards). To ensure and facilitate participation by the maximum number of facilities to meet the highest minimum that is practical under this legislation, a field test requirement or providing some operational protocols or guidance to California composters is vital. Composters are more likely to participate if they have some assurance that items that meet lab standards and ALSO (and necessarily) disintegrate adequately within active composting cycles so that they are not left at the end of the process and screened out as contaminants.	See response to W09-06 regarding field testing.	No
17989.5	W26-16	Recology, Inc.	Christine	Wolfe	Plastic, whether conventional or biobased, poses potential contamination issues at our facilities. We need to be able to sell clean, healthy, beneficial compost to our customers, mostly farmers growing food for Californians. It is important to reemphasize the language in PRC Section 423702(e)(1) — that compostable packaging must in a safe and timely manner break down or otherwise become part of usable compost. It is critical that the compost be high quality and free of contamination.	<p>The revised definition of “Safe and timely manner” in subsection 17989(a)(28) of the proposed regulation further clarifies the requirement in PRC subsection 42370.2(e)(1) which considers “Whether the food service packaging will, in a safe and timely manner, break down or otherwise become a part of usable compost that can be composted in a public or private aerobic compost facility designed for and capable of processing post-consumer food waste and food-soiled paper.”</p> <p>Specifically, the definition provides references to the ASTM standard specifications that must be used to verify whether a compostable plastic food service packaging item breaks down into non-toxic components during the composting process within a timeframe that reflects average processing times at California compost facilities (60 days).</p> <p>For further detail, see the response to W08-09 regarding the definition of “Safe and timely manner.”</p>	Yes

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17989.5	W26-17	Recology, Inc.	Christine	Wolfe	If a food service packaging item is considered compostable, it should consistently biodegrade into useable compost in facilities that process the State's food waste. The concept of acceptance as defined in Section 17989.1(a)(1) and implemented in Section 17989.5 is critical to ensure that materials are designed, used, and processed with true compostability in mind. In order to meet our obligations to jurisdictions as they comply with their diversion mandates and under our 1383 and permitting requirements at compost facilities, we must be able to efficiently and safely produce high-quality compost with low levels of residual materials that are diverted to landfill.	This comment does not suggest any specific changes to the proposed regulation or raise issues related to the rulemaking process.	No
17989.5	W28-16	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	The compostable food service packaging best suited for composting is clean fiberboard material that is easily decomposed and poses less contamination concerns at compost facilities. This packaging must be free from PFAs and poly-coated substances. Compostable plastics are not regularly processed at most California compost facilities. This would presumably prohibit this food service packaging from being added to the List, unless an alternative approach were considered based on regional acceptance or otherwise.	<p>CalRecycle will evaluate food service packaging items, including those with poly-coated substances, on a case-by-case basis through the application process. Food service packaging manufacturers are required to provide information in their applications demonstrating their food service packaging items meet the requirements of the Article, which includes a requirement that recyclable or compostable food service packaging items made from plastic or fiber contain total fluorine concentrations of no more than 100 parts per million to limit exposure to PFASs.</p> <p>CalRecycle agrees with the assessment that most California compost facilities do not accept "compostable plastics." In a CalRecycle survey of 27 food waste composting facilities in California, 26 did not accept "compostable plastics." This fact, however, does not change the process by which each item will be considered on a case-by-case basis by the department.</p> <p>See response to W15-31 regarding a regional or local approach.</p>	No

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17989.5	W31-11	Surfrider Foundation	Miho	Ligare	According to CalRecycle, an estimated 76.5 million tons of solid waste were generated statewide in 2016, with 44 percent recycled or composted and 56 percent disposed. Mainly due to the lack of infrastructure, the total available composting capacity in the state is 1.9 million tons, which falls short of the capacity needed to support diversion rates required for the criteria. We recommend CalRecycle come up with criteria that can be reasonably met in the whole state. If a lower diversion rate is used, it should be matched with corresponding increase in the rate of reusables and recyclables.	<p>Neither statute nor the regulations impose diversion rate requirements for food service packaging items. Rather, the criteria have been established to determine whether or not a type of food service packaging item is reusable, recyclable, or compostable in the state. Although “diversion rates” are not included in the criteria, the commenter is likely referring to the collection thresholds for recyclable and compostable food service packaging items.</p> <p>See response to W10-03 regarding phased collection and sortation thresholds.</p> <p>See response to W07-02 regarding collection and acceptance thresholds.</p> <p>There is not a corresponding collection requirement for reusable food service packaging items because these products are already routinely recovered and cost significantly more to purchase (compelling reuse). The reusable criteria include performance requirements that will help ensure the food service packing items on the List are durable and designed for extensive reuse.</p>	No
17989.5	W33-01	US Composting Council (USCC)	Frank	Franciosi	We applaud the goal of avoiding landfilling of packaging that is not compostable in state facilities. We encourage you to ensure that the feedback, systems and concerns of compost manufacturers is taken into account in the rollout of these purchases by state agencies. We recommend that, when possible, state purchasing agents who seek compostable food serviceware seek contracts or assurances from product companies that accessibility for successful composting of their products is guaranteed.	The recommendation concerns the practices of state purchasing agents and is outside the scope and purpose of this rulemaking. CalRecycle does not have authority to impose requirements on state purchasing agents.	No
17989.5(a)	PH06-29	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (5) “The food service packaging is certified by either the Biodegradable Products Institute (BPI) or a third-party certification entity that is determined by the department to have requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute (BPI).”	See response to W13-08 regarding BPI certification of compostable food service packaging items.	No
17989.5(a)	W04-65	American Chemistry Council (ACC)	Tim	Shestek	The commenter suggests deleting the stricken language: (a) A food service packaging item is “compostable” and shall be included on the List if the department determines it meets the requirements of Section 17989.2 and all the following criteria:	See response to PH01-05 regarding CalRecycle’s authority to consider public health and litter impacts.	No



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17989.5(a)	W15-39	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (5) “The food service packaging is certified by either the Biodegradable Products Institute (BPI) or a third-party certification entity that is determined by the department to have requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute (BPI).”	See response to W13-08 regarding BPI certification of compostable food service packaging items.	No
17989.5(a)	W16-21	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	If regulations are approved without a field-testing component, composters could choose not to participate initially or after finding that the materials collected do not disintegrate in the facility’s process.	See response to W09-06 regarding field testing.	No
17989.5(a)	W16-25	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	Organic compost producers are regulated by the USDA NOSB. These standards conflict with the standards set out in the proposed regulations. Under the NOSB, paper containing PFAS is acceptable but non-PFAS containing PLA with no additives is not.	CalRecycle disagrees with the comment’s assertion that the proposed regulations are in conflict with USDA National Organic Standards Board (NOSB) organic certification standards. The proposed regulations are specifically designed to implement statute, which requires the department to determine if a food service packaging item is compostable, with consideration given to certain minimum relevant factors, as well as public health impacts. The proposed regulations do not prohibit an entity from pursuing National Organic Program certifications or following the recommendations of the NOSB for the purposes of obtaining organic certification.  With regard to PFASs in food service packaging, the proposed regulations include a criterion that prohibits more than 100 ppm total fluorine in plastic and fiber food service packaging items that are recyclable or compostable. This requirement is more stringent than the NOSB standard for paper that may contain PFASs and should not conflict with NOSB standards.	No
17989.5(a)(1)	PH06-27	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest consistency when referring to “organics recycling programs” and/or “compost facilities,” and to clearly define these, and other, terms used in the regulations.	See response to W15-36 regarding the terms “organics recycling programs” and “compost facilities.”	Yes
17989.5(a)(1)	PH06-28	Clean Seas Lobbying Coalition	Genevieve	Abedon	We recommend that the Department clarify if the percentage is meant to be calculated at the statewide or local level, and allowing such packaging to be used by facilities who are serviced by a composter that accepts and processes the material.	Based on stakeholder feedback, subsection 17989.5(a)(1) has been revised to clarify that all calculations must be made at the statewide level. The revised text is shown in the response to W07-02.  Regarding the suggestion that packaging should be allowed if it is used by a facility that is serviced by a composter that accepts the packaging, see response to W15-31 regarding a regional or local approach.	Yes

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17989.5(a)(1)	W04-66	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests the following revision to the proposed regulations: (1) The food service packaging material is regularly collected for composting, <u>meaning that a minimum percentage of public/private aerobic compost facilities processing post-consumer food waste and food-soiled paper must reach 60 percent of the population.</u> by a minimum of 75 percent of organics recycling programs.	<p>The suggested revision is inappropriate because it is vague with respect to what would constitute “a minimum percentage” and what would constitute “reaching... the population.” Furthermore, it is unnecessary because “compost facility,” as defined in subsection 17989(a)(4), does not exclude “public/private aerobic compost facilities processing post-consumer food waste and food-soiled paper.”</p> <p>To the extent this comment asserts that the collection and acceptance thresholds are too high, see response to W07-02.</p>	Yes
17989.5(a)(1)	W09-11	California Compost Coalition (CCC)	Neil	Edgar	CCC is fully supportive of requiring wide acceptability of both recyclable and compostable packaging materials as criteria for listing. We are unclear who will be responsible for verifying how many programs are accepting recyclable or compostable materials. While we have concerns that “ <i>regularly collected by a minimum of 75 percent of programs</i> ” is an adequate metric – given that the collection of materials does not necessarily mean the materials will not be sorted and landfilled.	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>Food service packaging manufacturers are required to supply information in the applications submitted to CalRecycle that demonstrates their food service packaging material or item is accepted and collected at the applicable rates (e.g., recyclable or compostable) as specified in the regulations. CalRecycle will verify that the required thresholds are met and substantiated by the information provided. Staff may perform additional research if necessary.</p>	No
17989.5(a)(1)	W15-37	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest a higher percentage of 90 percent. Also, allowing such packaging to be used by facilities who are serviced by a recycler that accepts and processes the material - For instance, the list developed pursuant to the regulations could list something like “Ingeo PLA-coated paperboard cups, where allowed by the compost service provider.”	<p>CalRecycle disagrees with the commenter’s suggestion to increase the minimum collection percentage for compostable items to 90 percent. The commenter provides no justification for the increase to 90 percent and the department lacks data to conclude that food service packaging materials are recycled at such a high rate. A threshold of 90 percent also exceeds goals set in related departmental programs such as the diversion goals of SB 1383 (Lara, Chapter 395, Statutes of 2016).</p> <p>See response to W15-31 regarding a regional or local approach.</p>	No

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17989.5(a)(1)	W16-23	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	How is this threshold established? If the number of facilities accepting compostables falls below the 75% minimum prescribed in the rule, are the acceptance lists taken down or inactivated?	<p>This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.</p> <p>See responses to W07-02 regarding collection and acceptance thresholds and W09-11 regarding application of the acceptance and collection criteria.</p> <p>If a manufacturer is unable to provide information demonstrating their food service packaging item is accepted and collected as required pursuant to subsections 17989.5(a)(1)-(2), the product will not be added to the List, and the manufacturer will be notified.</p> <p>Regarding the potential for items no longer meeting the thresholds in the future, the department is required to reevaluate the List no less than once every 5 years and remove items that it no longer considers to be reusable, recyclable, or compostable. See response to W13-09 regarding the process for removing an item or material from the List.</p>	No
17989.5(a)(1) and (2)	W04-18	American Chemistry Council (ACC)	Tim	Shestek	The Department's proposed "compostable" criteria contain the same litmus test as the one discussed above for "recyclable" food service packaging. To avoid inequitable standards, the "compostable" criteria proposed by the Department should be revised to be consistent with the mandated statutory criteria in SB 1335, and the FTC's Green Guides. In particular, the Department should replace the current language containing the 75 percent litmus test in Section 17998.5(a)(1) – (2), at Page 10, Lines 270- 273 of the Proposed Regulations, with language stating that "a minimum percentage of public/private aerobic compost facilities processing post-consumer food waste and food soiled paper must reach 60% of the population."	<p>The suggested revision is inappropriate because it is vague with respect to what would constitute "a minimum percentage" and what would constitute "reaching... the population."</p> <p>To the extent this comment asserts that the proposed regulation is in conflict with the FTC Green Guides, see response to W04-50.</p> <p>To the extent this comment asserts that the collection and acceptance thresholds are too high, see response to W07-02.</p>	Yes
17989.5(a)(1) and (2)	W24-01	Plant Based Product Council (PBPC)	Jessica	Bowman	The criteria proposed for compostable food service packaging items pursuant to SB 1335 (§17989.5) will essentially act as a defacto ban on the use of compostable products. Requiring that a material be regularly collected for composting by a minimum of 75 percent of organics recycling programs and that the item is accepted by at least 75 percent of compost facilities is far too great a burden for these nascent products. Compost facilities are often not willing to accept these products because of the various concerns mentioned above, and they are under no obligation to accept these products. As a result, no "compostable" product could meet the proposed criteria.	See response to W07-02 regarding collection and acceptance thresholds.	Yes

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Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
17989.5(a)(1) and (2)	W24-03	Plant Based Product Council (PBPC)	Jessica	Bowman	Another approach may be to require that a material be regularly collected for composting by a minimum of 75 percent of organics recycling programs that accept compostable packaging, along with an item being accepted by at least 75 percent of compost facilities that accept compostable packaging.	<p>CalRecycle disagrees with the commenter’s suggestion to replace “accept mixed materials” with “accept compostable packaging.” The suggested language would mean that being “compostable” would depend on how many programs “accept compostable packaging,” which itself would depend on what is “compostable”; the result is vague with respect to “compostable packaging” generally, and analytically circular with respect to “compostable” food service packaging items, specifically. Instead, the proposed regulations establish an acceptance threshold among facilities that “accept mixed materials,” which includes food service packaging. Moreover, even if it were possible to define “compostable packaging” independently from what constitutes “compostable” under the proposed regulations, CalRecycle has determined it is appropriate to maintain the broader term “mixed materials.” The proposed change would narrow the subset of compost facilities from those that accept mixed materials to those that only accept compostable packaging. The narrowed focus on facilities that “accept compostable packaging” would defeat the purpose of the criteria, which is to reflect the degree to which statewide composting infrastructure incorporates the items as part of usable compost, as required by PRC 42370.2(e)(1).</p> <p>See response to W07-02 regarding collection and acceptance thresholds.</p>	No
17989.5(a)(1) and (2)	W25-21	Plastics Industry Association (PLASTICS)	Shannon	Crawford	A 75 percent requirement is overly restrictive. This limit is not established by number of consumers with access, which favors smaller facilities that may use non-standard composting practices. This would negatively impact facilities like convention centers, stadiums or universities who choose to use compostable products and either have on-site composting or contract with a third-party to accept and process their organic waste. CalRecycle should revise this section to eliminate criteria 1 through 3 so as to be consistent with federal guidelines. <sup>3</sup> so as to be consistent with federal guidelines.	See response to W07-02 regarding collection and acceptance thresholds.	Yes
17989.5(a)(1) through (3)	W16-20	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	A composter may refuse an item or collection from an entire entity because the product(s) do not meet the criteria of (3). The determination of the percentage of organics recycling programs is vague in that it does not specify whether this includes organic compost producers regulated by the USDA NOSB which does not follow the same scientific standards set out in the proposed regulations.	<p>See response to W16-26 regarding the definition of “Accept.”</p> <p>See response to W16-25 regarding NOSB standards.</p>	No



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17989.5(a)(1) through (4)	W07-02	Association of Compost Producers (ACP)	Dan	Noble	<p>Based on a Survey of ACP compost producer members in June 2019, 29% are “currently composting food scraps that include compostable plastics.” 23% “believe that there is a place for plastics in the organics system.” However, 87% “Do not want compostable plastics in their feedstocks.”</p> <p>To require 75% of the State’s compost producers to accept compostable plastics, effectively bans compostable plastics from being used in California. One ACP member that sells compostable food service ware and packaging, works exclusively with institutional food service packaging purchasers/generators to pair them up with a local composter that accepts and composts the food scraps and the compostable service ware. Therefore, the criteria should be whether a specific item is accepted in composting facilities capable of processing compostable products for specific users of these compostable materials. <b>Not</b> whether the facility is willing to accept the entire category, and <b>not whether</b> “<i>The food service packaging item is accepted by at least 75 percent of compost facilities permitted to accept mixed materials.</i>”</p> <p>This comment suggests the following revision to the proposed regulations:  (a) A food service packaging item is “compostable” and shall be included on the List if the department determines it meets the requirements of Section 17989.2 and all the following criteria:  (1) The food service packaging material is regularly collected for composting by a minimum of 75 percent of <u>the</u> organics recycling programs <u>serving the food service facility</u>.  2) The food service packaging item is accepted by at least 75 percent of <u>local</u> compost facilities <u>willing and permitted to accept mixed materials</u> <u>compostable food service packaging</u>.  (3) The food service packaging item biodegrades in a safe and timely manner.  (4) 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).</p>	<p>CalRecycle agrees with revising the 75 percent threshold for acceptance of compostable food service packaging by compost facilities based on current infrastructure and the number of facilities that accept and process mixed materials statewide.</p> <p>Based on stakeholder feedback, the collection and acceptance thresholds for compostable food service packaging have been revised from 75 percent to 50 percent to align with the diversion goals of SB 1383, (Lara, Chapter 395, Statutes of 2016). The collection and acceptance thresholds will increase to 75 percent on January 1, 2026, which more closely coincides with the time it will take for the state to build additional compost facilities and improve organics recycling programs anticipated as a result of the passage of SB 1383.</p> <p>Subsections 17989.5(a)(1) and 17989.5(a)(2) have been revised as follows:  (1) <del>The</del> <u>Prior to December 31, 2025, the</u> food service packaging material is regularly collected for composting by a <del>minimum of 75</del> <u>at least 50</u> percent of organics recycling programs <u>statewide</u>. <u>Effective January 1, 2026, the food service packaging material is regularly collected for composting by at least 75 percent of organics recycling programs statewide.</u>  (2) <del>The</del> <u>Prior to December 31, 2025, the</u> food service <del>item</del> <u>material</u> is accepted by at least <del>75</del> <u>50</u> percent of <u>the</u> compost facilities <del>permitted to in the state that</del> <u>accept mixed materials</u>. <u>Effective January 1, 2026, the food service packaging material is accepted by at by at least 75 percent of the compost facilities in the state that accept mixed materials.</u></p> <p>Regarding the suggested changes to subsection (a)(1), CalRecycle disagrees with eliminating the statewide collection threshold and narrowing the criterion to apply instead to a program serving a local food service facility. See response to W15-31 regarding a regional or local approach.</p> <p>Regarding the suggested changes to subsection (a)(2), CalRecycle disagrees with eliminating the statewide acceptance threshold and narrowing the criterion to apply to local compost facilities, rather than statewide. See response to W15-31 regarding a regional or local approach.</p>	Yes



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						Regarding the proposed deletion of subsection (a)(3), CalRecycle disagrees with removing this requirement; however, the text was modified. The revised text is shown in the response to W16-28.	
17989.5(a)(1) through (4)	W08-16	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>This provision is problematic, and would effectively block all certified compostable products today. One difference between recycling and composting markets is that composting markets are necessarily local, supported by a contract between the generating venue and the composter. The criteria should be whether a specific item is accepted in composting facilities capable of processing compostable products, not whether the facility is willing to accept the entire category. We support the Association of Compost Producers (ACP)'s proposed language.</p> <p>This comment suggests the following revision to the proposed regulations:</p> <p>(a) A food service packaging item is "compostable" and shall be included on the List if the department determines it meets the requirements of Section 17989.2 and all the following criteria:</p> <p>(1) The food service packaging material is regularly collected for composting by a minimum of 75 percent of <u>the</u> organics recycling programs <u>servicing the food service facility</u>.</p> <p>2) The food service packaging item is accepted by at least 75 percent of <u>local</u> compost facilities <u>willing and</u> permitted to accept mixed materials <u>compostable food service packaging</u>.</p> <p>(3) The food service packaging item biodegrades in a safe and timely manner.</p> <p>(4) 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).</p>	<p>See responses to W07-02 regarding collection and acceptance thresholds and W15-31 regarding a regional or local approach.</p> <p>CalRecycle disagrees with the commenter's recommended strikethrough of subsection 17989.5(a)(3). PRC 42370.2(e) requires the department to consider "whether the food service packaging will, in a safe and timely manner, break down or otherwise become part of usable compost." See response to W08-09 regarding the definition of "Safe and timely manner."</p>	No

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17989.5(a)(2)	PH05-09	Californians Against Waste (CAW)	Nick	Lapis	The requirement for food service packaging to be accepted by 75% of composting facilities in the state would render nothing in the market as 'compostable' under these regulations. Considering only 20% of the state's composting facilities accept packaging of any sort, even materials that meet the most stringent third-party certifications would not be accepted. The legislature clearly intended for "recyclable" and "compostable" packaging to be allowed, so the regulations cannot prohibit every piece of compostable packaging. We recommend allowing such packaging to be used by facilities who are serviced by a composter that accepts and processes the material. For instance, the list developed pursuant to the regulations could list something like "Ingeo PLA-coated paperboard cups, where allowed.	CalRecycle disagrees with the commenter's assertion of what the Legislature intended. For purposes of SB 1335, no packaging is defined as "recyclable" or "compostable" other than pursuant to a determination by CalRecycle. The commenter's assertion that "compostable packaging" has to be considered "compostable" under the proposed regulations is therefore logically circular.  See response to W07-02 regarding collection and acceptance thresholds.  See response to W15-31 regarding a regional or local approach.	Yes
17989.5(a)(2)	W04-67	American Chemistry Council (ACC)	Tim	Shestek	This comment suggested removing subsection 17989.5(a)(2) in its entirety.	Pursuant to PRC subsection 42370.2(e)(3), this subsection is necessary to establish the compostable criteria acceptance requirement and clarifies that only the compost facilities that "accept" mixed materials, as defined in subsection 17989(a)(1), will be counted toward a specified threshold. The calculation will not include compost facilities that are not permitted to accept mixed materials (e.g., food service packaging).	No
17989.5(a)(2)	W09-13	California Compost Coalition (CCC)	Neil	Edgar	We are supportive of the concept that listed packaging be " <i>accepted by at least 75 percent of compost facilities permitted to accept mixed materials.</i> " We would like to have additional clarity on who would verify that the facilities are accepting the type of packaging that is applying for being listed. Additionally, the latest information that we are aware of, a 2019 survey of permitted mixed materials composting facilities in California revealed that only 14 of 38 facilities willingly accepted compostable packaging. We would appreciate having CalRecycle conducting similar work to confirm acceptance rates.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.  To the extent this comment asserts that the proposed regulations are unclear with respect to the acceptance and collection criteria, see response to W09-11.	No
17989.5(a)(2)	W12-01	Californians Against Waste (CAW)	Nick	Lapis	The requirement for a 75% acceptance rate for compostable packaging doesn't really make sense and would completely ban all compostable packaging entirely (which was definitely not the goal). The composters suggested a good alternative of having it be allowed if the individual hauler allows it in their composting program.	See response to W07-02 regarding collection and acceptance thresholds.	Yes

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17989.5(a)(2)	W13-06	Californians Against Waste (CAW)	Nick	Lapis	The requirement for food service packaging to be accepted by 75% of composting facilities in the state would render nothing in the market as 'compostable' under these regulations. Considering only 20% of the state's composting facilities accept packaging of any sort, even materials that meet the most stringent third-party certifications would not be accepted. The legislature clearly intended for "recyclable" and "compostable" packaging to be allowed, so the regulations cannot prohibit every piece of compostable packaging.	Regarding the commenter's assertion concerning legislative intent, see response PH05-09.  See response to W07-02 regarding collection and acceptance thresholds.	Yes
17989.5(a)(2)	W13-07	Californians Against Waste (CAW)	Nick	Lapis	We recommend allowing such packaging to be used by facilities who are serviced by a composter that accepts and processes the material, as is consistent with the "regional" approach outlined in the statute. For instance, the list developed pursuant to the regulations could include something like "Ingeo PLA-coated paperboard cups, where allowed by the compost service provider."	See response to W15-31 regarding a regional or local approach.	No
17989.5(a)(2)	W15-38	Clean Seas Lobbying Coalition	Genevieve	Abedon	We want to ensure that regional acceptance/non-acceptance and local infrastructure are considered.	See response to W15-31 regarding a regional or local approach.	No
17989.5(a)(2)	W16-26	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	Some products work well in one composting process and not in others. In those instances, will the product be considered "accepted" or not? When using a lab-only standard, this issue is avoided but as discussed, creates the potential for greater contamination across the system. If a lab-only standard is finalized, acceptance of the product must be at the discretion of the industrial composter based upon their process and not regulated by a list over which they do not have control. This makes field testing even more important.	See response to W09-06 regarding field testing.  The proposed regulations define "Accept" to clearly establish that if a compost facility identifies a food service packaging as a physical contaminant, then it is not considered accepted. Food service packaging items must meet the compostable criteria to be added to the List and a specified threshold of compost facilities must accept a type of food service packaging in order for it to be included on the List.  CalRecycle does not have authority to require a compost facility to accept food service packaging items on the List – it will remain the sole discretion of the industrial composter as to whether or not they accept an item, based on their unique operational processes and requirements to ensure the quality of their finished compost.	No
17989.5(a)(2)	W16-27	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	In a recent survey of California compost facilities, 38 were permitted to accept mixed materials. Of those, only 14 (37%) willingly accept compostable packaging. This is far from the 75% required under the regulation. The accepted list is moot before it begins in this scenario and will preclude any compostable packaging usage.	See response to W07-02 regarding collection and acceptance thresholds.	Yes

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17989.5(a)(2)	W25-22	Plastics Industry Association (PLASTICS)	Shannon	Crawford	In a recent survey of California compost facilities, 38 were permitted to accept mixed materials. Of those, only 14 (37%) willingly accept compostable packaging. This is far from the 75% required under the regulation. The accepted list is moot before it begins in this scenario and will preclude any compostable packaging usage.	See response to W07-02 regarding collection and acceptance thresholds.	Yes
17989.5(a)(2)	W29-11	San Francisco Department of the Environment (SF Environment)	Hillary	Near	The criteria of compostable food service packaging as being accepted at 75% or more of facilities and programs does not recognize the current state of the industry nor the regional dynamics of organics processing infrastructure within California. A survey by Biocycle of 185 U.S. food waste composting indicates that nationally as of 2019, only 56% of facilities reported accepting BPI-certified compostable plastic food ware. An acceptance rate of 75% is restrictive and would likely create a de facto ban on compostable food ware. With the loss of compostable foodware as an option, state facilities will lose the recovery option represented by compostable food packaging.	See response to W07-02 regarding collection and acceptance thresholds.	Yes
17989.5(a)(3)	W16-22	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	Predictive lab certification does not mean a product disintegrates in a "safe and timely manner" as defined in §17989 (a)(25). This creates a disconnect in the system. The regulations may deem an item acceptable under §17989 (a)(25) but the composter's (and CMA's) experience says otherwise. The composter can refuse the item(s) or sort it out and landfill it. This does not achieve the intended goal of waste reduction. The product for which the State paid a premium must be landfilled after collection or after composting. The costs fall on the State or on the composter. Ecological costs (increased carbon emissions in production, distribution and in "the long way" to the landfill) fall upon everyone, leaving the State with an ineffective purchasing requirement at greater cost.	<p>To the extent this comment asserts that a food service packaging item may be considered compostable based solely on a predictive lab certification, no revision is necessary because an item can only be considered compostable if it also satisfies the thresholds for statewide collection and acceptance.</p> <p>To the extent that this comment asserts that the proposed regulation dictates to compost facilities what is "acceptable," or that the proposed regulation should eliminate the possibility that any composting facility will refuse to compost an item deemed compostable on the List, no revision is necessary. The proposed regulation defines what it means for a facility to "accept" a food service packaging item and contemplates that some facilities will not accept certain items on the List. Furthermore, CalRecycle lacks the authority to require composting facilities to accept any particular food service packaging items.</p> <p>See related response to W08-09 regarding the definition of "Safe and timely manner."</p>	No



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17989.5(a)(3)	W16-28	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	The requirement should be “ <u>disintegrates</u> and biodegrades in a safe and timely manner in a properly run industrial composting operation.”	CalRecycle selected the term “composts” because it refers to the entire break down process for materials that enter a compost facility, including disintegration and biodegradation.  Subsection 17989.5(a)(3) has been revised as follows: “The food service packaging item <u>composts</u> <del>biodegrades</del> in a safe and timely manner.”	Yes
17989.5(a)(3)	W30-01	Santa Monica College (SMC)	Ferris	Kawar	The definition of “compostable” found under §17989.5. Compostable Food Service Packaging Criteria states that “(3) The food service packaging item biodegrades in a safe and timely manner.” This language is too vague. I would suggest adopting the definition the City of Santa Monica uses which is “marine degradable”. This means the item will break down in a much shorter period. It translates to wooden utensils instead of PLA.	See response to W08-07 regarding a suggested definition of “Compostable.”  ASTM D7081, “Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment,” was withdrawn by ASTM International in 2014 and subsequently removed from PRC Section 42356 pursuant to the passage of AB 2287 (Eggman, Chapter 281, Statutes of 2020). Moreover, PRC Section 42370.2 directed CalRecycle to establish criteria for “reusable,” “recyclable,” and “compostable,” not for “marine degradable.”	No

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<b>§17989.6. Application Requirements and Submittal Process.</b>							
17989.6(a)(5)	W04-68	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests deleting subsection 17989.6(a)(5) in its entirety.	CalRecycle disagrees with the commenter’s suggestion to remove the application requirements established by this subsection. These requirements clarify how a food service packaging manufacturer must demonstrate that an item is in compliance with subsection 17989.2(a)(1) within the Public Health and Litter Impacts Criteria and are necessary to ensure the department receives the information in an application that it needs to evaluate whether a food service packaging item contains allowable amounts of regulated metals pursuant to the Toxics in Packaging Prevention Act.	No
17989.6(a)(6)	PH06-30	Clean Seas Lobbying Coalition	Genevieve	Abedon	Clean Water Action has only seen a Prop 65 warning on one piece of packaging. We suggest a statement as to whether any Prop. 65, DTSC candidate chemicals, or PFAS are included in the material.	See response to W15-40 regarding the disclosure of Proposition 65 chemicals and PFASs.  See response to W15-16 regarding DTSC’s Candidate Chemicals List.	No



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17989.6(a)(6)	W04-69	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests deleting subsection 17989.6(a)(6) in its entirety.	<p>CalRecycle disagrees with the commenter's suggestion to remove the application requirements established by this subsection. These requirements clarify how a food service packaging manufacturer must demonstrate that an item is in compliance with subsection 17989.2(a)(2) within the Public Health and Litter Impacts Criteria.</p> <p>The application requirements are necessary to ensure the department receives the information in an application that it needs from a manufacturer, including the names of chemicals contained in an item, their Chemical Abstract Service Registry Numbers (CASRN) from the Proposition 65 list, and a disclosure whether a Proposition 65 warning is required.</p> <p>See response to W04-33 regarding the Proposition 65 list.</p>	No
17989.6(a)(6)	W15-40	Clean Seas Lobbying Coalition	Genevieve	Abedon	Regarding the requirement to "disclose whether a Prop65 warning is required," Clean Water Action has only seen a Prop 65 warning on one piece of packaging. We suggest a statement as to whether any Prop. 65, DTSC candidate chemicals, or PFAS are included in the material.	<p>CalRecycle disagrees that the proposed revision is necessary. Subsection 17989.1(a)(6) requires that the List on CalRecycle's website include the names of chemicals contained in a food service packaging item and their CASRN from the Proposition 65 list.</p> <p>See response to W15-16 regarding DTSC's Candidate Chemicals List.</p> <p>Pursuant to the Public Health and Litter Impacts Criteria, subsection 17989.2(a)(3) specifies that recyclable or compostable food service packaging items made from plastic or fiber materials contain total fluorine concentrations of no more than 100 parts per million to limit exposure to PFASs.</p>	No
17989.6(a)(7)	W16-29	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	<p>Laboratories conduct testing to show products meet ASTM D6400 or D6868. CMA agrees these labs should be ISO/IEC 17025 accredited. However, these labs are not recognized as third-party certifiers of compostable products as that term is used in the composting industry. Please consider this language change for clarity.</p> <p>As applicable, the accreditation number(s) of the ISO/IEC 17025 laboratory(ies) used to perform ASTM D6400 or D6868 laboratory analysis must be included as part of the documentation submitted to third party certifiers that verify compliance.</p>	See comment W08-12 regarding the definition of "Third-party certification entity."	Yes
17989.6(c)	PH06-31	Clean Seas Lobbying Coalition	Genevieve	Abedon	Does this exist for reusables? If so, we suggest that the entity should be approved by the department.	See response to W15-41 regarding third-party certification entities for reusable food service packaging items.	No

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17989.6(c)	W15-41	Clean Seas Lobbying Coalition	Genevieve	Abedon	Do third-party certification entities for reusables exist? If so, we suggest that the entity should be specifically named and/or approved by the department.	CalRecycle is unaware of a third-party certification entity that specializes in testing reusable food service packaging items. Third-party certification entities are not approved by the department, but rather must hold ISO/IEC 17025:2017 accreditation. Any third-party certification entity that is ISO/IEC 17025:2017 accredited can perform the necessary tests to demonstrate reusable food service packaging items meet the criteria outlined in Section 17989.3.	No
17989.6(d)(4)	W25-23	Plastics Industry Association (PLASTICS)	Shannon	Crawford	The regulations are unclear on when the Department would expect an applicant to provide “information demonstrating that the food service packaging item is regularly collected for recycling.” Manufacturers of food packaging often do not often know what city or state their product ends up in after selling it to wholesalers, retailers or distributors. We request that this requirement be removed from the application requirement.	<p>Subsection 17989.6(d)(4) specifies that an application for a recyclable food service packaging item must include information demonstrating that the item is regularly collected for recycling by either recycling programs or a takeback program, according to the requirements of subsection 17989.4(a)(3). This is necessary in order for the department to evaluate whether a food service packaging item has met the criteria to be considered recyclable. This information is required and is not optional; thus it is clear that it is expected. The proposed regulations place the onus on the applicant to demonstrate that a food service packaging item can be routinely collected in the state’s recycling infrastructure and is compliant with all of the applicable criteria.</p> <p>To the extent possible and to reduce the burden on manufacturers, CalRecycle will publish a list of materials that have been determined by the department to meet the requirements of subsection 17989.4(a)(3)(A) and subsections 17989.5(a)(1) and (2). Manufacturers will be able to reference this list in their application if their packaging is made with the pre-approved materials. Additional criteria, as specified in the regulations, must also be met.</p> <p>See response to W28-07 for more information regarding the materials section within the List.</p>	No

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17989.6(d)(4)	W26-19	Recology, Inc.	Christine	Wolfe	PRC Section 42370.2(d)(6) requires that the Department consider whether the food service packaging material is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value. Will the Department use RDRS to make sure that the item is regularly recycled in addition to being regularly collected for recycling?	<p>PRC subsections 42370.2(d)(1)-(6) outline the minimum criteria that must be considered for determining if a food service packaging item is “recyclable.” Subsection 17989.4(a)(3) clarifies these criteria and requires that recyclable food service packaging items be both regularly collected and recycled, which includes being sorted and aggregated into a single-named bale by a specified percent of transfer/processors. The proposed regulations place the onus on the applicant to demonstrate that a food service packaging item can be recycled in the state’s infrastructure and is compliant with all of the applicable criteria.</p> <p>To the extent possible, CalRecycle will use a variety of data, including the RDRS, to determine which types of food service packaging materials are regularly collected and sorted for recycling. Manufacturers will be able to reference the List in their application if their packaging is made with the pre-approved materials. Additional criteria, as specified in the regulation, must also be met.</p> <p>See response to W28-07 for more information regarding the materials section within the List.</p>	Yes
17989.6(e)	PH06-32	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (5) “The food service packaging is certified by either the Biodegradable Products Institute (BPI) or a third-party certification entity that is determined by the department to have requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute (BPI).”	See response to W13-08 regarding BPI certification of compostable food service packaging items.	No
17989.6(e)	PH06-33	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding a final section clearly outlining how violations will be addressed and how these regulations will be enforced.	<p>CalRecycle does not have statutory authority to implement enforcement actions.</p> <p>See response to W13-12 regarding verification of compliance.</p>	No
17989.6(e)	W09-14	California Compost Coalition (CCC)	Neil	Edgar	Section (e) is consistent with the requirements noted in §17989.5 and we will refer to our comments specific to that section.	This comment does not propose any specific changes to the regulation or raise issues related to the rulemaking process.	No
17989.6(e)	W15-42	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (5) “The food service packaging is certified by either the Biodegradable Products Institute (BPI) or a third-party certification entity that is determined by the department to have requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute (BPI).”	See response to W13-08 regarding BPI certification of compostable food service packaging items.	No

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17989.6(e)(1)	W04-70	American Chemistry Council (ACC)	Tim	Shestek	This comment suggests the following revision to the proposed regulation: (1) Information demonstrating that the food service packaging material is regularly collected for composting <del>by a minimum of 75 percent of organics recycling programs</del> . <u>as required by subsection 17989.5(a)(1).</u>	This comment does not request a substantive change; it only requests that the requirement in subsection 17989.5(a)(1) be included by reference, rather than by restating the specific threshold. This change was made in the Second Draft Proposed Regulations.  See response to W08-17 regarding substantive changes to subsection 17989.6(e)(1).	Yes
17989.6(e)(1) and (2)	W07-03	Association of Compost Producers (ACP)	Dan	Noble	This should be about whether the specific package is accepted by facilities. Depackaging should be adequately addressed already in § 17989(a)(1) for “Accept” about physical contaminants. This comment suggests the following revision to the proposed regulation: (1) Information demonstrating that the food service packaging material is regularly collected for composting by <del>a minimum of 75 percent of the</del> <u>organics recycling programs serving the foodservice facility.</u> (2) Information demonstrating that the food service packaging item or group of items are accepted <del>at least 75 percent of local</del> <u>compost facilities willing and permitted to accept mixed materials compostable food service packaging</u> , as defined in Division 7, Chapter 3.1, Article 1, 344 Section 17852, subsection (a)(26), and that the material is not screened out for disposal prior to or after active composting.	These proposed changes do not align with the requirements established for the compostable criteria in Section 17989.5.  See response to W08-17 regarding substantive changes to subsection 17989.6(e)(1) and (2).	No

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17989.6(e)(1) and (2)	W08-17	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>This should be about whether the specific package is accepted by facilities. Depackaging should be adequately addressed already in § 17989(a)(1) for “Accept” about physical contaminants. We support most of what ACP is proposing, but without the statement around whether material is screened out. There are several reasons a facility may be screening to manage the quality of their finished compost; it should be left to the composter to manage their process in such a manner that they can generate high-quality compost.</p> <p>This comment suggests the following revision to the proposed regulation:</p> <p>(1) Information demonstrating that the food service packaging material is regularly collected for composting <del>by a minimum of 75 percent of the organics recycling programs serving the food service facility.</del></p> <p>(2) Information demonstrating that the food service packaging item or group of items are accepted <del>at least 75 percent of local compost facilities willing and permitted to accept mixed materials compostable food service packaging,</del> as defined in Division 7, Chapter 3.1, Article 1, 344 Section 17852, subsection (a)(26), <del>and that the material is not screened out for disposal prior to or after active composting.</del></p>	<p>These proposed changes do not align with the requirements established for the compostable criteria in Section 17989.5. CalRecycle disagrees with removing the threshold requirement in subsections 17989.6(e)(1) and (2) because they provide a quantitative method for demonstrating that the compostable food service packaging item and material is regularly collected and accepted throughout the state. See response to W15-31 regarding the suggestion that the regulation should be based on local or regional acceptance rates, not statewide rates.</p> <p>The requirement for material to not be screened out at facilities is included to remain consistent with the regulatory definition of “Accept” in subsection 17989(a)(1), which only applies where a facility actually composts an item.</p> <p>However, based on stakeholder feedback, the collection and acceptance thresholds were decreased, and subsections 17989.6(e)(1) and (2) have been revised to reference the appropriate thresholds in subsections 17989.5(a)(1) and (2) as follows:</p> <p>(1) Information demonstrating that the food service packaging material is regularly collected <u>as required by subsection 17989.5(a)(1) for composting by a minimum of 75 percent of organics recycling programs.</u></p> <p>(2) Information demonstrating that the food service packaging <del>item material or group of items are</del> <u>is accepted as required by subsection 17989.5(a)(2) by at least 75 percent of compost facilities permitted to accept mixed materials, as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(26),</u> and that the material is not screened out for disposal prior to or after active composting.</p> <p>See response to W07-02 regarding collection and acceptance thresholds.</p> <p>See response to W08-04 regarding the term “Physical contaminant.”</p>	No



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17989.6(e)(2)	W04-71	American Chemistry Council (ACC)	Tim	Shestek	This comment suggested removing subsection 17989.6(e)(2) in its entirety.	CalRecycle disagrees with the commenter's proposal to remove the requirement that an application for a compostable food service packaging item include information demonstrating the item is regularly accepted. This is necessary in order for the department to evaluate whether an item has met one of the criteria to be considered compostable.  See response to W07-02 regarding collection and acceptance thresholds.	No
17989.6(e)(3)	W07-04	Association of Compost Producers (ACP)	Dan	Noble	This will not work unless section §17989 is updated for the timeframe to match ASTM standards. Please see the Biodegradable Products Institute (BPI)'s suggestions for "safe and timely manner." This comment suggests the following revision to the proposed regulation: <del>Test results from a</del> Validation from a third-party certification entity that demonstrates the food service packaging item or group of items <del>biodegrades in</del> <u>meets the requirements of</u> a safe and timely manner.	See response to W08-09 regarding the definition of "Safe and timely manner."  See response to W08-18 regarding the submission of test results from a third-party certification entity.	No
17989.6(e)(3)	W08-18	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	This will not work unless section §17989 is updated for the timeframe to match ASTM standards. Please see our suggestions for "safe and timely manner." This comment suggests the following revision to the proposed regulation: <del>Test results from a</del> Validation from a third-party certification entity that demonstrates the food service packaging item or group of items <del>biodegrades in</del> <u>meets the requirements of</u> a safe and timely manner.	CalRecycle disagrees with the suggested revision. The requirement in the proposed regulation for the department to review the third-party certification test results associated with a food packaging item is more specific and clear than the proposed change to "validation," which can be interpreted inconsistently.  See related response to W08-09 regarding the definition of "Safe and timely manner."	No
17989.6(e)(3)	W16-30	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	CMA encourages that products meet lab standards through its own program or that of other recognized third-party certifiers, while the confirmation of disintegration within active composting cycles is critical to the efficacy of program implementation. With that in mind, please note the following suggested language change: Test results from a third-party certifier that demonstrates the food service packaging item or group of items <u>biodegrades and disintegrates in</u> a safe and timely manner.	See response to W08-09 regarding the definition of "Safe and timely manner."	Yes

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17989.6(e)(4)	W08-19	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Third-party certifiers are only permitted to send test reports under a court order, as proprietary formulation information that those tests are based on are considered confidential.	<p>Subsection 17989.6(e)(4) requires that a food service packaging manufacturer, or a person acting on its behalf, not the third-party certification entity, provide the test results to CalRecycle. Other programs within the department require similar documentation, which is achieved by the applicant providing the test results given to them by the third-party certification entity in the form of a summary of analysis, certificate of analysis, etc.</p> <p>To the extent that this comment objects to any entity having to submit potentially confidential information, subsection 17989.6(b) addresses such concern.</p>	No
17989.6(e)(4)	W08-20	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The point of the third-party certification is to have experts review these test reports in detail, rather than relying on the public to decipher whether the right tests were done. This section essentially negates the purpose for third party certification.	<p>This comment does not propose any specific changes to the regulation or raise issues related to the rulemaking process.</p> <p>See response to W08-12 regarding the definition of “Third-party certification entity.”</p>	No

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17989.6(e)(4)	W08-21	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	An expiration date for the validity of the test is not reasonable, as some tests in ASTM standards take 6 months to complete, and cost in excess of \$50,000/each. This section should be removed.	<p>CalRecycle disagrees that this Section should be removed because verification of performance is necessary to demonstrate compliance with the regulatory criteria. This Section does not establish an expiration date for individual test results that have been submitted pursuant to the regulatory criteria. See response to W06-08 regarding the duration of application determinations.</p> <p>Related to this comment, CalRecycle agrees that conducting ASTM tests within a six month timeframe may not be possible (due to laboratory backlogs) and revised the proposed regulation to clarify that test results must have a date of completion within six months from the date of submission. Subsections 17989.6(d)(3), 17989.6(e)(3) and 17989.6(e)(4) have been revised as follows:</p> <p>17989.6(d)(3):  “(3) <del>As applicable, test</del> <u>Test</u> results from a third-party certification entity that demonstrate compliance with subsection 17989.2(a)(3), <u>as applicable</u>. Tests shall be <del>conducted</del> <u>completed</u> within six (6) months of the application submittal date.”</p> <p>17989.6(e)(3):  “(3) Test results from a third-party certification entity that demonstrates the food service packaging item or group of items <del>biodegrades</del> <u>composts</u> in a safe and timely manner. <u>Tests shall be completed within six (6) months of the application submittal date.</u>”</p> <p>17989.6(e)(4):  “(4) <del>As applicable, test</del> <u>Test</u> results from a third-party certification entity that demonstrate compliance with subsection 17989.2(a)(3), <u>as applicable</u>. Tests shall be <del>completed</del> <u>conducted</u> within six (6) months of the application submittal date.”</p>	Yes – Time to complete ASTM tests



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17989.6(f)	W06-12	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	We are concerned that the proposed regulations do not allow an adequate phased pathway for existing foodservice packaging that may currently be considered disposable to achieve a “recyclable” or “compostable” determination, as mandated in SB 1335. The packaging is either listed or not based on an acceptance rate of 75 percent within a local recycling program. We believe the regulations should include a process whereby CalRecycle can direct packaging manufacturers on how to achieve a satisfactory determination within a designated amount of time, rather than simply removing the non-compliant packaging from the published List and requiring the manufacturer to submit a new application for that packaging at such time it is no longer considered disposable. Having a phased in pathway will support material recovery investments and be the most successful way to reach the targets outlined in the proposed regulations.	<p>CalRecycle agrees that clarification is needed with regard to the department’s actions to approve food service packaging applications, and has revised subsection 17989.6(f)(2)(B) as follows:</p> <p>“(B) If the department determines that a food service packaging item or group of items does not meet the applicable requirements <del>to</del> <u>in</u> this Article, the food service packaging manufacturer, or person acting on its behalf shall be notified <u>of the basis for the determination.</u></p> <p><u>(i) The food service packaging manufacturer, or person acting on its behalf, may provide additional documentation or information to supplement its application. The department shall consider the supplemental information prior to finalizing the determination.</u>”</p> <p>To the extent that this comment intends “a phased-in pathway” to mean that items should be approved for inclusion onto, or allowed to remain on, the List despite being considered “disposable” and not in compliance with the requirements set forth in the regulations, CalRecycle declines to make such a change. The statute does not give CalRecycle the discretion to include any item on the List unless CalRecycle considers it to be reusable, recyclable, or compostable.</p>	Yes
17989.6(f)	W14-05	Carton Council	Derric	Brown	We recommend that CalRecycle consider new manufacturer applications on an annual basis, at a minimum, and make determinations within a reasonable and defined time period such as 30 days.	See response to W06-08 regarding the duration of application determinations.	Yes



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<b>§17989.7. Noncompliant Food Service Packaging Inventories.</b>							
17989.7(a)	W06-10	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	Section 17989[7] of the proposed regulations specifies conditions under which inventories of foodservice packaging never or no longer on the published List may be used. These conditions are not realistic and do not adequately contemplate the actual amount of time that may be needed to replace such packaging.	CalRecycle does not have statutory authority to modify the provisions established in PRC Section 42370, which specify the conditions for using food service packaging items that are not on the List.	No
17989.7(a)	W06-11	AMERIPEN (American Institute for Packaging and the Environment)	Dan	Felton	In the event packaging design or formats changes are required to replace non-compliant foodservice packaging, time will be needed for packaging manufacturers to design, test and qualify new items and suppliers and then work with foodservice operators to address operational impacts and ramp up supplies. CalRecycle should recognize these facts and include longer compliance timeframes within the regulations to eliminate and replace non-compliant packaging.	The statute accommodates “compliance timelines” in PRC subsections 42370.4(b)(1)-(4) by setting forth specific allowances for inventories that existed and contracts that were entered into before CalRecycle publishes the List. However, the statute does not afford CalRecycle the discretion to add non-compliant packaging to be included on the List.  To the extent this comment requests a delay of the statute’s prohibition against the use of non-compliant packaging, no change is appropriate because the statute does not give CalRecycle authority to enforce that prohibition. Although CalRecycle states those allowances in Section 17989.7 to interpret them in the context of the regulation, the Legislature did not intend for CalRecycle to have any authority to excuse noncompliance with the statute.	No

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<b>§17989.8. Records.</b>							
17989.8(a)	PH04-04	California Restaurant Association (CRA)	Katie	Hansen	CRA appreciates the department providing 60 days for a food service facility to provide documentation upon request by the Department.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No
17989.8(a)	W11-10	California Restaurant Association (CRA)	Katie	Hansen	We appreciate the department providing 60 days for a food service facility to provide documentation upon request by the Department.	This comment does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process.	No