

CalRecycle Responses to 15-day Comments (10/6/2020 – 10/20/2020)
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
General Comments							
General	W01-01	American Chemistry Council (ACC) and Contributors	Tim	Shestek	While the Commenters appreciate some of the changes in the Revised Proposed Regulations, the Commenters continue to have serious concerns with the Department's proposal, including that the Revised Proposed Regulations are arbitrary and capricious, lack evidentiary support, and are otherwise not in accordance with law.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. CalRecycle conducted the rulemaking process in accordance with the California Administrative Procedure Act (APA). See responses to W01-02 through W01-22. See also 45-day comment responses PH01-05, PH01-06, and W04-01 through W04-71.	No
General	W01-21	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The changes made by the Department in the Revised Proposed Regulations do not address the comments raised in our First Comment Letter. Accordingly, we hereby restate the comments raised in our First Comment Letter and incorporate our First Comment Letter by reference as if fully set forth herein.	See 45-day comment responses W04-01 through W04-71.	No
General	W02-01	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	We have serious concerns that the proposed regulatory text places an arbitrary and unfair burden on recyclable and compostable materials that is unsupported by the statutory language.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. See responses to W02-02 through W02-16.	No
General	W04-01	AMERIPEN	Dan	Felton	California's criteria for determining which covered food service packaging is recyclable, compostable and/or reusable should align with U.S. Federal Trade Commission (FTC) Green Guides (CFR Title 16, Chapter I, Subchapter B, Part 260). Imposing differing and conflicting requirements could disincentivize future investments and efforts that will strengthen recycling infrastructure and markets even further.	See 45-day comment response W06-02.	No
General	W04-07	AMERIPEN	Dan	Felton	We continue to 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 in California through these regulations.	See 45-day comment response W14-07 and W06-07.	No

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General	W04-10	AMERIPEN	Dan	Felton	We are still 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.	CalRecycle revised the Second Draft Proposed Regulations to require lower initial statewide thresholds for collection and recycling of recyclable items and collection and acceptance of compostable materials. The suggestion to further lower the thresholds or to extend the phased pathway is not warranted in light of the considerations set forth in SB 1335, including whether an item is eligible to be marketed as “recyclable” or “compostable,” and the mandated statewide recycling and diversion goals. The statute does not give CalRecycle the discretion to include a food service packaging item on the List of Approved Food Service Packaging (List) unless CalRecycle determines it to be reusable, recyclable, or compostable in accordance with the established criteria. The specified statewide thresholds ensure the types of food service packaging added to the List are not items or materials that are regularly disposed. See also 45-day comment responses W10-03, W07-02, and W06-12.	No
General	W06-01	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. Likewise, 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 reduce contamination. We would suggest that products covered under this regulation be clearly and legibly marked with the words "compostable" or "recyclable", as appropriate. 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. See also 45-day comment response W09-01.	No
General	W07-01	California Restaurant Association (CRA)	Katie	Hansen	Restaurants are highly regulated businesses which operate on very thin economic margins. The challenge for restaurants is to implement any new mandates in a way that mitigates negative impacts to the business given the strict regulatory environment in which they already operate. 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.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No

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General	W07-10	California Restaurant Association (CRA)	Katie	Hansen	The proposed regulations do not include any type of process for regional use of food service packaging. PRC subsection 42370.2(b)(3) authorizes the department to establish a process to authorize regional use of food service packaging. The purpose for this section was to show deference to the regional differences and needs in California's local communities, coastal communities vs. inland communities vs. rural communities.	See 45-day comment response W15-31.	No
General	W07-12	California Restaurant Association (CRA)	Katie	Hansen	Revisions to Sections 17989.4 and 17989.5 require the respective food service packaging item to be collected by a certain percent of recycling or composting programs statewide with increased thresholds over time. While this is an improvement over the last draft of the regulation, we are concerned that the thresholds are too high, and when combined with subsection 17989.2(a)(4), will result in fewer items for food facilities to use on the List. This will lead to an increase in costs for food facilities and potential difficulty in obtaining the needed quantity of items if there are only one or two approved vendors in each category on the List.	<p>See response to W12-01 regarding recyclable and compostable food service packaging. See also 45-day comment responses W10-03 and W07-02.</p> <p>Not all types of food service packaging products are compatible with the state's recycling and composting infrastructure and, as a result, are regularly disposed. Therefore, not all food service packaging items currently available for purchase will be compliant and included on the List.</p> <p>However, the statute provides flexibility for food service facilities to choose reusable, recyclable, or compostable food service packaging items. The proposed regulatory text also contains provisions allowing for takeback program options for recyclable and compostable food service packaging to allow for the distribution of items that may not meet the statewide thresholds but are still recovered after use. Therefore, food service facilities will have options to purchase any of the three types of compliant food service packaging items or to purchase recyclable or compostable items that are subject to a takeback program.</p> <p>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.</p> <p>See also 45-day comment response PH04-03.</p>	No
General	W09-51	Clean Seas Lobbying Coalition	Genevieve	Abedon	There are no proposed enforcement or compliance mechanisms, or language describing how violations will be addressed. We strongly suggest adding a final section clearly outlining how violations will be addressed and how these regulations will be enforced.	See 45-day comment response W13-12.	No

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General	W12-01	Foodservice Packaging Institute	Natha	Dempsey	Foodservice Packaging Institute (FPI) has serious concerns that the current draft of the proposed rulemaking will create the unintentional elimination of all foodservice ware products in the state. To our knowledge, no foodservice packaging product in the current marketplace can technically meet the standards and timelines in the proposed regulations, because they are unrealistic and at times vague. The products covered under this regulation will effectively be removed from the marketplace, without a cost-effective, sanitary, alternative left available.	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>Related to this comment, based on stakeholder feedback, the department lowered the thresholds for the recyclable and compostable criteria in the Second Draft Proposed Regulations in order to provide the opportunity for more food service packaging items to be eligible for inclusion on the List.</p> <p>See also 45-day comment responses W10-03 and W07-02.</p>	Yes
General	W13-05	Old Town Family Hospitality Corp	Chuck	Ross	Revisions to Sections 17989.4 and 17989.5 require the respective food service packaging item to be collected by a certain percent of recycling or composting programs statewide with increased thresholds over time. While this is an improvement over the last draft of the regulation, I am concerned that the thresholds are too high, and when combined with subsection 17989.2(a)(4), will result in fewer items for food facilities to use on the List. This will lead to an increase in costs for my restaurant and potential difficulty in obtaining the needed quantity of items if there are only one or two approved vendors in each category on the List.	See response to W07-12 regarding the increased costs to food service facilities. See also 45-day comment response PH04-03.	No
General	W17-01	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	The changes made by CalRecycle in the Revised Proposed Regulations do not address the concerns raised in our First Comment Letter. Accordingly, we restate the comments raised in that letter and incorporate them here by reference.	See 45-day comment responses W25-01 through W25-23.	No
General	W19-03	Recology, Inc.	Christine	Wolfe	We are not experts in material testing; we care less about how these results are achieved than that they are. We encourage the Department to work with experts in material testing to understand how these outcomes can best be achieved. We also hope the Department will continue to pursue opportunities with qualified research partners in academia to better match performance in laboratory settings to on-the-ground conditions in California.	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>CalRecycle consulted with materials testing experts, laboratory technicians, and university researchers throughout the SB 1335 rulemaking process to inform development of the criteria. Staff will continue to engage with stakeholders and evaluate field testing protocols, if developed, that are designed to measure the performance of food service packaging items and materials processed at California compost facilities.</p>	No
General	W20-03	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	What is the mechanism by which CalRecycle will engage with large transfer and compost facilities to determine whether food service packaging meets recyclable or compostable criteria?	See 45-day comment response W28-02.	No

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General	W20-04	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	How will food service packaging be readily and easily identifiable as recyclable or compostable?	See 45-day comment response W09-01.	No
General	W20-05	Resource Recovery Coalition of California (Resource Coalition)	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 (List)?	See 45-day comment response W13-12.	No
General (APA)	W01-19	American Chemistry Council (ACC) and Contributors	Tim	Shestek	SB 1335 requires CalRecycle to adopt regulations “in consultation with the Department of General Services (DGS), the Department of Rehabilitation, the Department of Parks and Recreation, the Ocean Protection Council, the Department of Toxic Substances Control (DTSC), and any other appropriate state and local agencies.” Given the nature of the “public health and litter impacts criteria” that CalRecycle seeks to impose, we would expect to see documentation of consultations with both DTSC and the Office of Environmental Health Hazard Assessment (OEHHA). DTSC is specifically named in SB 1335. Because OEHHA’s mandate is directly relevant to the public health criteria CalRecycle seeks to impose, OEHHA is clearly within the scope of “other appropriate state and local agencies” identified in the statute. However, the public comments received by CalRecycle on the first draft regulation do not appear to include comments from DTSC or OEHHA regarding the material restrictions and chemical disclosures the Department is proposing under the guise of its “public health and litter impacts criteria.”	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>To the extent this comment asserts that fulfilling CalRecycle’s obligations under the California Administrative Procedure Act required the submission of public comments by other government agencies, CalRecycle disagrees. CalRecycle consulted with DTSC and OEHHA in the development of the public health criteria throughout the SB 1335 rulemaking process.</p>	No

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General (APA)	W01-20	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Commenters also did not find any reference to this mandatory consultation process in CalRecycle’s Initial Statement of Reasons. Thus, based on the record available to us, it appears that, in addition to the procedural deficiencies noted in our first comment letter, CalRecycle has also failed to comply with its procedural obligation to consult with relevant state agencies in preparing the Proposed Regulations and these Revised Proposed Regulations, as mandated by PRC subsection 42470.2(a)(2). Apart from complying with its statutory mandate, including documentation on this mandatory consultation in the administrative record is critical to ensuring transparency in the process, as well as the public’s right to have meaningful opportunity to participate in the rulemaking process.	<p>This comment does not suggest any specific changes to the revised regulation. To the extent this comment concerns whether CalRecycle consulted with the agencies with which it was required to consult pursuant to SB 1335, this comment does not implicate any requirements under the APA.</p> <p>CalRecycle followed all rulemaking procedures pursuant to the APA. It also consulted with various state and local agencies, as required by statute. Specifically, the department received feedback from DGS and Department of Rehabilitation regarding the maintenance of the List; DGS, Department of Parks and Recreation, and University of California regarding food service facility operations; and the Ocean Protection Council and San Francisco Department of the Environment regarding reusability criteria.</p> <p>See response to W01-19 regarding development of the public health criteria.</p>	No
General (APA/ CEQA)	W01-22	American Chemistry Council (ACC) and Contributors	Tim	Shestek	We also request that the Department revisit its statutory obligations under the APA and the California Environmental Quality Act (CEQA) in order to ensure that all impacts of the Revised Proposed Regulations, including those that may be unintended, are appropriately evaluated.	<p>CalRecycle complied with all the statutory obligations under the APA. The department’s obligations under CEQA are not part of the rulemaking procedures required under the APA.</p> <p>In any event, the requirement of an environmental review does not apply to the proposed regulation. See 45-day comment response PH01-07.</p>	No
General (COVID)	W07-02	California Restaurant Association (CRA)	Katie	Hansen	<p>Such surety has been turned on its head in the midst of the current public health and economic crisis associated with COVID-19.</p> <p>The global pandemic has dramatically altered restaurant industry operations on both private and state properties. The demands of public health have required us to adapt quickly. We have generally expanded the use of curbside pickup, online orders and deliveries, and outdoor dining to serve our customers in a safe manner.</p> <p>These operational changes have significantly impacted how we package our food for customers. With the state allowing and encouraging restaurants to continue to serve the public as “essential businesses” via take-out and delivery, the actual food packaging itself has taken on an even more critical role to date.</p>	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>See 45-day comment responses W04-49 regarding the COVID-19 pandemic and PH07-01 regarding the statutory timeline.</p>	No

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General (COVID)	W07-03	California Restaurant Association (CRA)	Katie	Hansen	As the state Department of Public Health dictates the reopening and closing of individual restaurants in counties, the need for take-out and delivery orders will play an even larger role in serving consumers well into 2021. The state "Guidance for Dine-In Restaurants" is meant to help guide safe restaurant operations. Both the state issued guidance and separate local health department guidance recommend the use of single-service products at times under their "cleaning and disinfecting protocols." These relatively recent developments have increased the demand and need for food packaging options for restaurants on private land throughout the state and it is critical to consider these issues in the context of the proposed SB 1335 regulations and their impact on the single service food-ware supply chain and the restaurant community.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. To the extent that this comment requests that the department delay implementation of SB 1335 while the effects of the COVID-19 crisis persist, the department does not have the authority to do so. See also 45-day comment responses W04-49 regarding the COVID-19 pandemic and PH07-01 regarding the statutory timeline.	No
General (COVID)	W07-04	California Restaurant Association (CRA)	Katie	Hansen	Many state properties have either been closed or had drastically reduced operation hours and, consequently, the food service establishments in those facilities have used relatively little single-use packaging and have struggled to generate any meaningful revenue. Economic health of restaurants will be necessary to rise to the challenge of buying and using more expensive food packaging.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. See 45-day comment responses W04-49 regarding the COVID-19 pandemic and PH07-01 regarding the statutory timeline.	No
General (COVID)	W07-13	California Restaurant Association (CRA)	Katie	Hansen	The COVID-19 crisis has dramatically impacted recycling programs in California. At the beginning of the crisis, Governor Newsom 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. The order responds to concerns about the virus spreading between essential industry workers. Prior to COVID-19, California's recycling system has been in crisis with major recycling centers closing. 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 coupled with the lack of recycling and composting facilities in the state, it is going to be nearly impossible for any food service packaging material to meet the recycling or composting collection thresholds.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. See also 45-day comment response W04-49.	No
General (COVID)	W13-07	Old Town Family Hospitality Corp	Chuck	Ross	The COVID pandemic has had a significant effect on the product availability and packaging supply chain throughout the country. There will need to be more time in order for the market to adjust to the new normal with packaging needs and requirements.	See 45-day comment response PH01-07.	No

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General (COVID)	W14-01	Pactiv Evergreen	Lynn M.	Dyer	While we support the intent of the law, we are gravely concerned that the October 5, 2020 version of CalRecycle’s draft regulations will not lead to the use of more sustainable packaging, but instead eliminate all single-use foodservice packaging from all state-owned/operated food service facilities. Under the proposed regulations, we do not believe that ANY foodservice packaging will meet the “recyclable” or “compostable” criteria. This would have dire consequences for food service facilities, especially at a time when they are dealing with COVID-19-related challenges.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. See response to W12-01 regarding recyclable and compostable food service packaging. See also 45-day comment responses W10-03 and W07-02. See 45-day comment response W04-49 regarding the COVID-19 pandemic.	No
General (COVID)	W20-01	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	California is still facing a state of emergency as a result of COVID-19. While we appreciate the initial 45-day regulatory comment extension, we also recommended coordinating a working group with stakeholders and CalRecycle staff between comment periods that was never held. We understand with a constrained timeline to finalize the regulations by the end of this year the department is hesitant to hold additional meetings or workshops, but we remain concerned that without appropriate stakeholder engagement the regulations may be less effective.	See 45-day comment response W28-01.	No

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§17989. Definitions.							
17989(a)(1)	W02-03	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The phrase “does not compost the item” is problematic as it relies solely on the discretion of the facility with no ability for a manufacturer of a compostable item to understand why the item is not composted.	See 45-day comment response W08-04 regarding proposal to remove “does not compost the item” from this subsection.	No
17989(a)(1)	W05-06	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The definition of “Accept” continues to be problematic. The acceptance of feedstocks should be dictated by the individual composter. We suggest the following update: § 17989.a.(1) “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 that received the item does not compost the item or identifies the item as a physical contaminant. “Physical contaminant” has the same meaning as defined in the California Code of Regulations Title 14, Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(32).	See 45-day comment response W08-04.	No

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17989(a)(1)	W21-06	SF Environment	Hilary	Near	The acceptance of feedstocks should be dictated by the individual composter. We suggest the following update: "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 that received the item does not compost the item or identifies the item as a physical contaminant. "Physical contaminant" has the same meaning as defined in the California Code of Regulations Title 14, Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(32).	See 45-day comment response W08-04 regarding proposal to remove "does not compost the item" from this subsection.	No
17989(a)(3)	W19-04	Recology, Inc.	Christine	Wolfe	As a point of clarification, "collect" should encompass delivery to transfer stations permitted by the Department as well as recycling facilities and compost facilities.	CalRecycle disagrees with the commenter's suggestion that the definition of "Collect" should include transfer stations permitted by the department. Materials delivered to permitted transfer stations may ultimately be transferred to various destinations, including landfills, where the items would be disposed. By defining "Collect" to mean "picked up and delivered to a recycling or composting facility," the regulations ensure that items are ultimately recycled or composted, respectively.	No
17989(a)(8)	W09-05	Clean Seas Lobbying Coalition	Genevieve	Abedon	Currently the University of California food courts and dormitories are the only academic institutions listed. We commend the addition of University of California and California State Universities (CSUs), and suggest adding "Community Colleges" to the definition.	See 45-day comment response W13-11.	No
17989(a)(8) (A)	W08-05	Californians Against Waste (CAW)	Baani	Behniwal	Add Community Colleges to the definition of "food service facility." While the list of state agencies identified in the regulation is far more comprehensive than in the first draft, it continues to exclude Community College Districts. It should 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 45-day comment response W13-11.	No
17989(a) (18)	W09-06	Clean Seas Lobbying Coalition	Genevieve	Abedon	We would like to ensure that paper pulp would be included under fiber, and also add wood and porcelain.	See 45-day comment response W15-03.	No
17989(a) (18)	W09-07	Clean Seas Lobbying Coalition	Genevieve	Abedon	For identifying a plastic material, we suggest adding plastic resin #7 to capture all plastics including "other."	See 45-day comment response W15-04.	No
17989(a) (18)	W09-08	Clean Seas Lobbying Coalition	Genevieve	Abedon	Here we would also like ensure that paper and/or plastic sandwich wrappers/deli paper are included.	See 45-day comment response W15-05.	No

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17989(a) (22)	W03-03	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	One goal of the proposed rulemaking is to reduce PFAS in food packaging and defines PFAS as: (19) "Per- and polyfluoroalkyl substances (PFAS)" means 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 of PFAS that international regulators, the academic community, and industry have adopted.	CalRecycle disagrees with the comment that the definition of "Per- and polyfluoroalkyl substance (PFAS)" is overly broad and inconsistent with other definitions. The proposed definition intentionally includes the entire class of PFASs. See also 45-day comment responses W01-03 regarding the class of PFASs and W03-02 regarding the definition of "Per- and polyfluoroalkyl substance (PFAS)."	No
17989(a) (22)	W15-01	Performance Fluoropolymer Partnership (PFP)	Jay	West	The rule includes and overly broad definition of PFAS that is inconsistent with a more specific and widely accepted definition of PFAS that international regulators, the academic community and industry have adopted. For example, the Organisation for Economic Cooperation and Development (OECD) defines PFAS as chemicals that contain one or more perfluoroalkyl moiety (– CnF2n+1).	See response to W03-03 regarding the definition of "Per- and polyfluoroalkyl substance (PFAS)." See also 45-day comment responses W01-03 regarding the class of PFASs and W03-02 regarding the definition of "Per- and polyfluoroalkyl substance (PFAS)."	No
17989(a) (23)	W09-09	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.	See 45-day comment response W15-06. To the extent this comment asserts that the definition of "Plastic bag" is unclear, CalRecycle agrees the definition should be further revised to clarify that plastic bags that have handles and are designed not to be closeable or sealable, and that are not used to serve or transport prepared, ready-to-consume food or beverages, are not subject to the regulation. The definition of "Plastic bag" has been revised as follows: (20)(23) "Plastic bag" means an open-top, carryout-style plastic bag with that has handles and is designed not to be closeable or sealable that cannot be closed or sealed, by design.	Yes
17989(a) (23)	W12-09	Foodservice Packaging Institute	Natha	Dempsey	The definition of "plastic bag" clearly states an "open-top carryout style plastic bag with handles that cannot be closed or sealed, by design." Given the rise of tamper evident and carryout bags that have sealing capabilities or closures, defining plastic bags in this manner will exclude a portion of the marketplace. We suggest a revision to the definition that removes "open-top" and "cannot be closed or sealed".	See response to W09-09 regarding the definition of "Plastic bag." See also 45-day comment response W15-06.	Yes
17989(a) (25)	W01-03	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Department's narrow construction of the terms "recycling" and "recyclable" in the Revised Proposed Regulations continue to contravene the statutory mandate and legislative intent of SB 1335 by restricting recycling to a limited set of technologies that exclude certain advanced technologies used to recycle plastic packaging into feedstocks to produce new products.	See 45-day comment response W04-02 regarding the scope of "recycling" and "recyclable." To the extent this comment asserts that the "single named bale" criterion results in too narrow a range of what may be considered "recyclable," see responses to W12-07 and W14-02.	Yes

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17989(a) (28)	W02-05	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The standard chosen for products should be applicable to those products that they have been designed for. Commenter recommends that ISO 18606 be included.	To the extent this comment asserts that the ASTM standards incorporated by reference are not intended to be applied to plastic items, CalRecycle disagrees. The ASTM standards expressly concern the composting of plastic-containing items. See response to W02-06 regarding ISO 18606.	No
17989(a) (28)	W02-06	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	We recommend the addition of ISO 18606 to the list of relevant standards.	CalRecycle disagrees with the recommendation to require compostable food service packaging items to additionally comply with ISO 18606. The regulations specify that ASTM D6400-19 and D6868-19 must be used to demonstrate compliance with the compostable criteria for any food service packaging items that are plastic, plastic-coated or plastic-containing. This requirement aligns with PRC Sections 42355-42358.5, which mandate that these ASTM standards be used for the purpose of labeling plastic products with the term “compostable.” Staff determined the ISO 18606 standard contains similar or redundant requirements to those contained in ASTM D6400-19 and D6868-19. Therefore, adding the ISO 18606 standard would impose unnecessary additional burden on food service packaging manufacturers.	No
17989(a) (28)	W02-07	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The 60-day modification to the two existing standards (ASTM D6400-19 and ASTM D6868-19) is arbitrary and should be removed.	Regarding the assertion that the 60-day timeframe is arbitrary and should be removed, see 45-day comment response W08-10. Regarding the commenter’s statement that the 60-day timeframe is a modification of existing ASTM standards, see response to W10-03.	No
17989(a) (28)	W02-08	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	If this requirement is to be considered, CalRecycle should complete testing to determine the differences between length provided in the standards and length proposed in the draft legislation.	CalRecycle disagrees with the commenter’s assertion that CalRecycle should complete testing to determine the differences between the 180-day and 60-day timeframes to achieve 90 percent biodegradation. Conducting this testing would not change the fact that compostable food service packaging needs to demonstrate performance within 60 days. As noted in the Initial Statement of Reasons, the requirement for 90 percent biodegradation within 60 days for compostable plastic food service packaging items is based on timeframes that reflect commercial California compost facility operations. See also 45-day comment response W08-10.	No

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17989(a) (28)	W02-09	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	Ligno-cellulosic materials generally take longer to compost, but provide benefits to the compost material, which should be recognized in the legislation.	<p>CalRecycle agrees that food service packaging items made wholly from cellulose and other natural fibers are a beneficial component of compost material. Based on stakeholder feedback, the department clarified in the Third Draft Proposed Regulations that the requirement for the item to compost in a safe and timely manner only applies to items that are “plastic, plastic-coated, or plastic-containing.”</p> <p>Revisions to the regulatory text are shown in the response to W05-08.</p>	Yes
17989(a) (28)	W05-02	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>“Safe and timely manner” has been incorrect for multiple drafts, and now goes further by requiring ASTM test results for both disintegration and biodegradation within 60 days. We understand and support the desire to have standards that work for real world composting, however this is not a scientifically valid requirement. The timeframes in the ASTM standards were established based on the time that it takes naturally occurring microbes to consume cellulose in a lab. Because cellulose is the positive control in these tests, if it cannot break down in 60 days, then everything else will fail too. The ASTM standards were developed based on a 5-year study, and were field-validated in real world composting systems. Compostable products designed and certified to the ASTM standards routinely break down much faster in real world composting systems.</p>	<p>CalRecycle removed the requirement for compostable food service packaging to demonstrate 90 percent disintegration within 60 days in the Third Draft Proposed Regulations because the department determined that biodegradation is the critical factor for ensuring that food service packaging items will “break down or otherwise become part of usable compost that can be composted in a public or private aerobic compost facility,” as directed by statute.</p> <p>Additionally, in response to stakeholder comments, CalRecycle revised the compostable criteria in the Third Draft Proposed Regulations to clarify that food service packaging manufacturers are required to demonstrate that their food service packaging items compost in a “safe and timely manner” by providing test results showing that a compostable plastic item biodegrades 90 percent within 60 days. These test reports are already required as part of ASTM test procedures and protocols.</p> <p>Subsection 17989.5(a)(2)(B) has been revised as follows:</p> <p>(B) Test results from an ISO/IEC 17025:2017 accredited laboratory indicating that the item has achieved at least 90% biodegradation within 60 days, as documented by the food service packaging item’s ASTM D6400-19 or ASTM D6868-19 test report. The test report shall include either a biodegradation curve or tabular data indicating biodegradation rates utilizing one of the following test methods: ASTM D5338-15, ISO 148551:2012, or ISO14855-2:2018.</p> <p>Regarding the 60-day timeframe, see 45-day comment response W08-10.</p>	Yes

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						Regarding the ASTM 5-year study, no stakeholders provided CalRecycle with evidence that compostable products currently on the market will biodegrade 90 percent within the typical 60-day timeframe in commercial California compost facilities. The 5-year study relied upon by ASTM was conducted in the mid-1990s and did not test products on the market today. Composting techniques and technologies have also changed over the last few decades. The study proposed a strategy to refine a systematic test protocol for determining compostability that would require multiple tests to yield more accurate results. However, this work has not been completed and the existing ASTM standard specifications rely on lab tests.	
17989(a) (28)	W05-03	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Our proposal is to allow the ASTM standards, but require them to be field-validated again by 2022. Notably, field validation is only relevant for disintegration, as biodegradation cannot be demonstrated in a field test. Specifically we recommend this section read as follows: <ul style="list-style-type: none"> ● ASTM D6400 – 19 sections 6.2 and 6.3 shall be <u>field-validated no later than December 31, 2022 to demonstrate that disintegration can be achieved within 60 consecutive days after the test is initiated in a real world composting environment.</u> ● ASTM D6868 – 19 sections 6.2 and 6.3 shall be <u>field-validated no later than December 31, 2022 to demonstrate that disintegration be achieved within 60 consecutive days after the test is initiated in a real world composting environment.</u> 	See 45-day comment response W09-06.	No
17989(a) (28)	W06-03	California Compost Coalition (CCC)	Neil S.R.	Edgar	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. That being said, we do not think the concept presented is technically achievable; the ASTM standard is tied to a number of lab processes to verify compliance with the standard, but the standard is not a flexible code. Identifying the appropriate laboratory processes or mandating field testing for disintegration, with follow up laboratory testing for biodegradation, is more appropriate.	See 45-day comment response W09-06.	No

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17989(a) (28)	W09-10	Clean Seas Lobbying Coalition	Genevieve	Abedon	“Safe and timely manner” can be misleading. We suggest adding “that is removed from its disposed environment by microbial metabolism,” so that it reads “Safe and timely manner” means a food service packaging item that is removed from its disposed environment by microbial metabolism, and is verified...”	See response to W05-02 regarding the definition of “Safe and timely manner.” See also 45-day comment responses W08-09 and W08-10.	Yes
17989(a) (28)	W09-11	Clean Seas Lobbying Coalition	Genevieve	Abedon	We support the 90 percent biodegradation within 60 days in addition to requiring specific ASTM standards which are 84-180 days. This is for reasons including that composters throughout the state turn compost much faster than 84-180 days; as short as 30 days according to Recology.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989(a) (28)	W10-03	Clorox Company	Lisa	Pankiewicz	The proposed modification with the language "shall be achieved within 60 consecutive days after the test is initiated" to a well-established standard via a regulation is an inappropriate "use" of a voluntary consensus standard. Any modification of the ASTM should be addressed through rigorous, scientific, transparent and open process used to develop such standards. The Department should remove any requirement related to "within 60 consecutive days." In the event the ASTM standard is revised, the Department may then rely upon the new ASTM timeline.	See response to W05-02 regarding the definition of “Safe and timely manner.” See 45-day comment response W08-10 regarding the 60-day timeframe. Regarding the commenter’s suggestion that the 60-day timeframe is a “modification” of ASTM standards, CalRecycle disagrees. The 60-day requirement does not interfere with ASTM D6400-19 or D6868-19 inasmuch as an item can be certified to these ASTM standards without meeting CalRecycle’s criteria for composting in a “safe and timely manner.” CalRecycle made a minor revision to the compostable criteria in the Third Draft Proposed Regulations to clarify that food service packaging manufacturers are required to demonstrate that an item biodegrades 90 percent within 60 days by submitting test reports that are already part of ASTM test procedures and protocols.	No
17989(a) (28)	W10-04	Clorox Company	Lisa	Pankiewicz	The revised proposed rule allows for certification only to the ASTM standards for compostability (ASTM 6400 and ASTM 6868) in subsection 17989(a)(28). We recommend that in addition to acceptance of the ASTM standards, the regulation conform to the current definition of “Compostable” in California law which allows for the "conformity with the existing Vincotte certification of "OK compost HOME certification," which as of January 1, 2011, uses European Norm 13432.	See 45-day comment response W08-07 regarding other statutes that concern the definition of “compostable.”	No
17989(a) (28)	W11-03	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	To confirm that products will disintegrate in a time-frame shorter than 90 days, we recommend requiring field disintegration testing within one year of implementation of the regulation. This should be designed to reflect the processing times and process technologies for participating California composters. There are several ways to accomplish this and would result in a more meaningful result for composters.	See 45-day comment response W09-06.	No

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17989(a) (28)	W12-03	Foodservice Packaging Institute	Natha	Dempsey	When it comes to compostable packaging and the requirements laid out in subsection 17989(28), requiring ASTM test results for disintegration and biodegradation within 60 days, as well as the definition of third-party certification entities expressed in subsection 17989 (31), FPI believes that comments submitted by the Biodegradable Products Institute (BPI) best capture suggestions and criteria. FPI works closely with BPI and have a number of mutual members and common interests.	To the extent this comment incorporates the comments submitted by BPI concerning this subsection, see comment responses W05-02 and W05-03. See also 45-day comment response W09-06.	No
17989(a) (28)	W17-02	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	“Safe and timely manner” is too restrictive. This definition should be amended as follows: <ul style="list-style-type: none"> ●ASTM D6400 – 19 sections 6.2 and 6.3 shall be <u>field-validated no later than 2025 to be achieved within 60 consecutive days after the test is initiated in a real world composting environment.</u> ●ASTM D6868 – 19 sections 6.2 and 6.3 shall be <u>field-validated no later than 2025 to be achieved within 60 consecutive days after the test is initiated in a real world composting environment.</u> 	See 45-day comment response W09-06.	No
17989(a) (28)	W19-02	Recology, Inc.	Christine	Wolfe	We want to ensure that compostable products are capable of disintegration and biodegradation within the timeframes and other process parameters that are the new regulatory realities at California compost facilities. A 60-day process better reflects our composting timeframe than 90 or 180 days.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989(a) (28)	W21-07	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 additional 60 days threshold. We recognize that facilities do vary widely. The additional threshold does not consider the complexity of industrial composting nor take advantage of the existing third-party certification system that demonstrates sufficient biodegradation, disintegration, and ecotoxicity. The tests are conducted under lab conditions that are a reasonable proxy for industrial composting and have been reconciled with real-world testing.	See response to W05-02 regarding the definition of “Safe and timely manner.” See also 45-day comment response W08-10.	Yes

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17989(a)(28)	W21-08	SF Environment	Hilary	Near	We strongly recommend CalRecycle rely on BPI and its contractors for a thorough and independent review of the test method results rather than attempting to implement an additional layer of review to an already lengthy process for applicants.	<p>CalRecycle disagrees with the recommendation to rely on BPI and its contractors for independent review of the test method results; BPI and BPI contractors are not the only entities that are able to conduct such a review. To help clarify, in the Third Draft Proposed Regulations the department revised language in subsection 17989.5(a)(2) to require that applicants submit tests from an ISO/IEC 17025:2017 accredited laboratory.</p> <p>See response to W05-04 regarding the definition of "Third-party certification entity." See also 45-day comment response W08-12.</p> <p>See response to W05-02 regarding the definition of "Safe and timely manner." See also 45-day comment response W08-10.</p>	No
17989(a)(28)(A)-(B)	W11-01	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	The references to ASTM standards are specifically referencing the 2019 version of the standards. We recommend excluding the "-19" on each entry and indicating the "then current" version of each standard.	CalRecycle determined that including the year to reference the most current ASTM standards available while drafting the regulation was necessary to avoid any inconsistencies that may arise from a future revision to a standard that may contain less stringent requirements for biodegradation. Moreover, regulations under the California Administrative Procedure Act (California Code of Regulations Title 14, Division 1, Chapter 1, Article 1, Section 20(c)(4)) expressly require the inclusion of a "date of publication" for any document incorporated by reference unless applicable law requires "adoption or enforcement of any subsequent amendments." Because SB 1335 incorporates only ASTM standards "adopted in accordance with Section 42356.1" as opposed to "any" amendments, the proposed regulations must specify a particular publication date.	No
17989(a)(28)(A)-(B)	W11-02	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	Requiring a 60-day modification of the ASTM standard effectively creates an entirely new standard specifically for California. ASTM testing is a scientifically-vetted, lengthy, and expensive process, costing in the tens of thousands of dollars. Requiring manufacturers to have one set of lab tests for California and another for the remainder of the country is overly burdensome.	See response to W05-02 regarding the definition of "Safe and timely manner." See also 45-day comment response W08-10.	Yes

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17989(a) (31)	W05-04	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	It is inaccurate to say that a testing laboratory is a “Third party certification entity.” Testing at accredited labs is vitally important, but the tests reports alone are insufficient for what SB 1335 requires. Third party certifiers make sure the correct set of tests were done based on confidential formulas, that the tests were done correctly, maintains lists of certified products, issues a certification logo, etc.	Due to extensive stakeholder feedback CalRecycle removed the definition of “Third-party certification entity” in the Third Draft Proposed Regulations, and replaced the term with the requirement that an “ISO/IEC 17025:2017 accredited laboratory” perform the specified tests. 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. Subsection 17989(b)(6) incorporates ISO/IEC 17025:2017, “General requirements for the competence of testing and calibration laboratories,” by reference to define ISO/IEC 17025:2017 accredited laboratories. See also 45-day comment response W08-12.	Yes
17989(a) (31)	W06-06	California Compost Coalition (CCC)	Neil S.R.	Edgar	We are also unclear on who will be providing the third-party certification. Currently, the only third-party certification entities we are aware of using an established protocol are the Compost Manufacturing Alliance (CMA) and the Compost Council Research and Education Foundation, which have abundant experience and well-defined product testing protocols. Will CalRecycle be developing a list of potential, authorized service providers to the packaging manufacturers?	To the extent this comment asserts that the definition of “Third-party certification entity” is inaccurate or lacks clarity, see response to W05-04. Regarding the suggestion that CalRecycle develop a list of authorized service providers, statute does not authorize CalRecycle to develop such a list or act as an authorizing body with respect to product testing conducted by food service packaging manufacturers.	Yes
17989(a) (31)	W09-12	Clean Seas Lobbying Coalition	Genevieve	Abedon	We urge you to specify that an equivalent to or stronger than 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 determined by the department to have requirements that are equivalent to, or more stringent than, those required by the Biodegradable Products Institute.”	See 45-day comment response PH06-22.	Yes
17989(a) (31)	W09-13	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding that the third party certifiers strictly follow ASTM standards identified in the bill and not follow arbitrary requirements of the lab.	See response to W05-04 regarding the definition of “Third-party certification entity.”	Yes

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17989(a) (31)(A)	W11-04	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	Subsection A requires a lab to <i>certify</i> results. Labs are not certifiers. They perform the applicable testing and report the results. "Third-party certification" implies that a neutral entity, unconnected to the requester or the entity performing the test, confirms that the proper tests were performed to the appropriate standards and the results meet the criteria for passing results. As set out, labs performing the testing should be ISO/IEC 17025 accredited. However, these labs should not be considered the certifier. If the intent is to allow passing ASTM results to suffice to meet the criteria of "Safe and timely manner" (28), the reference to "third-party certifier" should be removed entirely. Either the lab results alone should be acceptable OR third-party certification should be required. As written, those two ideas are convoluted. Since labs are not certifiers, the lab accreditation requirement should not be included in the "third party certification" section. If third party certification is required, we suggest moving subsection (A) to new subsection (28)(C): <u>17989(28)(C). Testing to the standards in (A) and (B) must be performed by 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 of food service packaging items. "ISO/IEC 17025" means the International Organization for Standardization, International Electro-technical Commission general requirements for the competence of testing and calibration laboratories.</u>	See response to W05-04 regarding the definition of "Third-party certification entity."	Yes
17989(a) (31)(B)	W11-05	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	Creating a contractual relationship with a laboratory defeats the purpose of "third-party" certification and creates excessive control over the market. "Third-party," by definition, means a party that is not principally involved in the matter. The "parties" in the context of this model language would be the food service packaging manufacturer and the lab performing the tests. Requiring a contract between the third-party certifier and the lab creates a business relationship that makes the "certifier" a party - no longer third-party. Requiring a contract between the certifier and the lab could be interpreted as exerting unwarranted control over the market by requiring food service packagers in California to use the lab with which the certifier has a contractual relationship. This forces all food service packaging manufacturers to use lab(s) <i>controlled by the certifier</i> . There are a number of labs that are accredited and perform this testing on a regular basis. Manufacturers should have the choice of accredited labs from which they seek testing.	See response to W05-04 regarding the definition of "Third-party certification entity."	Yes

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17989(a) (31)(B)	W11-06	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	<p>To our knowledge, there are only two entities in the US that certify products as meeting the referenced ASTM standards for food service packing: Compost Manufacturing Alliance and Biodegradable Products Institute. If third-party certification entities are specifically listed in the regulations, we request that both CMA and BPI be listed. Listing only one of two certifiers creates confusion for the manufacturers and may give the appearance of ethical impropriety.</p> <p>We recommend changing subsection (31) as follows: (31) "Third-party certification entity" means <u>an independent body that reviews and confirms compliance with the ASTM standards and requirements of 17989(a)(28) (e.g., Compost Manufacturing Alliance or Biodegradable Products Institute), either of the following:</u> (A) An independent laboratory that is ISO/IEC 17025 accredited by an International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA) signatory, and performs applicable testing October 2020 Page 6 of 19 157 methods to certify a food service packaging item "ISO/IEC 17025" means the International Organization for Standardization/International Electrotechnical Commission general requirements for the competence of testing and calibration laboratories, or (B) An entity (e.g., Biodegradable Products Institute) that has executed a contract with an ISO/IEC 17025 accredited laboratory to perform testing methods to certify a food service packaging item.</p>	See response to W05-04 regarding the definition of "Third-party certification entity."	Yes

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§17989.1. List of Approved Food Service Packaging.							
17989.1(a) (2)	W07-05	California Restaurant Association (CRA)	Katie	Hansen	The revision to include additional food service packaging item details on the List provides additional information to food service facilities which are purchasing products from the List. The inclusion of this additional information is helpful to food service facilities making purchasing decisions.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.1(a) (2)	W13-01	Old Town Family Hospitality Corp	Chuck	Ross	The revision to include additional food service packaging item details on the List provides additional information to food service facilities which are purchasing products from the List. The inclusion of this additional information is helpful to food service facilities making purchasing decisions.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.1(a) (5)	W09-14	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest that in addition to the Proposition 65 list, you also add the Department of Toxic Substances Control'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 45-day comment response W15-16.	No
17989.1(b)	W09-15	Clean Seas Lobbying Coalition	Genevieve	Abedon	What about reusability requirements? We strongly suggest adding a reference to section 17989.3 as well.	CalRecycle disagrees with the suggestion that reusable food service packaging materials should be included in the section of the List specified under subsection 17989.1(b) because the requirements in Section 17989.3 are specific to individual food service packaging items. CalRecycle would not have access to information regarding wash cycle performance or express warranties on an individual item basis. Rather, this portion of the List is to help food service packaging manufacturers demonstrate their recyclable and compostable food service packaging items meet the collection and acceptance percentage thresholds established in subsections 17989.4(a)(3)(A) and 17989.5(a)(1)(A).	No
17989.1(c)	W09-16	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 certification equivalent or more stringent."	See 45-day comment response to W13-08.	No
17989.1(e)	W01-05	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Commenters acknowledge the procedural changes made in the Revised Proposed Regulations. The changes now provide that a manufacturer must be notified and afforded an opportunity to respond to the Department before the Department proceeds with removing a food service packaging item from the List. These revisions are helpful in ensuring that due process is provided before the Department takes the powerful step of removing a food packaging item from the List.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No

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17989.1(e) (1)-(4)	W07-06	California Restaurant Association (CRA)	Katie	Hansen	The revision outlining the process by which the department will review and update the List provides an opportunity for the manufacturer to provide input into the review process. CRA is supportive of this revision and would like to suggest including a notification to food service facilities when an item is removed from the List. A notification to food service facilities of the removal of an item from the List will help to ensure compliance with the regulations.	CalRecycle does not regulate food service facilities, nor does statute specify that food service facilities must register with or provide information to the department. As such, the department would be unable to provide notice to each food service facility impacted by the regulation. Pursuant to subsection 17989.1(e)(2), the regulation clarifies that CalRecycle will notify the public when an approved food service packaging item or material will potentially be removed from the List, along with the reasons for the preliminary determination. Notification will be provided via the SB 1335 listserv, to which anyone may subscribe, and updates will be published on CalRecycle's website, which is available to the public. Additionally, subsection 17989.1(h) requires the department to notify the Department of General Services and the public within 30 days of making any changes to the List. Food service facilities are encouraged to subscribe to the SB 1335 listserv.	No
17989.1(e) (1)-(4)	W13-02	Old Town Family Hospitality Corp	Chuck	Ross	The revision outlining the process by which the department will review and update the List provides an opportunity for the manufacturer to provide input into the review process. I would like to suggest including a notification to food service facilities when an item is removed from the List. A notification to food service facilities of the removal of an item from the List will enable me to comply with the regulations.	See response to W07-06 regarding notification to food service facilities.	No
17989.1(e) (3)	W09-17	Clean Seas Lobbying Coalition	Genevieve	Abedon	We commend the addition of a process for removing food service packaging from the List. We suggest adding a timeline to (3) so that there is a finite time for which an item/material must be determined as removable from the List or not.	CalRecycle shall evaluate the written comments and documentation, if provided, received from food service packaging manufacturers and the public before determining if a food service packaging item and/or material should be removed from the List. The department disagrees with the recommendation to specify a timeframe for this review because the department anticipates that the workload and extent of review will vary on a case-by-case basis. In addition, CalRecycle may need to consult with other organizations or agencies that are not subject to any statutory deadlines.	No

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17989.1(f)	W09-18	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest striking this as we don't see any reason to give manufacturers leeway to add even more chemicals to already chemical-heavy products.	<p>CalRecycle disagrees that subsection 17989.1(f) should be removed. It does not give manufactures more "leeway" with respect to adding chemicals. Rather, it describes the process through which the department will consider removing an item from the List when the item becomes subject to certain environmental disclosure requirements after the item was added to the List.</p> <p>To the extent this comment suggests CalRecycle impose restrictions on what chemicals manufacturers may legally include in their products, no revision is appropriate because SB 1335 does not authorize CalRecycle to do so.</p> <p>To the extent this comment asserts that the proposed regulations should include measures concerning products newly determined to contain a regulated metal or a chemical on the Proposition 65 list, or should more clearly explain the process through which CalRecycle will re-evaluate and remove such products from the List, the Third Draft Proposed Regulations reflect this concern. Subsection 17989.1(f) was modified to clarify that CalRecycle will necessarily remove a food service packaging item from the List if a manufacturer fails to provide any additional information within 60 days, and such removal will not be subject to the process set forth in subsection 17989.1(e). Removal due to environmental concerns identified in Section 17989.2 otherwise is subject to the process set forth in subsection 17989.1(e); subsection 17989.2(b) was also amended to clarify this point.</p>	No
17989.1(f)-(g)	W01-06	American Chemistry Council (ACC) and Contributors	Tim	Shestek	Subsections 17989.1(f)(1) and 17989.1(g)(2) now provide that if certain requested information or a duplicative application are not received within a specified time, that the Department "shall consider removing the item from the List." The newly proposed language is inappropriately vague and enables arbitrary and capricious actions by the Department during its reviews and updates to the List.	<p>Based on stakeholder feedback, CalRecycle revised subsections 17989.1(f)(1)-(2) and 17989.1(g)(3) in the Third Draft Proposed Regulations to clarify that the department shall remove an item from the List if the information requested in 17989.1(f)(1) is not received, or if the department determines that the item no longer satisfies the criteria set forth in subsections 17989.2(a)(1) or 17989.2(a)(2).</p> <p>Subsection 17989.1(f)(2) has been revised as follows:</p> <p><u>(2) If this information is not received within 60 days of the date of the notification, or if the department determines that the food service packaging item no longer satisfies the criteria set forth in subsections 17989.2(a)(1) or 17989.2(a)(2), the department shall consider removing remove the food service packaging item(s)-items from the List.</u></p>	Yes

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						<p>CalRecycle also revised subsection 17989.1(g)(1) to clarify that if a new application for an item is not received within 180 days of the request by the department, the item shall be removed from the list.</p> <p>Subsection 17989.1(g)(1) has been revised as follows:</p> <p>(1) The If the department determines that a new application pursuant to Section 17989.6 is reasonably necessary for the department to evaluate whether a food service packaging item is reusable, recyclable, or compostable, the <u>department shall notify the manufacturer that the item requires a new application.</u> A food service packaging manufacturer, or person acting on its behalf, that it is evaluating the List shall submit a new application to the department within 180 days of being notified by the department that it is evaluating the List to determine whether each of the approved food service packaging items is reusable, recyclable, or compostable. If a new application is not received within 180 days the food service packaging item may be removed from the List. (2) <u>The food service packaging manufacturer, or person acting on its behalf, shall submit a new application to the department within 180 days of the date of the notification, and the department shall consider such application in making its determination of whether the item is reusable, recyclable, or compostable. If a new application is not received submitted within 180 days of the date of the notification, the department shall consider removing remove the food service packaging item from the List, and the requirements of subsection (e) shall not apply.</u></p>	

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17989.1(f)-(g)	W01-07	American Chemistry Council (ACC) and Contributors	Tim	Shestek	SB 1335 does not provide CalRecycle with the authority to take punitive action against a food service packaging manufacturer, including removing a food packaging item from the List for any reason other than if a substantive finding is made that the item is not reusable, recyclable or compostable. Thus, the language in subsections 17989.1(f)(1) and 17989.1(g)(2) should be stricken, as they are in conflict with SB 1335.	<p>CalRecycle disagrees with the commenter’s suggestion to strike subsections 17989.1(f)(1) and (g)(2). Subsections 17989.1(f)(1)–(3) and 17989.1(g)(1)–(2) ensure that food service packaging items on the List meet the applicable criteria. These provisions also account for the possibility that information relevant to an item may become available to CalRecycle after the item has already been added to the List. Establishing a process to handle such circumstances is not a “punitive action”; it is the exercise of the department’s authority under SB 1335 to “establish a process... for determining the types of food service packaging that are reusable, recyclable, or compostable” (PRC section 42370.2(a)(1)) and to “regularly... evaluate the list” and “amend the list to remove or add a type of food service packaging” (PRC section 42370.3(b)). Notably, the Legislature did not limit the authority granted to CalRecycle under section 42370.2(a)(1) to establishing a process only for creating the List or adding items to it. Rather, CalRecycle has the authority to develop a process for making determinations as to whether items are reusable, recyclable, or compostable for purposes of the statute generally. Re-evaluating items on the List, whether in light of new information or as part of its regular re-evaluation of the List, and removing an item if a manufacturer fails to participate in the process the department adopts for doing so is a valid exercise of this express authority. See also 45-day comment response W04-29.</p> <p>See 45-day comment response PH01-05 regarding CalRecycle’s authority to consider potential litter, public health, and wildlife impacts.</p>	No

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§17989.2. Public Health and Litter Impacts Criteria.							
17989.2	W01-04	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Revised Proposed Regulations maintain the same arbitrary and unsupported material restrictions and chemical disclosure obligations under the guise of the label “public health and litter impact criteria.” CalRecycle does not have the expertise or authority to adopt the type of chemical regulations that it is proposing here, and its proposal in this regard is in excess of its authority, inconsistent with SB 1335 and otherwise arbitrary and without adequate scientific basis or support in the record.	See 45-day comment response PH01-05 regarding CalRecycle’s authority to consider potential litter, public health, and wildlife impacts. See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria.	No
17989.2	W01-09	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Commenters continue to have significant concerns with the arbitrary and statutorily unauthorized “public health and litter impacts criteria” proposed by the Department in Section 17989.2. The requirements contained in this section are beyond the scope of CalRecycle’s competency, exceed the Department’s rulemaking authority, are inconsistent with SB 1335, and lack a strong scientific foundation and/or support in the record.	See 45-day comment response PH01-05 regarding CalRecycle’s authority to consider potential litter, public health, and wildlife impacts. See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria.	No
17989.2	W02-12	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The criteria set forth in the draft regulations are inadequately supported by science and duplicative of the regulatory processes underway at the jurisdictional agencies, specifically the Office of Environmental Health Hazards Assessment and the Department of Toxic Substances Control.	See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria. CalRecycle disagrees that the public health criteria are duplicative of the regulatory processes at OEHHA, which implements the Proposition 65 program. The proposed regulation does not impose new obligations regarding product warnings; it merely requires disclosure that Proposition 65 applies because of the presence of certain chemicals. That requirement complements, rather than duplicates, the Proposition 65 warning requirement itself. See 45-day comment response W10-06 regarding regulatory duplication with DTSC.	No
17989.2	W03-01	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	By proposing “public health and litter” criteria in Section 17989.2, CalRecycle oversteps the direction given by SB 1335. 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 from the proposed regulation. ATCS supports comments filed by the American Chemistry Council and coalition partners regarding these concerns.	See 45-day comment response PH01-05 regarding CalRecycle’s authority to consider potential litter, public health, and wildlife impacts. See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria.	No

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17989.2	W03-02	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	This proposed rulemaking is overly broad and a non-science-based approach that would have a wide range of unintended consequences and would prevent implementation of effective regulatory policies. We oppose SB 1335 in its current form. In addition to exceeding the agency's authority, ATCS believes the public health and litter criteria are not based on sound science and are therefore unfeasible and arbitrary.	See 45-day comment response PH01-05 regarding CalRecycle's authority to consider potential litter, public health, and wildlife impacts. See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria.	No
17989.2	W17-03	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	CalRecycle does not have the authority to regulate public health impacts of food service packaging and those items are overseen by other state agencies and the Food and Drug Administration.	See 45-day comment response PH01-05 regarding CalRecycle's authority to consider potential litter, public health, and wildlife impacts. See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria. See 45-day comment response W10-07 regarding regulatory duplication with the FDA.	No
17989.2	W19-01	Recology, Inc.	Christine	Wolfe	We support the Department's approach to ensure recyclable and compostable packaging meets market expectations for performance and supports safe remanufacturing. Specifically, we support the standards for public health and litter impacts in Section 17989.2. Chemicals of concern should be eliminated from products before they enter the waste stream, as supported by the external scientific peer review provided as part of the rulemaking package.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.2(a) (2)	W02-13	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	These criteria should be consistent with Proposition 65 in that if exposure of a chemical in the food service packaging item is below a Safe Harbor value then disclosure of the chemical name(s) should not be required. Proposition 65 establishes a duty to warn consumers of possible exposures if the exposure exceeds a very conservative Safe Harbor value. By definition, creating a disclosure obligation even when the chemical is below Safe Harbor values serves no rational public health purpose.	See 45-day comment response W04-33.	No
17989.2(a) (2)	W06-02	California Compost Coalition (CCC)	Neil S.R.	Edgar	Beyond physical contamination, we have concerns about the chemical compounds which may be present in food service packaging. While these regulations clearly addresses concerns regarding compounds identified in the "Toxics in Packaging Prevention Act" and total fluorine, we are very supportive of the requirement for disclosure of any chemicals included on the Proposition 65 list.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.2(a) (2)	W09-19	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest adding the DTSC Candidate Chemicals list here as well.	See 45-day comment response W15-16.	No

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17989.2(a) (3)	W02-14	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	Food service packaging material that contains current U.S. Food and Drug Administration (FDA) approved PFAS should be exempted from this section.	See 45-day comment response W10-07 regarding regulatory duplication with the FDA and its determinations that materials are “Generally Recognized as Safe.” See also 45-day comment response W01-03 regarding the PFAS class approach.	No
17989.2(a) (3)	W02-15	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	For the total fluorine measurement an EPA-accepted analytical method should be included in the text. If there is not an EPA approved method this section should be deleted.	See response to W15-03 regarding support for the total fluorine threshold. See also 45-day comment response W02-10. CalRecycle disagrees with the suggestion that subsection 17989.2(a)(3) should be removed in the absence of an EPA-approved method; this subsection is necessary to reduce the potential adverse impacts on public health and wildlife from exposure to PFASs. The United States Environmental Protection Agency (EPA) has not yet developed a standard analytical method for total fluorine; however, in the Third Draft Proposed Regulations, CalRecycle added examples of analytical techniques that could be used for the total fluorine test, and added the requirement that applicants disclose the analytical technique used to determine the level of total fluorine.	No
17989.2(a) (3)	W02-16	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	DTSC is currently undertaking a science-driven regulatory process to determine whether further regulation of PFAS in food packaging is warranted. CalRecycle preemptively taking action is duplicative of the DTSC process.	See response W02-12 regarding regulatory processes at DTSC. See also 45-day comment response W10-06 regarding regulatory duplication with DTSC.	No
17989.2(a) (3)	W03-04	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	PFAS are a diverse family of chemistry that includes a broad range of substances with different physical, chemical, and toxicological properties and uses containing fluorine and carbon, including: Fluoropolymers, Polymeric perfluoropolyethers, Side-chain fluorinated polymers, Perfluoroalkyl substances, and Polyfluoroalkyl substances.	See 45-day comment response W01-03 regarding the PFAS class approach.	No
17989.2(a) (3)	W03-05	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	Of the many chemicals categorized under PFAS, the vast majority are neither used nor suitable for use in food service packaging items.	See 45-day comment response W01-03 regarding the PFAS class approach.	No

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17989.2(a) (3)	W03-06	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	The two sub-categories of PFAS that have been used in certain FDA-regulated food contact applications include "Long chain" or "C8" chemicals and "Short chain" or "C6." Manufacturers of these chemicals submit their specific formulations to the FDA, Health Canada, and other appropriate regulatory agencies for rigorous review. If found to be safe for their intended use, they may be used. 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.	See 45-day comment response W01-03 regarding the PFAS class approach. See 45-day comment response W10-07 regarding regulatory duplication with the FDA.	No
17989.2(a) (3)	W03-07	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	Before a food contact substance can be sold or distributed in commerce it must be reviewed by FDA, and under Section 201(s) of the Federal Food Drug and Cosmetic Act (FFDCA), FDA can only provide authorization for a food contact substance if the agency concludes that there is sufficient scientific data to demonstrate that the substance is safe for its intended use in packaging. In order to demonstrate that a food contact substance is safe for its intended use, FDA requires submission of extensive upfront test data and scientific information. Because of recent increased attention to the family of PFAS and the use of certain PFAS chemistries in food packaging, FDA has undertaken a reassessment of these applications. In connection with this reassessment, manufacturers of the majority of PFAS products used in fiber-based food packaging agreed to a voluntary phase-out, leading to the discontinuation of sales of these products for use in food packaging as of January 1, 2024. As reflected in its announcement of this agreement, FDA concluded that this phase-out period is needed to avoid unnecessary food supply chain and market disruptions.	See 45-day comment response W10-07 regarding regulatory duplication with the FDA. See 45-day comment response W01-03 regarding the PFAS class approach.	No

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17989.2(a) (3)	W03-08	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	The C6 fluorochemicals currently used in food service packaging materials have been well studied and meet regulatory requirements designed to protect public health and the environment. ATCS member companies have generated a large body of data demonstrating the safety of C6 chemistry. A recently completed, long-term biodegradation study demonstrates that C6 sidechain fluorinated polymers do not degrade under environmentally relevant conditions. The studies demonstrate that C6-based side-chain fluorinated polymers have an environmental half-life in the thousands of years. Thus, the best available scientific evidence indicates that C6-based side-chain fluorinated polymers do not degrade in any meaningful way under environmentally relevant conditions, which means that potential exposure to theoretical degradation products will be negligible. Moreover, a large body of scientific evidence indicates that the primary degradation products associated with C6-based side-chain fluorinated polymers do not present significant adverse health or safety impacts. This information demonstrates that C6-based side-chain fluorinated polymers - which are the primary PFAS chemistries in food service packaging items in use today - do not present significant toxicity concerns. California should defer to the regulatory process to work, as designed, with FDA using science to determine whether PFAS substances used in a food contact application are safe for their intended use.	See 45-day comment response W01-03 regarding the PFAS class approach. See 45-day comment response W10-07 regarding regulatory duplication with the FDA.	No
17989.2(a) (3)	W03-09	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	The proposed rule also lacks a means to measure and monitor for PFAS chemicals. The proposed rulemaking would specifically prohibit food service packaging items made from plastic or fiber and that is recyclable or compostable containing PFASs, as measured by total fluorine at concentrations above 100 parts per million. ATCS believes measuring Total Fluorine would provide a highly inaccurate estimate of PFAS in food packing. Testing for fluorine and its presence has commonly been used to conclude PFAS were used/present, but often studies demonstrate that there is no consistency between level of fluorine and PFAS.	See response to W15-03 regarding support for the total fluorine threshold. See also 45-day comment response W02-10.	Yes

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17989.2(a) (3)	W03-10	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	These studies using detected fluorine levels as an indicator when testing for PFAS do not indicate whether the PFAS are "long chain" or "short chain." All PFAS chemicals are not the same and should not be regulated as such, much less 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.	See 45-day comment responses W01-03 regarding the PFAS class approach, W02-10 regarding total fluorine test methods, and W04-32 regarding the external scientific peer review of the scientific evidence relied upon for the conclusions about PFASs. Collectively, these responses explain why the proposed regulations rely on total fluorine measurements and not individual "long chain" or "short chain" PFASs. See also W15-03 regarding support for the total fluorine threshold.	No
17989.2(a) (3)	W03-11	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	ATCS recommends limiting the scope of restricted PFAS in food service packing items to only PFOA and PFOS. PFOA and PFOS were added to Prop 65 in November 2017. ATCS is currently working with the OEHHA to develop a safe use determination (SUD) 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.	To the extent this comment suggests a change in the proposed regulations based on a forthcoming Maximum Allowable Dose Level (MADL) being developed by OEHHA, no such MADL currently exists and thus cannot be considered at this time. See 45-day comment response W01-03 regarding the PFAS class approach. See 45-day comment response W02-12 regarding a Maximum Allowable Dose Level for PFASs. See 45-day comment response W04-33 regarding the relevance of Safe Use Determinations.	No
17989.2(a) (3)	W03-12	Alliance for Telomer Chemistry Stewardship (ATCS)	Shawn	Swearingen	As currently drafted, the proposed regulations would circumvent these existing, robust regulatory processes currently in place and implemented by FDA, and would also inappropriately group together chemistries with significant differences in physical, chemical, and toxicological properties and uses. We urge members to consider these points, and remain committed to working with CalRecycle as it further considers policies to address PFAS.	See 45-day comment response W01-03 regarding the PFAS class approach. See 45-day comment response W10-07 regarding regulatory duplication with the FDA.	No

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17989.2(a) (3)	W09-02	Clean Seas Lobbying Coalition	Genevieve	Abedon	Ensure that any recyclable or compostable food service packaging does not contain toxic chemicals, including, but not limited to, PFAS. Many chemicals in food packaging “persist in the environment after use, and are associated with harm to humans and to wildlife...” Also, from the Department’s Initial Statement of Reasons, “Reducing harmful or potentially harmful chemicals from materials that enter our landfills, compost facilities, and recycling facilities is an important way to reduce the amount of these chemicals entering the environment. It is unknown how much of any specific chemical will be reduced, or how to quantify the impacts of this change, but any reduction will have positive environmental and public health benefits.” Specifically, 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>CalRecycle disagrees with adding the broad term “toxic chemicals” to the regulations. To the extent a food service packaging item presents environmental concerns due to the presence of toxic chemicals, subsection 17989.2(b) provides a basis for CalRecycle to remove it from the list.</p> <p>Additionally, the proposed regulation also includes a criterion that food service packaging items included on the List may not contain lead, mercury, cadmium, or hexavalent chromium in an amount that exceeds 100 parts per million by weight, which is consistent with the Toxics in Packaging Prevention Act.</p> <p>Moreover, subsection 17989.1(f) provides a process for CalRecycle to obtain additional information when it determines that an item contains a chemical that is added to the definition of “regulated metal” under the Toxics in Packaging Prevention Act or to the Proposition 65 list, and subsection 17989.2(b) provides for the potential removal of such an item from the List based on impacts to litter, public health, or wildlife.</p>	No
17989.2(a) (3)	W09-20	Clean Seas Lobbying Coalition	Genevieve	Abedon	Though 100ppm total fluorine is the Biodegradable Products Institute standard for limiting PFAS in compostable items, we suggest adding “In addition, compostable materials will be Biodegradable Products Institute certification equivalent or more stringent” here as well.	See 45-day comment response PH06-22 regarding BPI certification.	No
17989.2(a) (3)	W10-06	Clorox Company	Lisa	Pankiewicz	The regulations should include a process to allow a manufacturer to attest or certify no changes have been made to a product which was tested more than 6 months prior to the application date.	<p>CalRecycle disagrees with the suggestion that the regulation should include an attestation for products tested more than six months from the date of submission because food service packaging manufacturers may be unaware of upstream changes in the manufacturing supply chain.</p> <p>See response W10-05 regarding attestation suggestion.</p>	No
17989.2(a) (3)	W11-07	Compost Manufacturing Alliance (CMA)	Janet L.	Thoman	The PFAS requirements should be clarified to create some exception to the "absolute" total fluorine requirement since there are inert non-PFAS compounds that can inflate the total fluorine results. We recommend the following changes: (3) A food service packaging item made from plastic or fiber and that is recyclable or compostable shall not contain PFAS, as measured by total fluorine at concentrations above 100 parts per million. <u>The total fluorine results may exclude fluorine content shown to be from mineral or non-PFAS containing chemicals such as mold releases and release agents.</u>	<p>See response to W15-03 regarding support for the total fluorine threshold. See also 45-day comment response W02-10.</p> <p>See 45-day comment response W01-03 regarding the PFAS class approach.</p>	No

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17989.2(a) (3)	W15-02	Performance Fluoropolymer Partnership (PFP)	Jay	West	The proposed rule lacks a means to measure and monitor for PFAS chemicals of concern. Measuring total fluorine would provide a highly inaccurate estimate of PFAS in food packaging by inappropriately including inorganic fluorine compounds and polymers of low concern like fluoropolymers in the concentration count.	See response to W15-03 regarding support for the total fluorine threshold. See also 45-day comment response W02-10.	No
17989.2(a) (3) (ESPR)	W09-03	Clean Seas Lobbying Coalition	Genevieve	Abedon	We commend adding an external scientific peer review for “the Proposed Adoption of Limit on PFASs in Plastic and Fiber-based Food Service Packaging.”	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No

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17989.2(a)(3) (ESPR)	W15-03	Performance Fluoropolymer Partnership (PFP)	Jay	West	We disagree with Dr. Cory-Slechta’s assertion that total fluorine is an acceptable proxy for determining the presence of PFAS in food service packaging. When proposing a quantitative regulatory limit, CalRecycle has an obligation to provide regulated entities with a suitably specific and sensitive method with which to evaluate compliance.	<p>Health and Safety Code Section 57004 requires CalRecycle to submit the scientific basis and scientific portion of all proposed regulations for external scientific peer review (ESPR). The ESPR is conducted through an established process that clearly lays out the responsibilities of the reviewers and the regulatory agencies responding to them. Scientific expert reviewers are independently determined to be qualified in the area of expertise and to have no conflict of interest. Approved reviewers have the responsibility to determine whether the scientific findings, conclusions, and assumptions are based upon sound scientific knowledge, methods, and practices. Reviewers are required to comment on the scientific basis of the proposed regulation, as well as essential topics they feel might have been overlooked. Dr. Cory-Slechta was chosen through this process and reviewed the total fluorine threshold accordingly.</p> <p>CalRecycle agrees with the suggestion that suitable analytical techniques would help the food service packaging manufacturers understand how they may demonstrate their food service packaging item meets the criteria via testing by an ISO/IEC 17025:2017 accredited lab in subsection 17989.2(a)(3). As examples of applicable analytical techniques, the department added the three analytical techniques that were discussed in the technical documents relied upon and the Initial Statement of Reasons.</p> <p>Subsection 17989.2(a)(3) has been revised as follows:</p> <p><u>A food service packaging item made from plastic or fiber and that is recyclable or compostable shall not contain PFASs. A food service packaging item shall be deemed not to contain PFASs if its, as measured by total fluorine at concentrations above concentration is not more than 100 parts per million, as determined by combustion ion chromatography, particle-induced gamma-ray emission spectroscopy, instrumental neutron activation analysis, or other technique utilized by an ISO/IEC 17025:2017 accredited laboratory.</u></p> <p>See also 45-day comment response W02-10.</p>	Yes

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17989.2(a) (3) (ESPR)	W15-04	Performance Fluoropolymer Partnership (PFP)	Jay	West	Regarding the document prepared by Dr. Vanden Heuval, we strongly disagree with his conclusion that it is acceptable to treat all PFAS as perfluoroalkyl acids for regulatory purposes. Our comments submitted in May speak to this point, noting the diversity of PFAS compounds and the attributes of fluoropolymers that limit concerns about hazard, exposure, and, therefore, risk.	See 45-day comment response W01-03 regarding the PFAS class approach. See response to W15-03 regarding support for the total fluorine threshold. W15-03 also describes the ESPR process, through which Dr. Vanden Heuval was selected to evaluate the scientific basis of the PFAS restriction. See also 45-day comment response W02-10. Regarding the commenter's incorporation of previous comments regarding PFAS, see 45-day comment responses W03-02 through W03-05.	No
17989.2(a) (4)	W01-11	American Chemistry Council (ACC) and Contributors	Tim	Shestek	We do not believe there is any rational basis or justification why a "non-governmental organization" should be provided equal opportunity along-side state and federal government agencies to provide information and identify whether a food service packaging item has "the potential to contribute to an adverse public health impact" as proposed in Section 17989.2(a)(4). Thus, we continue to request that the Department delete Section 17989.2 in its entirety.	See response to W18-01 regarding "non-governmental organizations" and W18-02 regarding CalRecycle's consideration of information from organizations.	Yes
17989.2(a) (4)	W07-07	California Restaurant Association (CRA)	Katie	Hansen	CRA eventually supported SB 1335 because of its promise to help de-politicize the process by which food service packaging is evaluated as reusable, recyclable and compostable. The revisions to the proposed regulation to include information from non-governmental organizations (or any other single special interest) that identifies food service packaging items as adverse to the public health only tilts and politicizes this evaluation process. The revisions do not require the information to be scientifically based or scientifically peer reviewed or even based on data from the marketplace in California. Under this proposed revision a non-governmental organization could provide a survey of its membership as the flimsy information required under this section which would disqualify a product from being on the List. All reference to non-governmental organizations in this section should be removed to ensure the integrity and the balanced scientific nature of the evaluation process.	See response to W18-01 regarding "non-governmental organizations" and W18-02 regarding CalRecycle's consideration of information from organizations.	Yes

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17989.2(a) (4)	W13-03	Old Town Family Hospitality Corp	Chuck	Ross	I am making purchasing decision for my restaurant knowing that the items on the List have been scientifically reviewed. The revisions to the proposed regulation to include information from non-governmental organizations (or any other single special interest) that identifies food service packaging items as adverse to public health politicizes this evaluation process. The revisions do not require the information to be scientifically based or scientifically peer reviewed or even based on data from the marketplace in California. Under this proposed revision, a non-governmental organization could provide a survey of its membership, which is not scientifically based, as the information required under this section that would disqualify a product from being on the List. All reference to non-governmental organizations in this section should be removed to ensure the integrity and the balanced scientific nature of the evaluation process.	See response to W18-01 regarding “non-governmental organizations” and W18-02 regarding CalRecycle’s consideration of information from organizations.	Yes
17989.2(a) (4)	W18-01	Printing United Alliance (PrUA)	Marcia Y.	Kinter	Section 17989.2 includes language in (a)(4) referencing the ability of a “non-governmental organization” to identify food packaging items with potential adverse public health impacts. We are concerned with the provision for several reasons as the condition essentially provides regulatory authority to a non-governmental organization and while this may not have been an intended outcome, the structure of the inclusion in this provision grants it and a complete revision is necessary.	Based on stakeholder feedback, CalRecycle removed “non-governmental organization” from subsection 17989.2(a)(4). This subsection was revised as follows to further clarify the process CalRecycle will take to remove an item from the list: (4) If a food service packaging item is identified by another state agency, or another state or federal government agency or non-governmental organization as having to have the potential to contribute to an adverse public health impact (e.g., through publications or reports provided by the Office of Environmental Health Hazard Assessment’s Prop 65 program or the Department of Toxic Substances Control’s Safer Consumer Products Program) the department may not include or remove the food service packaging item from the list, the department shall: (A) Evaluate publications, reports, and any other information provided by a state agency, federal government agency, or non-governmental organization to determine if it is applicable to PRC Public Resources Code subsection 42370.2(g). (B) Consult with the Office of Environmental Health Hazard Assessment and the Department of Toxic Substances Control (C) Follow the process described in subsection 17989.1(e) to determine if an item or material should be removed from the List. (5) If a food service packaging material is subject to a ban, fee for distribution (e.g., a fee for a single use disposable cup at point of sale), or other restrictions, at least in part due to litter or ocean debris concerns in city or county ordinances,	Yes

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						<p>the department may not include or remove food service packaging items made from that material from the List shall:</p> <p>(A) Evaluate the ordinance(s) to determine if it is applicable to PRC subsection 42370.2(g).</p> <p>(B) Follow the process described in subsection 17989.1(e) to determine if an item or material should be removed from the List.</p> <p>(b) If the department determines that a food service packaging item has the potential to contribute to litter or public health or wildlife impacts, then it shall follow the process described in subsection 17989.1(e) for potential removal of the item from the List. In making such a determination, the department shall:</p> <p>(1) Consider whether the food service packaging item has been identified by a state or federal government agency or other organization as having the potential to contribute to an adverse impact;</p> <p>(2) Evaluate publications, reports, and any other information provided by a state agency, federal government agency, or other organization;</p> <p>(3) If the basis of the determination relates to public health or wildlife impacts, consult with the Office of Environmental Health Hazard Assessment and the Department of Toxic Substances Control; and</p> <p>(4) If the food service packaging item or material is subject to a ban, fee for distribution (e.g., a fee for a single-use disposable cup at point of sale), or other restrictions imposed pursuant to city or county ordinances, evaluate the ordinance and documentation in the public record in support of the ordinance concerning the food service packaging item's potential to contribute to litter or ocean debris concerns.</p> <p>See also 45-day response W04-36 regarding consideration of determinations by other organizations concerning public health and wildlife impacts.</p>	

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17989.2(a)(4)	W18-02	Printing United Alliance (PrUA)	Marcia Y.	Kinter	A non-governmental organization is not held to the same standards as a traditional regulatory agency, therefore not subject to the APA. The APA includes requirements for publishing notices of proposed and final rulemakings, as well as provides opportunities for the public to comment on these notices. It is unclear if recommendations, before they are considered by the Department, would be fully vetted using acceptable scientific methods, peer reviewed, and published for notice and comment by the non-governmental organization. Due to the ramifications and requirements associated with this rulemaking, it is imperative that any information regarding changes to the regulations be transparent. It is unclear, based on the current regulatory language, the weight and preponderance of evidence that would be required to be submitted prior to consideration.	See response to W18-01 regarding “non-governmental organizations.” Regarding the commenter’s concern questioning how CalRecycle will consider information from organizations, the proposed regulation provides CalRecycle the flexibility to review publications, reports, and other information from organizations to the extent such information is relevant to CalRecycle’s consideration of potential litter, public health, or wildlife impacts. CalRecycle will ensure the integrity of the information by evaluating the publications and reports and consulting with OEHHA and DTSC (if determined to relate to public health or wildlife impacts). Additionally, if the department determines after evaluation and consultation that a food service packaging item has the potential to contribute to litter, public health, or wildlife impacts, the department will follow the removal process outlined in subsection 17989.1(e). The manufacturer and the public may submit comments during that process. See also 45-day response W04-36 regarding consideration of determinations by other organizations concerning public health and wildlife impacts.	Yes
17989.2(a)(4)	W18-03	Printing United Alliance (PrUA)	Marcia Y.	Kinter	The term “non-governmental organization” is not defined in the current regulatory proposal. Without providing any structure to what constitutes a non-governmental organization or a process by which any recommendations would be vetted, the language needs to be changed and that the reference to non-governmental organizations be stricken.	See response to W18-01 regarding “non-governmental organizations” and W18-02 regarding CalRecycle’s consideration of information from organizations.	Yes
17989.2(a)(4)–(5)	W01-10	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The changes made to subsections 17989.2(a)(4) and 17989.2(a)(5), which are largely process-focused, do not address the unreasonably vague and undefined terms that are included throughout these provisions. Phrases such as “potential to contribute to an adverse health impact,” and “other restrictions, at least in part due to litter or ocean debris concerns,” are still undefined and the changes still do not explain how these concerns have any bearing on whether a food service packaging item is reusable, recyclable or compostable.	See 45-day comment response PH01-05 regarding CalRecycle’s authority to consider potential litter, public health, and wildlife impacts. See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria.	No
17989.2(a)(4)(B)	W09-21	Clean Seas Lobbying Coalition	Genevieve	Abedon	We commend the consultation with OEHHA and DTSC.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No

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17989.2(a) (5)	W07-08	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 local Cities and Counties choose to pass or not pass. Often, local Cities and Counties pass laws regarding food packaging based on what appears popular, not science. CRA supported SB 1335 because it was intended to de-politicize the discussion of what is reusable, recyclable and compostable when it comes to food service packaging, through the creation of a science-based method to determine reusable, recyclable and compostable food packaging types to use at food facilities on state properties. 17989.2(a)(5) encourages the continued politicization of food packaging types (by enshrining in state policy what some local governments did on a regionally, politically popular whim) while at the same time disrupting 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.	<p>To the extent this comment asserts that the proposed regulation defers to local ordinances with respect to whether a food service packaging item has potential impacts on litter, public health, and wildlife, it is incorrect. Under the proposed regulation, a local ordinance restricting a particular item triggers the process by which CalRecycle will consider whether to remove an item from the List, but such an ordinance does not establish any particular fact with respect to the item's potential impacts.</p> <p>To the extent this comment asserts that the proposed regulation requires CalRecycle to remove a food service packaging item from the List based solely on the passage of a local ordinance restricting the item, the Third Draft Proposed Regulation addresses that concern. As clarified in subsection 17989.2(b)(4), the passage of such an ordinance does not mandate removal of an item from the List, but rather triggers the process for "potential removal... from the List," including CalRecycle's consideration of the ordinance and related documentation concerning the item's potential to contribute to litter or ocean debris.</p> <p>See also 45-day 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)	W07-11	California Restaurant Association (CRA)	Katie	Hansen	17989.2(a)(5) does nothing to address litter control. Food service packaging bans and takeout taxes at the point of sale do nothing to address litter control. The restaurant community shares the on-going concern over litter and routinely partners on litter abatement efforts at the state and local levels. Marine debris is a serious issue, however the discriminatory approach of selecting and eliminating a given type of food service product has proven an ineffective approach. When litter reduction occurs on the streets within our communities, the amount of material that flows through storm drains, rivers, and ultimately to the ocean is also reduced. Comprehensive efforts should be aimed at reducing ALL composition of litter, not solely individual products. This will allow an overall volume of material reaching the marine environment to be reduced. For instance, the City and County of San Francisco banned polystyrene containers in 2008 but according to a litter re-audit conducted for the City/County, paper cup litter increased after the ban was enacted. 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. It is for these reasons 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. 17989.2(a)(5) should be removed from the Proposed Regulations.	<p>To the extent this comment asserts that the proposed regulation will adopt local litter ordinances at the statewide level, the Third Draft Proposed Regulation addresses that concern; see response to W07-08.</p> <p>Regarding the commenter’s concern over targeting of individual items, no change is appropriate because the statute requires CalRecycle to consider food service packaging for inclusion on the List on an item-by-item basis.</p> <p>See also 45-day comment response W25-03 regarding the regulation’s impacts on litter.</p>	Yes
17989.2(a)(5)	W12-11	Foodservice Packaging Institute	Natha	Dempsey	We acknowledge the language added to 17989.2(a)(5)(A) and 17989.2(a)(5)(B), as it allows for more specific evaluation of foodservice packaging products subject to a ban, fee or other restrictions. However, we are still concerned that the inclusion of 17989.2(a)(5) rests outside the legislative intent of SB1335 and would recommend the removal of 17989.2(a)(5).	<p>CalRecycle disagrees that the proposed regulation falls outside the intent behind SB 1335. This subsection is expressly limited by the statute itself: CalRecycle will evaluate whether a local ordinance relates to PRC Section 42370.2(g), which authorizes CalRecycle to consider “potential impacts on litter, public health, and wildlife.”</p> <p>See also response to W07-08 regarding the effect of local ordinances and the process for removing food service packaging items from the List.</p>	No

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17989.2(a) (5)	W13-04	Old Town Family Hospitality Corp	Chuck	Ross	When I am purchasing products from the List to use in my restaurant, I want to know that I am purchasing a product that was reviewed in a fair and balanced scientific manner and that there is stability in my purchasing decision. Subsection 17989.2(a)(5) could potentially remove a product from the List just because a small city in another part of the state decided to pass an ordinance. It doesn't seem fair to me that my restaurant, primarily based on dine-in customers, should be precluded from using approved products just because a small city decided to pass an ordinance charging customers fees for take-out items. 17989.2(a)(5) should be removed from the Proposed Regulations.	The Third Draft Proposed Regulation resolves the commenter's concern regarding the effect of ordinances passed by remote local authorities. Such ordinances, by themselves, will not result in removal of a food service packaging item from the List. See response to W07-08 regarding the effect of local ordinances and the process for removing food service packaging items from the List.	Yes
17989.2(a) (5)	W17-04	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	The rationale behind the litter impacts criteria is arbitrary and not based on scientific evidence. This entire section should be removed from the proposed regulations.	CalRecycle disagrees that this section lacks proper basis; it is based on the considerations set forth in in PRC Section 42730(2)(g). See also response to W07-08 regarding the effect of local ordinances and the process for removing food service packaging items from the List.	No
17989.2(a) (5) (COVID)	W07-09	California Restaurant Association (CRA)	Katie	Hansen	As localities are responding to the COVID-19 crisis with measures to protect the public health, some are suspending their disposable food service ware ordinance, while others are halting consideration of further restrictions as they take into account health and safety considerations.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. See 45-day comment response W04-49 regarding the COVID-19 pandemic.	No

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§17989.3. Reusable Food Service Packaging Criteria.							
17989.3	W04-05	AMERIPEN	Dan	Felton	We appreciate that the "number of cycles" was changed in the second draft of the proposed regulations from "125" to "780" cycles, although 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 practices.	See 45-day comment response W14-07.	No
17989.3	W04-06	AMERIPEN	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.	See 45-day comment response W06-04.	No

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17989.3	W08-01	Californians Against Waste (CAW)	Baani	Behniwal	When writing SB 1335, the authors and sponsors of the bill fully intended to include and promote reusable alternatives for single-use foodservice packaging. As currently drafted, the regulations overlook traditional reusable options by requiring either a third-party certification or express warranty. While this is necessary to preclude regrettable substitutions like thicker (but still disposable) plastic packaging, it is not needed to verify the reusability of traditional foodware used at on-site dining locations (metal silverware, ceramic plates, glasses etc.). The ultimate goal of this legislation is to source reduce the amount of unnecessary single-use foodware in California, and it is of concern that these regulations will have the opposite effect by requiring food service facilities to jump through hoops in order to continue, or begin, to use common-sense reusable foodware types that don't come with a certification or express warranty. We recommend that regulatory language be amended for this criteria to apply only to plastic, fiber, and foil products, or those items that are not subsequently collected for cleaning and reuse by the food vendor.	See 45-day comment response W13-01.	No
17989.3	W09-01	Clean Seas Lobbying Coalition	Genevieve	Abedon	Keep the regulations strong with regards to reusable food service packaging criteria.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.3	W09-04	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 evidenced by the thicker "reusable" plastic bags that are permissible under SB 270. 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 transition from disposables to reusables can save businesses money. According to a recent UCLA report, "Available evidence suggests that food vendors may benefit fiscally following adoption of reusable items and that reducing plastic waste will lower costs on operators, municipal governments, and ratepayers."	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.3	W09-25	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 since many of these items likely don't come with an express warranty or a third-party certification. Thus, we strongly suggest that the department specifically list the inclusion of these materials in this section.	See 45-day comment response W13-01.	No

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17989.3	W09-26	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest adding 17989.3 (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.	See 45-day comment responses W15-24 regarding "conventionally disposed of" and W15-20 regarding the number of wash cycles.	No
17989.3	W09-27	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.	See 45-day comment response W15-25.	No
17989.3	W09-28	Clean Seas Lobbying Coalition	Genevieve	Abedon	The department could consider a tracking and reporting requirement as opposed to a collection standard.	See 45-day comment response W15-26.	No
17989.3	W21-03	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 reuse that item.	See 45-day comment response W05-02.	No
17989.3	W21-05	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 PRC Section 42370.5.	See 45-day comment response W05-02. To the extent this comment asserts that PRC Section 42370.5 grants CalRecycle the authority to establish requirements for "reuse systems," CalRecycle disagrees. PRC Section 42370.5 grants CalRecycle no authority other than the authority to access records demonstrating that the food service packaging items purchased by a food service facility comply with SB 1335. In other words, PRC Section 42370.5 enables CalRecycle to determine whether all of the food service packaging items acquired by a food service facility are on the List. It does not authorize CalRecycle to impose a "reuse system" requirement on food service facilities or require food service facilities to provide verification of reuse.	No
17989.3(a) (1)	W09-22	Clean Seas Lobbying Coalition	Genevieve	Abedon	We commend increasing the higher standard of 780 cycles as compared to 125. 125 cycles is far too low. For example, plastic cups can be made thicker and some can withstand the proposed level of ware-washing- 125 cycles.	See 45-day comment response W15-20.	No
17989.3(a) (1)	W09-23	Clean Seas Lobbying Coalition	Genevieve	Abedon	Do third-party certification entities <u>for reusables</u> exist? If so, we suggest that the entity should be specifically named and/or approved by the department if different from the third-party certification entity as defined.	See 45-day comment response W15-41 regarding third-party certification entities for reusable food service packaging items. See response to W05-04 regarding the definition of "Third-party certification entity."	No

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17989.3(a)(1)	W12-04	Foodservice Packaging Institute	Natha	Dempsey	The number of cycles now included in subsection 17989.3(a)(1), used to define a foodservice packaging item as “reusable” set at 780, is seemingly arbitrary. We have no indication of what rationale was utilized to determine the number of cycles set forth in this section.	CalRecycle disagrees with the commenter’s suggestion that the requirement of 780 wash cycles is arbitrary. The department calculated that a food service packaging item used and washed three times per day, for 260 business days, would total 780 cycles (equating to one year of reusing the food service packaging item). 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 covered by a one-year warranty. See also 45-day comment response W15-20.	No
17989.3(a)(1)	W12-05	Foodservice Packaging Institute	Natha	Dempsey	FPI has concerns as to the availability of third-party certification entities who would be able to accurately certify the requirements laid out by the proposed language. To FPI’s knowledge, no such authoritative body exists to date who could provide this certification for foodservice packaging products.	See 45-day comment response W15-41 regarding third-party certification entities for reusable food service packaging items. See response to W05-04 regarding the definition of “Third-party certification entity.”	No
17989.3(a)(1)	W21-01	SF Environment	Hilary	Near	The increase of uses required by the definition of reusable food service packaging from 125 to 780 uses is a commendable development. It still does not require sufficient uses to ensure the intended outcome and avoid regrettable alternatives. We still recommend that the minimum uses be 1,000.	See response to W12-04 regarding the rationale for 780 wash cycles. See also 45-day comment response W15-20.	No
17989.3(a)(1)	W21-04	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 1141010 and 114099.7, respectively, as demonstrated by a third-party certification entity <u>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.</u> ”	See response to W12-04 regarding the rationale for 780 wash cycles. See also 45-day comment response W15-20. See 45-day comment response W05-02 regarding the verification of reuse.	No
17989.3(a)(1)-(2)	W21-02	SF Environment	Hilary	Near	Most important is that the number of uses be backed up by warranty. To ensure that the products are redesigned 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 AND requiring the manufacturer to warranty the performance during a year of frequent reuse.	See 45-day comment response W29-05.	No
17989.3(a)(2)	W09-24	Clean Seas Lobbying Coalition	Genevieve	Abedon	We would like to better understand where one year was chosen. We suggest that a better minimum would be at least 2 years.	See 45-day comment response W15-22.	No

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§17989.4. Recyclable Food Service Packaging Criteria.							
17989.4	W01-02	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Revised Proposed Regulations continue to stifle investment and innovation in the state's recycling sector and limit opportunities for California to build a robust circular economy.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.4	W02-02	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	CalRecycle's proposed regulations effectively grants an extraordinary veto power to any single stakeholder in the chain to block acceptance of individual materials based on factors other than practical and technical recyclability.	CalRecycle disagrees with the commenter's suggestion that the proposed regulations provide veto power to a single stakeholder in the recycling chain. The criteria in subsection 17989.4(a)(3)(A) establish a statewide threshold for the percentage of recycling programs and processing facilities that must collect and sort a food service packaging material for an item to be considered recyclable. These thresholds explicitly prevent a single stakeholder from determining whether a material is considered recyclable.	No
17989.4	W04-04	AMERIPEN	Dan	Felton	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 W01-12 regarding the phased collection and sortation thresholds and their relation to the FTC Green Guides. See also 45-day comment responses W10-03 and W06-02 regarding CalRecycle's authority and the basis for the thresholds stated in this subsection.	No
17989.4	W04-09	AMERIPEN	Dan	Felton	Material recycling markets are notoriously volatile and often unpredictable. We therefore encourage CalRecycle to integrate more flexibility into List determinations so that abrupt changes are not made during periodic down markets.	See 45-day comment response W06-09.	Yes
17989.4	W08-02	Californians Against Waste (CAW)	Baani	Behniwal	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. We recommend expanding the criteria to more closely align with the statutory language under PRC subsections 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.	See 45-day comment response PH05-07.	No
17989.4	W09-31	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, including ensuring viable markets.	See 45-day comment response PH05-07.	No

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17989.4	W09-32	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding at least the following text to assure markets for materials: “Whether the food service packaging material is recycled in a sufficient quantity, and is of sufficient quality, to maintain a market value.” We also suggest the adding to this: “Establishing minimum postconsumer recycled content requirements for food service packaging in order to create or enhance markets for recycled material.”	Regarding the suggestion to add “Whether the food service packaging material is recycled in a sufficient quantity, and is of sufficient quality, to maintain a market value” to the regulations, the Third Draft Proposed Regulations expressly incorporate the concept of “market value.” See responses to W12-07 and W14-02. Regarding CalRecycle authority to establish minimum postconsumer recycled content requirements, see 45-day comment response W27-01.	Yes – “Market value” No – Content requirements
17989.4	W09-35	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.	See 45-day comment response W15-31.	No
17989.4	W09-37	Clean Seas Lobbying Coalition	Genevieve	Abedon	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. 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.”	See 45-day comment response W04-02.	No
17989.4	W20-02	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	We appreciate a number of changes that were made to this iteration of regulatory text, including several definition clarifications and more detail around recyclability criteria. The new-tiered approach will presumably allow additional infrastructure development and program expansion for products that may not meet 75% collection and recycling at the outset.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No

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17989.4(a) (1)	W09-29	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.	See 45-day comment response W15-27.	No
17989.4(a) (2)	W09-30	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding that the regulations should also prohibit packaging composed of materials that will fragment (as opposed to just additives).	See 45-day comment response W09-10.	No
17989.4(a) (3)	W04-03	AMERIPEN	Dan	Felton	We are concerned 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.	<p>CalRecycle disagrees with the commenter's suggestion that the department will allow recycling programs and takeback operators to make decisions about what is recyclable and compostable. The proposed regulations require that food service packaging items meet several criteria in order to be deemed "recyclable." CalRecycle will review each application and make a determination as to whether the food service packaging item(s) meet the regulatory criteria based on information submitted by the food service packaging manufacturer. In addition, CalRecycle will post a list of food service packaging <i>materials</i> that it determines meet the recyclable or compostable criteria in subsections 17989.4(a)(3)(A) or 17989.5(a)(1)(A) in order to alleviate some of the burden on manufacturers to determine the percentage of facilities recycling or composting food service packaging materials.</p> <p>To make these determinations, CalRecycle will evaluate a wide range of data, including statewide collection programs, material sorting/aggregation rates and transfer/processing facilities, acceptance rates at compost facilities, data from takeback operators, and market data for recovered paper and plastic resins.</p>	No

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17989.4(a)(3)	W14-02	Pactiv Evergreen	Lynn M.	Dyer	The inability of foodservice packaging to meet the “recyclable” criteria stem from the inclusion of subsection 17989.4(a)(3). According to studies from the Foodservice Packaging Institute on recycling of foodservice packaging in California: Foodservice packaging made from PET, PP and PS may meet access rates, but may not be sorted and aggregated into a single-named material bale. Foodservice packaging made from paper and molded fiber does not meet the 60% access threshold. Foodservice packaging made from aluminum does not meet the 60% access threshold.	<p>CalRecycle agrees with the commenter that not all recycled materials are sorted into single named material bales prior to recycling. To better represent the flow of recycled materials, the recyclability criteria in subsection 17989.4(a)(3)(A) have been refined to remove the specific requirement for a single named bale. Instead, the criteria now relate to the material having “sufficient commercial value to be marketed for recycling” and being “sorted and aggregated into defined streams.”</p> <p>CalRecycle revised subsection 17989.4(a)(3)(A) as follows:</p> <p>(A) The <u>Prior to January 1, 2026</u> December 31, 2025, the food service packaging item is comprised of materials that are material is collected by at least 75-60 percent of recycling programs statewide, have sufficient commercial value to be marketed for recycling, and are <u>sorted and aggregated into defined streams (e.g., mixed paper, PET) a single named material bale</u> by at least 75-60 percent of large volume transfer/processors, processing facilities in the state. <u>Effective January 1, 2026, the food service packaging item is comprised of materials that are material is collected by at least 75 percent of recycling programs statewide, have sufficient commercial value to be marketed for recycling, and is</u> are <u>sorted and aggregated into defined streams (e.g., mixed paper, PET) a single named material bale by at least 75 percent of large volume transfer processing facilities in the state; or.</u></p> <p>Regarding specific foodservice packaging items, each application will be reviewed and evaluated on an individual basis against available data sources. Those sources may differ from those available in studies from the Foodservice Packaging Institute. CalRecycle will review and approve food service packaging applications on a case-by-case basis during implementation.</p>	Yes

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17989.4(a) (3)	W14-04	Pactiv Evergreen	Lynn M.	Dyer	In order to increase the use of recyclable foodservice packaging, while also providing time for the recycling programs to accept and process these products, we recommend the following: Replace the current subsection 17989.4(a)(3) with: (A) Prior to December 31, 2022, the food service packaging material is collected by the local recycler servicing the food service facility and is sorted, aggregated and sent to an end market for processing into new products. Effective January 1, 2023, the food service packaging material is collected by at least 50 percent of recycling programs and is sorted and aggregated into at least one named material bale by at least 50 percent of large volume transfer/processing facilities in the state. Effective January 1, 2027, the food service packaging material is collected by at least 75 percent of recycling programs and is sorted and aggregated into at least one named material bale by at least 75 percent of large volume transfer/processing facilities in the state. (1)To confirm proper sortation, aggregation and end market viability, the food service packaging industry will hire a third party to survey large volume transfer/processing facilities in the state and provide the department with a report of the survey findings annually until December 31, 2027.	See 45-day comment response W15-31 regarding a regional or local approach. See response to W12-01 regarding thresholds for the recyclability criteria. See also 45-day comment response W10-03. Regarding the suggested addition of subsection (A)(1), CalRecycle does not have the broad authority to require the food service packaging industry, at large, to hire a third party to conduct a survey. Moreover, such a regulatory requirement would be ambiguous regarding “food service packaging industry” and would not sufficiently identify the persons and entities to which it applies. See 45-day comment response PH05-07 regarding end markets.	No
17989.4(a) (3)(A)	W01-12	American Chemistry Council (ACC) and Contributors	Tim	Shestek	We strongly disagree with the arbitrary selection of 75 percent as a threshold at which recycling programs must collect, sort, and bale a material in order for it to be eligible to be deemed “recyclable” under the Department’s recyclable criteria at Section 17989.4. A 75 percent litmus test is inconsistent with the plain language and intent of SB 1335, in excess of the Department’s authority and lacks a rational purpose. Specifically, under SB 1335, the Department is required to consider whether the “packaging is eligible to be labeled as ‘recyclable’ under the uniform standards contained in Sections 17580-81 of the Business and Professions Code” in developing its “recyclable” criteria. The uniform standards in the Business and Professions Code incorporate the FTC Green Guides by reference, and the FTC Green Guides, in turn, specify that a material is eligible to be labeled as “recyclable” without qualification if the recycling facilities that will collect and recycle the material are available to at least 60 percent of the population where the item is sold.	CalRecycle disagrees with the commenter that the recyclable requirements in the proposed regulation are inconsistent with the language and intent of SB 1335. PRC subsection 42370.2(d) provides the minimum criteria the director shall consider for determining recyclability. The statute does not require CalRecycle to adopt thresholds identical to those in the FTC Green Guides, which are guidelines for what constitutes deceptive environmental marketing and therefore serve a different core purpose than SB 1335. See also 45-day comment responses W10-03 and W06-02 regarding CalRecycle’s authority and the basis for the thresholds stated in this subsection.	No

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17989.4(a) (3)(A)	W01-13	American Chemistry Council (ACC) and Contributors	Tim	Shestek	Although the Department is proposing to make certain changes to Section 17989.4, which in effect attempt to bring its recyclability thresholds in line with the FTC Green Guides, the proposed changes only make this alignment temporary, until December 31, 2025. Accordingly, as from January 1, 2026, the Department's recyclable criteria are inconsistent with the FTC Green Guides. Thus, the Department's new proposal is still inconsistent with the plain language and intent of SB 1335, exceeds the authority conferred by the legislature, and otherwise lacks a rational purpose.	CalRecycle disagrees with the commenter's suggestion that the recyclability criteria must match the FTC Green Guides, which state thresholds for deceptiveness of marketing claims, not for the determinations that SB 1335 mandates CalRecycle to make. See response to W01-12. See also 45-day comment responses to W10-03 and W06-02.	No

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17989.4(a) (3)(A)	W01-15	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Revised Proposed Regulations now specify that, in order to satisfy the Department’s arbitrary recyclable litmus test, the food service packaging material must be “sorted and aggregated into a single named material bale by at least 60 percent [or as of January 1, 2026, 75 percent] of large volume transfer/processing facilities in the state.” There does not appear to be any rational basis that is consistent with the statutory mandate and legislative intent of SB 1335, which would justify the Department’s newly proposed restriction limiting the types of facilities where sorting and aggregating activities can occur to only “large volume” transfer/processing facilities. Indiscriminately dictating that sorting and aggregating of food service packaging material that occur at smaller volume facilities in the state cannot count towards the Department’s litmus test for determining whether a food service packaging item is “recyclable” is arbitrary, capricious, inconsistent with SB 1335 and lacks a rational basis and/or support in the administrative record. The Revised Proposed Regulations will not only disenfranchise existing secondary sortation Material Recovery Facilities (“MRFs”) in the state and disincentive any further investments or expansions in this segment of the market, but now will also potentially foreclose recycling opportunities at smaller transfer/processing facilities, who are valuable partners in the recycling community.	<p>CalRecycle disagrees that specifying “Large volume transfer/processing facilities” will limit where sorting and aggregation activities can occur. The proposed regulation does not impose any restrictions on such activities, nor does SB 1335 grant CalRecycle the authority to impose such a restriction.</p> <p>CalRecycle disagrees that not counting smaller-volume facilities in setting the sorted and aggregated thresholds is arbitrary, capricious, and lacks a rational basis or support. The focus on “Large volume transfer/processing facilities” is justified because they represent the majority of statewide sorting and aggregation capacity. Because the percentage thresholds are based on the number of facilities that sort and aggregate a material (as opposed to the percentage of total statewide capacity represented by facilities that do so), counting all facilities regardless of size would risk seriously misrepresenting the extent to which materials are actually sorted and aggregated.</p> <p>Furthermore, it is rational to count discrete facilities that sort and aggregate a material rather than using a threshold based on the proportion of statewide capacity represented by such facilities, which would not be reasonably feasible. By basing the threshold on the number of large volume facilities, the proposed regulations provide a less burdensome method for food service packaging manufacturers to demonstrate that a food service packaging material meets the applicable criteria. If the regulations were not limited to the number of “Large volume transfer/processing facilities,” manufacturers would have to gather extensive data from every individual transfer/processing facility statewide.</p> <p>Assessing the percentage of large facilities that sort and aggregate a particular material is also consistent with statute, which expressly authorizes CalRecycle to consider the frequency with which packaging is sorted and aggregated and whether it is recycled in “sufficient quantity... to maintain a market value.” Because large facilities account for much of the statewide recycling capacity, they reasonably reflect such frequency and quantity.</p> <p>See also 45-day comment response PH01-07.</p>	No

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17989.4(a)(3)(A)	W01-16	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Department has failed to evaluate the impacts that its proposal would have on these small businesses, as is required by the APA.	See 45-day comment response PH01-07.	No
17989.4(a)(3)(A)	W01-17	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Commenters request that the references to “large scale transfer/processing facilities” in subsections 17989.4(a)(3)(A) and 17989(a)(15) be removed.	See response to W01-15 regarding the term “Large volume transfer/processing facilities.”	No
17989.4(a)(3)(A)	W04-02	AMERIPEN	Dan	Felton	While we appreciate the change from a 75 to 60 percent initial collection and processing threshold in the proposed regulations (it would rise to 75 percent in 2026), we are still concerned that the threshold is an arbitrary number outside the control of food service packaging manufacturers.	See response to W01-12 regarding the phased collection and sortation thresholds. See also 45-day comment responses W10-03 and W06-02. Regarding the assertion that the thresholds concern factors outside the control of food service packaging manufacturers, see 45-day comment response W10-02.	No
17989.4(a)(3)(A)	W09-33	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 example, the List could include something like “Ingeo PLA-coated paperboard cups, where allowed by the compost service provider.”	See 45-day comment response W15-37 regarding a 90 percent collection threshold. See response to W01-12 regarding the phased collection and sortation thresholds. See also 45-day comment responses W10-03 and W06-02. See 45-day comment response W15-31 regarding a regional or local approach.	No
17989.4(a)(3)(A)	W12-06	Foodservice Packaging Institute	Natha	Dempsey	The thresholds set in subsection 17989.4(a)(3)(A), placing first a 60 percent rate, followed very quickly by a 75 percent rate at which recycling programs must collect, sort and bale material by January 1, 2026 offers an unmanageable timeline for the foodservice packaging industry and our members’ customers. FPI has been working on the recovery of foodservice packaging products for nearly a decade. We understand and recognize the amount of time and resources it takes to add materials to recycling programs across the country, including California. Given the timeline laid out in this regulatory proposal, the industry will not be able to meet a 60 percent threshold prior to December 31, 2025, nor will it be able to stretch to a 75 percent rate by January 1, 2026. End market and infrastructure development, communications and educational resources will all need to be put into place. These require capital, both human and financial in nature. Achieving the desired thresholds will require a longer timeline than what has been provided here.	Statute directs CalRecycle to develop criteria for “determining the types of food service packaging that are reusable, recyclable, or compostable.” Thus, the criteria assess what types of food service packaging items are currently recyclable statewide, not what may be recyclable in the future. The department developed the proposed regulation with full consideration of current market conditions. See also 45-day comment response W10-03.	No

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17989.4(a)(3)(A)	W12-07	Foodservice Packaging Institute	Natha	Dempsey	Subsection 17989.4 (a)(3)(A) uses the term “single named material bale” has the unintentional capability to limit where foodservice packaging items might be captured and baled. Foodservice packaging items today have the ability to be collected, sorted and baled into more than one named bale type. We recommend changing the language used in subsections 17989.4 (a)(3)(A) and 17989.4(a)(3)(B)(ii) from “single named material bale” to include “at least one single named material bale”.	Based on multiple comments received, CalRecycle determined that the term “single-named material bale” was ambiguous and unnecessarily narrow, as interpreted by some stakeholders. Therefore, CalRecycle deleted this term and revised the language in subsections 17989.4(a)(3)(A) and (B) and subsection 17989.6(d)(4)(A) of the Third Draft Proposed Regulations to clarify that food service packaging items must be comprised of materials that have “sufficient commercial value to be marketed for recycling” and be “sorted and aggregated into defined streams.” This revision more clearly aligns the regulatory text with PRC subsection 423070.2(d)(6), which requires CalRecycle to consider whether a food service packaging material is “recycled in sufficient quantity, and is of sufficient quality, to maintain a market value.” See also response to W14-02 regarding recyclability criteria.	Yes
17989.4(a)(3)(A)	W17-05	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	The requirement that a material be collected by at least 60 percent “large volume” transfer/processing facilities is arbitrary, overly restrictive and presented without rationale. CalRecycle offers no explanation for the reasoning behind requiring facilities to meet this size threshold. This additional criteria will severely limit the amount of material that can be considered “recyclable” without offering an explanation as to its merit.	See response to W01-15 regarding the term “Large volume transfer/processing facilities.”	No
17989.4(a)(3)(A)–(B)	W01-14	American Chemistry Council (ACC) and Contributors	Tim	Shestek	Subsection 17989.4(a)(3) of the Proposed Regulations should be revised to provide that a food service packaging material is “regularly collected and recycled” if it is collected by “60 percent of recycling or takeback programs” serving “60 percent of the population.”	See 45-day response W04-62.	No
17989.4(a)(3)(B)	W09-34	Clean Seas Lobbying Coalition	Genevieve	Abedon	“Takeback programs shall collect at least 75 percent of the food service packaging items...” We suggest a higher percentage of 90 percent. We also suggest separating requirements for takeback programs for reusable food service packaging and recyclable food service packaging.	See 45-day comment response W15-32 regarding the proposed 90 percent collection rate. To the extent that this comment reflects confusion over whether there is a separate takeback program for reusable food service packaging, the department revised subsection 17989.4(a)(3)(B) in the Third Draft Proposed Regulations to remove the word “reusable” in reference to “recyclable” takeback programs, and to specify that “recyclable” items, even in a takeback program, must “have sufficient commercial value to be marketed for recycling” and must ultimately be recycled.	No

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17989.4(a)(3)(B)(i)	W09-36	Clean Seas Lobbying Coalition	Genevieve	Abedon	There are truly reusable items, such as ceramic plates, and there are sort-of reusable items which are still disposable (such as the thicker plastic bags allowed under SB 270.) We see “can be reused prior to being recycled” as limiting, and we don’t want to see the regulations to be limited to only the sort-of reusable items, since takeback programs can also include truly reusable items.	CalRecycle disagrees that the recyclable takeback program criteria will result in the approval of “sort-of-reusable” items. This subsection applies to “recyclable” food service packaging items, not “reusable” food service packaging items. The purpose of this language was to ensure that, regardless of how many times an item is reused in the takeback program, it must be recycled at the end of its useful life. See also response to W09-34.	Yes

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§17989.5. Compostable Food Service Packaging Criteria.							
17989.5	W02-11	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The reality is that California lacks the infrastructure to support widespread collection and commercial composting of much foodservice packaging. The deficit of infrastructure will severely limit the availability of compliant packaging options for foodservice operators.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.5	W05-01	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	No compostable product can meet the regulations as written to satisfy SB 1335. While we do not think this is the desired effect, this regulation would effectively ban state agencies from using compostable products. SB 1335 should be a model for how California deals with single-use items on a statewide basis, but these are not reasonable criteria. Without a serious reconsideration of many sections of SB 1335, it will become a model for how to kill the compostable products industry.	See response to W08-03 regarding the compostable thresholds. See also 45-day comment response W07-02.	No

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17989.5	W05-05	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>The requirements in subsections (a)(1) and (a)(2) are not feasible and would again mean no packaging would be considered compostable in the state of California. We feel it is critical to have a pre-2026 requirement that is more flexible while composting infrastructure is being built out under SB 1383. Compostables are fundamentally different from recyclables, as they are part of the organic waste stream, not collected and composted on their own.</p> <p>The commenter suggests the following revisions: (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 Prior to December 31, 2025, the food service packaging material is regularly collected for composting by a minimum of 75 <u>in an organics recycling program, and is regularly accepted by composting facilities receiving those organics, at least 50 percent of organics recycling programs statewide.</u> (2) Effective January 1, 2026, the food service packaging material is regularly collected for composting by at least 75 <u>50</u> percent of organics recycling programs statewide, <u>and is regularly accepted by composting facilities receiving those organics, as demonstrated by a CalRecycle survey of infrastructure.</u> (2) The Prior to December 31, 2025, the food service packaging item material is accepted by at least 75 <u>50 percent of the compost facilities permitted to in the state that accept mixed materials. Effective January 1, 2026, the food service packaging material is accepted by at least 75 percent of the compost facilities in the state that accept mixed materials.</u></p>	<p>Regarding the assertion that no packaging would be considered compostable in California, see response to W08-03. See also 45-day comment response W07-02. See 45-day comment response W15-31 regarding a regional or local approach.</p> <p>CalRecycle agrees with the commenter’s suggestion to add a takeback program option for compostable items. In response to stakeholder feedback suggesting more flexibility for compostable items, the department added an option for compostable items to be collected by a takeback program in subsection 17989.1(a)(1)(B) that is comparable to the requirements for recyclable items in subsection 17989.4(a)(3)(B).</p> <p>Subsection 17989.5(a)(1)(B) in the Third Draft Proposed Regulations has been added as follows:</p> <p>(B) Prior to January 1, 2026, the food service packaging item is included in a takeback program that, on an annual basis, recovers at least 50 percent of the food service packaging items in the program that are distributed at food service facilities. Effective January 1, 2026, the food service packaging item is included in a takeback program that, on an annual basis, recovers at least 75 percent of the food service packaging items in the program that are distributed at food service facilities. All food service packaging items that are recovered by the takeback program shall be accepted at a compost facility at the end of their useful life.</p>	Yes
17989.5	W06-04	California Compost Coalition (CCC)	Neil S.R.	Edgar	<p>We recommend a field disintegration validation process be implemented, by the end of 2022, which would clearly identify which compostable materials meet compost manufacturing timelines. We do have questions about what will be the accepted protocol for the field validation. Will the protocol include both aerated static pile (ASP) and windrow composting technologies? What relevant operating parameters will the composter be required to adhere to? Moisture, temperature, pH, oxygen levels, etc. have been contemplated by some regulators as important. How will the cost of the field validation study work be funded?</p>	See 45-day comment response W09-06.	No

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17989.5	W06-05	California Compost Coalition (CCC)	Neil S.R.	Edgar	We are aware the compostability depends greatly on the type of composting technology employed at an individual facility, as well as the manner in which composting is conducted. So, 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. 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.	See 45-day comment response W09-06.	No
17989.5	W08-03	Californians Against Waste (CAW)	Baani	Behniwal	As currently drafted, the proposed regulations would likely not allow for any compostable packaging to be used at state facilities. Given the burgeoning potential of this market, it's vital that these regulations lay a clear path forward for the use of compostable packaging in the state of California. The requirement for food service packaging to be accepted by 50% and then 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. The phased-in and tiered approach that CalRecycle is suggesting in this draft is a good approach. However, the specific criteria and timeline need to be adjusted to give both the industry and the manufacturers time to adjust to the roll out of organics facilities in response to the implementation of SB 1383 and to ensure that the ultimate implementation tier is sufficiently protective of composters. We look forward to discussing those criteria and timeline with all the stakeholders.	<p>The proposed criteria were revised in the Second Draft Proposed Regulations to align with SB 1383 (Lara, Chapter 395, Statutes of 2016), which requires the state to achieve a 50 percent reduction in the level of the statewide disposal of organic waste by 2020 and a 75 percent reduction by 2025. In addition, the phased approach to the compostability thresholds encourages improvements in composting infrastructure, provides time for food service packaging manufacturers to achieve the higher thresholds, and ultimately aligns with the goal of AB 341 (Chesbro, Chapter 476, Statutes of 2011) for not less than 75 percent of solid waste generated to be source reduced, recycled, or composted. See also 45-day comment response W07-02.</p> <p>Additionally, CalRecycle added a takeback option for compostable items in the Third Draft Proposed Regulations to provide an alternative option for compostable items. See response to W05-05 regarding a takeback program option.</p>	No – Thresholds Yes – Takeback option
17989.5	W08-04	Californians Against Waste (CAW)	Baani	Behniwal	We recommend that prior to the full implementation of SB 1383, compostable packaging be required to meet the standard ASTM 6400 and 6868 criteria and to replace the 50% acceptance criteria with a requirement that the packaging may only 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 could include something like "Ingeo PLA-coated paperboard cups, where allowed by the compost service provider."	<p>See 45-day comment response W15-31 regarding a regional or local approach.</p> <p>Regarding the commenter's suggestion that "compostable packaging be required to meet the standard ASTM 6400 and 6868 criteria," this is already a requirement in the proposed regulations. See response to W05-02 regarding the definition of "Safe and timely manner."</p>	No

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17989.5	W09-38	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 revised regulation or raise issues related to the rulemaking process.	No
17989.5	W09-39	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 45-day comment response W15-36.	No
17989.5	W09-42	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.	See 45-day comment response W15-31.	No
17989.5	W09-44	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding: (5) “The food service packaging 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.”	See 45-day comment response to W13-08.	No
17989.5	W10-01	Clorox Company	Lisa	Pankiewicz	The second criteria should not be the percent of compost facilities that accept the food packaging but the % of the population of California that is served by the composting facilities.	CalRecycle disagrees with the commenter’s suggestion that the acceptance criteria should be replaced with the percent of population served by the composting facilities. The acceptance criteria in the proposed regulations is consistent with PRC subsection 42370.2(e)(3), which requires the department to consider whether a food service packaging item is “regularly collected and <i>accepted</i> for processing.” Furthermore, the comment provides no recommendation for a methodology to establish a population threshold, nor justification for how a compost facility, simply by <i>servicing</i> a percentage of the population, leads to composting of food service packaging items. In contrast, “Accepted” as defined in subsection 17989.1(a)(1), ensures that a compost facility is knowingly incorporating a food service packaging item into the compost facility’s routine daily operations for processing. See 45-day comment response W04-62 regarding the impracticality of a population-based acceptance approach.	No
17989.5	W10-02	Clorox Company	Lisa	Pankiewicz	The state should identify a numeric threshold that is achievable in the relevant time frame (2025 and 2026). The state should not identify a number threshold that it knows can't be achieved for many food service packaging products.	See response to W08-03 regarding compostable thresholds. See also 45-day comment response W07-02.	No

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17989.5	W13-06	Old Town Family Hospitality Corp	Chuck	Ross	The criteria doesn't take into account the lack of local facilities to recycle compostable food service packaging. The problem is San Diego doesn't have the facilities to take compostable food service packaging or organic food waste. My local haulers don't collect organic food waste, so I have a relationship with a compost farmer to take my organic food waste to comply with AB 1826 regulations. If there weren't enough recyclable food service packaging products types on the List and I were required to only use compostable food service packaging for take-out at my restaurant, my customers would just throw the compostable food service packaging in their trash can or recycle bin, causing a cross contamination issue. The end result will be me paying a higher price for a compostable food service packaging products that will only end up in the landfill.	See response to W08-03 regarding compostable thresholds. See also 45-day comment response W07-02. See 45-day comment response W15-31 regarding a regional or local approach.	No
17989.5	W16-01	Plant Based Products Council (PBPC)	Jessica	Bowman	Many plant-based products, including some food service packaging items, are compostable. These products provide numerous environmental benefits over traditional plastics and other products that are made from fossil fuel.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.5	W16-02	Plant Based Products Council (PBPC)	Jessica	Bowman	The compost produced at the materials' end of life provides a valuable soil amendment for farmers and homeowners, improving soil health and water quality. Compost enriches soil, prevents nutrient runoff, enhances rainfall penetration, and improves soil's carbon sequestration abilities.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No

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17989.5	W16-03	Plant Based Products Council (PBPC)	Jessica	Bowman	Our comments discussed that these, often newer, innovative compostable products face a number of challenges that hamper their ability to reach their full market potential. These challenges include a lack of adequate composting infrastructure. Some composting facilities refuse to accept these products for various reasons such as concerns about product break down time, chemical contamination, or confusion with similar looking traditional plastics. In addition, compostable products are not considered acceptable feedstock for compost that is used on USDA certified organic farming operations. Importantly, many stakeholders who see the benefit of composting and compostable products are working to address these challenges, but change will take time. Unfortunately, the revised criteria proposed for compostable food service packaging items pursuant to SB 1335 will continue to act as a defacto ban on the use of compostable products. Requiring a significant percentage of materials be collected and accepted by compost facilities statewide, even with an extended timeline, presents 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 W08-03 regarding compostable thresholds. See also 45-day comment response W07-02.	No
17989.5	W16-04	Plant Based Products Council (PBPC)	Jessica	Bowman	We continue to encourage the development of a more nuanced approach that would allow the use of compostable products when, where, and 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, recognizing the practices of programs and facilities serving the food service facility, without setting statewide minimum percentage collection or acceptance requirements.	To the extent this comment suggests that the proposed regulations include criteria that do not rely on statewide collection or acceptance, see response to W05-05 regarding a takeback program option. See 45-day comment response W15-31 regarding a regional or local approach.	Yes – Takeback No – Regional approach
17989.5	W16-05	Plant Based Products Council (PBPC)	Jessica	Bowman	It is important for the SB 1335 regulations to recognize the growing nature of the compostable products industry and foster, rather than discourage their use. If the regulations are crafted in such a way that the criteria for compostable food service items encourages their use and acceptance, the barriers these products face can start to fall, allowing the market to grow, and the associated environmental benefits to be realized.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. To the extent this comment suggests that the proposed regulations include criteria that are not based on statewide collection or acceptance, see response to W05-05 regarding a takeback program option.	Yes

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17989.5	W20-06	Resource Recovery Coalition of California (Resource Coalition)	Veronica	Pardo	Recyclability and compostability standards are not necessarily interchangeable, and most facilities do not accept compostable plastic packaging. With SB 1383 regulations nearly finalized, we anticipate more compostable products, or products that claim to be compostable, will enter the organic waste recycling stream. It is absolutely imperative that this material be free from harmful chemicals and that it perform as intended at a compost facility, otherwise it is simply additional contamination and an added expense to SB 1383 programs. Verification that a product is indeed compostable both in theory and in real-world practice will be critical.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. Related to the comment regarding harmful chemicals, see response to W09-02.	No
17989.5	W21-09	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. 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.”	See 45-day comment response W15-26.	No
17989.5	W21-10	SF Environment	Hilary	Near	We acknowledge that the amended draft reduced the acceptability threshold for food service packaging among California composting programs. The criteria of compostable food service packaging as being accepted by at least 50 percent of facilities and programs still does not recognize the current state of the industry nor the regional dynamics of organics processing infrastructure within California.	See response to W08-03 regarding compostable thresholds. See also 45-day comment response W07-02. See response to W05-05 regarding a takeback program option.	No – Thresholds Yes – Takeback
17989.5	W21-11	SF Environment	Hilary	Near	The SB 1383 Infrastructure and Market Analysis Report published April 2019 found that of the California organics processing facilities surveyed, only 49 percent accepted food scraps. Assuredly, fewer of those facilities accept compostable products that meet ASTM D6500/6868 standard specifications. Even as composting infrastructure is growing across California, an acceptance rate for food service packaging is restrictive. This 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 food recovery option represented by compostable food packaging.	See response to W08-03 regarding compostable thresholds. See also 45-day comment response W07-02. See response to W05-05 regarding a takeback program option.	No – Thresholds Yes – Takeback

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17989.5	W21-13	SF Environment	Hilary	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. As a community that has been composting for decades, 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 45-day comment response W15-31 regarding a regional or local approach. In response to stakeholder feedback suggesting more flexibility for compostable items, the department added an option for compostable items to be collected by a takeback program in subsection 17989.1(a)(1)(B) that is comparable to the requirements for recyclable items in subsection 17989.4(a)(3)(B). See response to W05-05 regarding a takeback program option.	No – Regional approach Yes – Takeback
17989.5	W22-01	World Centric	Lauren K.	Olson	This criterion gives all the power to the compost facilities, which for the most part, are owned by major multinational corporations that are not social entities who do what is right for the environment; they do what makes the most financial sense. When compostable products enter their system, they would rather not deal with them than compost them. They will claim that compostables invite contamination, but the reality is that they would rather just not deal with the issue. If you hand all the power to these multinational corporations to make the decisions, we probably would not be recycling or composting at all. It is easier not to sort or educate and dump everything in a landfill or to incinerate it without regulation. Instead, this area should require that 50% of compost facilities HAVE TO take compostable products by Dec 31, 2025, but their lobbyists will fight on this. You have to understand that these corporations are not social entities; they have not the obligation to do what is best for the planet. They are PROFIT generating enterprises.	CalRecycle does not have the statutory authority to require compost facilities to accept specific materials.	No
17989.5(a)	W12-08	Foodservice Packaging Institute	Natha	Dempsey	The thresholds set to determine if a foodservice packaging item is “compostable” being applied in subsections 17989.5(a)(1) and 17989.5(a)(2) are unrealistic within the timeline being laid out by this proposed regulation. Developing the levels of acceptance for compostable foodservice products at 75 percent of the composting facilities in the state that accept mixed materials by January 1, 2026 is simply too short a timeframe in which to accomplish an extensive and complex task. A task that includes infrastructure development, education and communications campaigns for municipalities and residents, all of which require time and resources. Please refer to the comments submitted by the Biodegradable Product Institute for additional information.	See response to W08-03 regarding compostable thresholds. See also 45-day comment response W07-02.	No

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17989.5(a)	W14-03	Pactiv Evergreen	Lynn M.	Dyer	The inability of foodservice packaging to meet the “compostable” criteria stem from the inclusion of subsection 17989.5(a). Based on data from FPI, less than half of organics recycling programs, as well as compost facilities, in California accept compostable foodservice packaging. The reality is that recycling and composting of foodservice packaging is still in its infancy, and more time is needed before it is available widely across the state. Pactiv Evergreen is proud to support the foodservice packaging industry’s efforts to increase recycling and composting in California.	See response to W08-03 regarding compostable thresholds. See also 45-day comment response W07-02.	No
17989.5(a)	W14-05	Pactiv Evergreen	Lynn M.	Dyer	In order to increase the use of compostable foodservice packaging, while also providing time for the composting programs to accept and process these products, we recommend the current subsections 17989.5(a)(1) and (2) be replaced with: (1) Prior to December 31, 2025, the food service packaging material is regularly collected for composting and accepted by the local composter servicing the food service facility. Effective January 1, 2026, the food service packaging material is regularly collected for composting by at least 50 percent of organics recycling programs statewide and is accepted by at least 50 percent of the compost facilities permitted to in the state that accept mixed materials. Effective January 1, 2028, the food service packaging material is regularly collected for composting by at least 75 percent of organics recycling programs statewide is accepted by at least 75 percent of the compost facilities in the state that accept mixed materials. (A)To confirm acceptance, the foodservice packaging industry will hire a third party to survey compost facilities in the state that accept mixed materials and provide the department with a report of the survey findings annually until December 31, 2028.	See 45-day comment response PH07-01 regarding the statutory timeline, including when the regulations must be in effect. See 45-day comment response W15-31 regarding a regional or local approach. See response to W05-05 regarding a takeback program option, which provides an alternative pathway for compostable items to comply with the regulations and be included on the List. Regarding the suggested revision of subsection (A), it would be ambiguous to require any particular action by “the food service packaging industry,” which is not an identifiable entity. Regarding the suggested requirement that the “foodservice packaging industry... hire a third party” to conduct a survey, see response to W14-04.	No – Thresholds Yes – Takeback option
17989.5(a) (1)–(2)	W09-40	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest a higher percentage of 90 percent.	See 45-day comment response W15-37.	No

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17989.5(a) (1)-(3)	W02-10	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The requirements that materials be collected by X percent of organics recycling programs and X percent of compost facilities creates a chicken and egg situation, where identification of a product through a label or other means is necessary, but the percentage has not yet reached the thresholds specified.	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>To the extent this comment identifies wording that was not sufficiently clear, the Third Draft Proposed Regulations address this by more clearly stating that collection and acceptance percentages are based on the materials of which an item is comprised, not on collection and acceptance of “items” themselves.</p> <p>To the extent this comment asserts that satisfying the collection and acceptance thresholds requires “identification of a product through a label or other means,” CalRecycle disagrees. The thresholds apply to materials, not items directly. For a particular material, the relevant percentages are the percentage of programs that “regularly collect” the material and the percentage of compost facilities (that accept mixed materials) that accept the material. Determining these percentages does not present a “chicken and egg situation” or other logical conflict.</p>	<p>Yes – Clarification</p> <p>No – Threshold</p>
17989.5(a) (2)	W06-07	California Compost Coalition (CCC)	Neil S.R.	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. We have concerns that a compostable product is regularly collected by a minimum of 50 or 75 percent of programs is a relevant metric - collection frequency is a moot point, unless the materials are "accepted" at a facility, as noted in the below language.	See 45-day comment response W09-11.	No
17989.5(a) (2)	W06-08	California Compost Coalition (CCC)	Neil S.R.	Edgar	We are supportive of the concept that listed packaging be "accepted" by at least 50 or 75 percent of compost facilities permitted to accept mixed materials, as noted in subsections 17989.5(a)(1)-(2). However, we have concerns that any of the compostable food service packaging currently sold in California can meet this threshold.	<p>See response to W08-03 regarding compostable thresholds. See also 45-day comment response W07-02.</p> <p>See response to W05-05 regarding a takeback program option.</p>	<p>No – Threshold</p> <p>Yes – Takeback</p>
17989.5(a) (2)	W06-09	California Compost Coalition (CCC)	Neil S.R.	Edgar	We continue to seek additional clarity on who would verify that the facilities are accepting the type of packaging that is applying for being listed. We would appreciate knowing CalRecycle will be the entity which will work to confirm acceptance rates.	See 45-day comment response W09-11.	No

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17989.5(a) (2)	W09-41	Clean Seas Lobbying Coalition	Genevieve	Abedon	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 could include something like “Ingeo PLAcoated paperboard cups, where allowed by the compost service provider.”	See 45-day comment response W15-31.	No
17989.5(a) (2)	W19-05	Recology, Inc.	Christine	Wolfe	It would be helpful for the Department to issue guidance on how it intends to determine if 50/60 percent of composters/processors accept items, so that we can verify as necessary.	See 45-day comment response W09-11.	No
17989.5(a) (2)	W21-12	SF Environment	Hilary	Near	A percentage threshold should be based on facilities and programs that already accept food scraps as a feedstock, not organics generally. The 50 percent acceptability threshold is slightly more realistic once refining to include facilities that are already accepting a wider range of products.	<p>Regarding the compostable criterion in 17989.5(a)(2), CalRecycle agrees with the commenter that the 50 percent acceptance threshold should be based on the number of facilities that already accept feedstocks. The Third Draft Proposed Regulations were revised to clarify that 50 percent of compost facilities that accept mixed materials (i.e., those that accept food waste) must accept the material that comprises the food service packaging item for it to be considered compostable.</p> <p>This criteria was revised to be a part of subsection 17989.5(a)(1)(A), as follows:</p> <p style="padding-left: 40px;">(A) The Prior to January 1, 2026December 31, 2025, the food service packaging item is comprised of materials that are material is regularly collected for composting by a minimum of 75 at least 50 percent of organics organic waste recycling programs statewide and accepted by at least 50 percent of the compost facilities in the state that accept mixed materials. Effective January 1, 2026, the food service packaging item is comprised of materials that are material is regularly collected for composting by at least 75 percent of organics organic waste recycling programs statewide and accepted by at least 50 percent of the compost facilities in the state that accept mixed materials.</p>	Yes
17989.5(a) (4)	W09-43	Clean Seas Lobbying Coalition	Genevieve	Abedon	Why is this limited to only subsection 17580.5(a) of the Business and Professions Code? Why not include (b) as well? We suggest striking “(a)” so that it reads “Section 17580.5 of the Business and Professions Code.”	The proposed regulation refers to subsection 17580.5(a) of the Business and Professions Code because that subsection sets forth substantive requirements concerning environmental marketing claims. Referring to subsection 17580.5(b) is unnecessary because it does not concern those requirements in a way that is relevant to SB 1335. Rather, it establishes conformance with the FTC Green Guides as a defense in civil lawsuits alleging deceptive marketing.	No

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§17989.6. Application Requirements and Submittal Process.							
17989.6	W04-08	AMERIPEN	Dan	Felton	We have continued concerns that the proposed regulations do not specify a maximum time for CalRecycle to issue determinations to manufacturers on their initial applications and any new application they submit. Not having a mandated time restraint on CalRecycle could result in long delays and uncertainty for packaging manufacturers who may be considering new, significant investments in packaging redesign or recycling infrastructure and market support.	See 45-day comment response W06-08.	No
17989.6(a) (6)	W09-45	Clean Seas Lobbying Coalition	Genevieve	Abedon	Clean Water Action has only seen a Prop 65 warning on one piece of packaging. Rather, we suggest a statement as to whether any Prop. 65, DTSC candidate chemicals, or PFAS are included in the material.	See 45-day comment response W15-40 regarding the disclosure of Proposition 65 chemicals and PFASs. See 45-day comment response W15-16 regarding DTSC's Candidate Chemicals List.	No
17989.6(c)	W09-46	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 if different from the third-party certification entity as defined.	See 45-day comment response W15-41.	Yes
17989.6(d) (1)	W09-47	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.	See 45-day comment response W15-27.	No
17989.6(d) (2)	W09-48	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding that the regulations should also prohibit packaging composed of materials that will fragment (as opposed to just additives).	See 45-day comment response W09-10.	No

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17989.6(d) (3)	W10-05	Clorox Company	Lisa	Pankiewicz	The revised proposals require tests from a third-party certification entity that demonstrate compliance with subsection 17989.2(a)(3), shall be complete within six months of the application submittal date. Requiring the testing be performed within six months of the application submittal date is likely to create an unnecessary burden with little attendant benefit. A test performed one or more years earlier is no less valid if the manufacturer does not change its process in a manner that could introduce PFAS into the product. The same challenge exists after the testing is performed as is inherent in testing any product for composition. Alternatively, the manufacturer could perform the test prior to 6 months before submission and attest that there has been no change in manufacturing that would change the results of the test.	<p>CalRecycle has not modified the timeframe as suggested by the commenter because a longer timeframe would increase the likelihood that test results become outdated by changes in manufacturing inputs and processes, and a recent test is more reliable, verifiable proof of compliance than a manufacturer's statement that no changes have occurred that could introduce PFASs into its product. Furthermore, requiring a recent test accounts for the possibility that methods for detecting the presence of PFASs may improve over time.</p> <p>CalRecycle did revise this subsection in the Second Draft Proposed Regulations to clarify that a test required to demonstrate compliance with subsection 17989.2(a)(3) may begin outside the six month timeframe, but that the test and the corresponding results must be completed within six months of the application submittal date.</p>	No
17989.6(e)	W09-49	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest adding (5) "The food service packaging 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."	<p>See 45-day comment response W13-08.</p> <p>See response to W05-04 regarding the definition of "Third-party certification entity."</p>	Yes
17989.6(e) (2)	W05-07	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Several items remain unaddressed. This language should match §17989.5(a), and should not restrict the ability of a composter to screen for contamination, which is an essential tool to manage quality. Despite best efforts, prescreening may allow conventional plastic fragments to enter the composting stream, and ultimately the environment. Conventional plastic fragments will likely result in microplastics, whereas compostable material will break down during composting. The commenter recommends revising the regulation as follows: §17989.6(e)(2) Information demonstrating that the food service packaging material is accepted as required by subsection 17989.5(a)(2) and that the material is not <u>intentionally</u> screened out <u>as a contaminant for disposal prior to or after active composting.</u>	See 45-day comment response W08-04.	No

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17989.6(e) (2)	W21-14	SF Environment	Hilary	Near	The criteria should not restrict the ability of a composter to screen for contamination, which is an essential tool to manage quality. The commenter recommends revising the regulation as follows: Information demonstrating that the food service packaging item material or group of items are is accepted as required by subsection 17989.5(a)(2) by at least 75 percent of compost facilities permitted to accept mixed materials, as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(26), and that the material is not <i>intentionally</i> screened out as a <i>contaminant</i> . for disposal prior to or after active composting.	See 45-day comment response W08-04.	No

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17989.6(e) (3)	W05-08	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>The regulation continues to say that compostability tests must be completed within 6 months of submittal. In BPI's May 2020 comments, we already noted that this is not technically possible and is excessive. The biodegradation tests take 6 months alone, not including a roughly 3-6 month queue currently at qualified testing labs all around the world, plus time for the lab to prepare the final reports. These tests are extremely expensive, and should not have to be repeated if formulas have not changed. This is the purpose of a third-party certification like BPI, to manage test report and collect samples, identifying that formulas have not changed. It is also important to note that BPI requires recertification every three years, or whenever the formulation is modified, to ensure that the products still meet applicable compostability standards. The commenter recommends revising the regulation as follows: §17989.6(d)(3) As applicable, test Test results from a third-party certification entity that demonstrate compliance with subsection 17989.2(a)(3), as applicable. Tests shall be completed conducted within six (6) months of the application submittal date.</p>	<p>Based on stakeholder feedback, CalRecycle revised the timeframe for completing the ASTM D6400-19 and ASTM D6868-19 test results. Previously, the test was required to have been completed no longer than six months prior to the application date. This has been revised to five years in subsection 17989.6(e)(2) (described as (d)(3) in the comment) in the Third Draft Proposed Regulations. Based on stakeholder feedback, CalRecycle also deleted the term "Third-party certification entity" in this subsection to remove confusion. See response to W05-04 regarding the definition of "Third-party certification entity."</p> <p>The subsection has been revised as follows:</p> <p>(2)(3) Test results from a third-party certification entity that demonstrates the food service packaging item or group of items biodegrades/composts in a safe and timely manner. Tests shall be For any food service packaging items that are plastic, plastic-coated or plastic-containing, documentation demonstrating that the items meet the requirements of ASTM D6400-19 or ASTM D6868-19, as applicable pursuant to subsection 17989.5(a)(2)(A), as shown by results from tests <u>completed</u> no more than five years prior to <u>within six (6) months of the application submittal date.</u> (A) If an applicant submits test results documentation <u>for a group of food service packaging items, the applicant must explain how the test results are</u> documentation is <u>representative of the group of food service packaging items.</u></p> <p>Regarding changes to subsections 17989.6(d)(3) and 17989.2(a)(3), CalRecycle disagrees that the six-month time frame for the completion of total fluorine test results should be revised. See response to W10-05 regarding the timeline to complete total fluorine testing.</p>	<p>Yes – Compostability tests</p> <p>No – Total fluorine tests</p>
17989.6(e) (3)	W02-04	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	<p>A six-month application period is not realistic with the current state of qualified labs in the U.S. A longer period will be necessary to allow for the commercial labs to have the time to provide results to the manufacturers.</p>	<p>See response to W05-08 regarding the completion of test results demonstrating compostability.</p>	<p>Yes</p>

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17989.6(e) (3)	W12-02	Foodservice Packaging Institute	Natha	Dempsey	Subsection 17989.6(d)(3) requires testing be completed within six months of the application submittal date. FPI believes this to be close to impossible to achieve and exceeds the intent of the law. The testing and certification process can extend beyond six months and testing, without a change to a formula, components or procedure, can be ridiculously costly as well as unnecessary. FPI recommends striking the “within six months of the application and submittal date” and replacing with “certification testing shall be current at the time of the application submittal date.”	See response to W05-08 regarding the completion of test results demonstrating compostability.	Yes
17989.6(f)	W12-10	Foodservice Packaging Institute	Natha	Dempsey	While it is helpful to have a 30-day notification deadline by which the department must notify foodservice packaging manufacturers of completed applications, it would be invaluable to also include a timeline by which manufacturers could expect completion of the approval process. We recognize applications will be processed in the order in which they are received, however, some indication of the length of time expected in processing would be greatly appreciated.	The revised regulation does not specify a timeframe for application review because CalRecycle anticipates that the workload and extent of correspondence with a food service packaging manufacturer will vary on a case-by-case basis, due to the nature of the applications. That said, subsection 17989.6(f)(1)(A) specifies that the department shall notify a food service packaging manufacturer whether their application is complete or incomplete within 30 days of receipt of submission. This completion review process ensures that the department receives necessary information from manufacturers in a timely fashion and establishes a clear benchmark for CalRecycle’s initial processing of applications. See 45-day comment response W06-08.	No
17989.6(g)	W01-08	American Chemistry Council (ACC) and Contributors	Tim	Shestek	The Department should only require a food service packaging manufacturer to submit a new application for a food service packaging item that is already on the List if a change is made that would materially affect the item’s conformity with the Department’s reusable, recyclable or compostable criteria. The application provisions in Section 17989.6 now provide that a food service packaging manufacturer must submit a new application to the Department within 30 days of every “non-aesthetic change” that is made to an approved item. Requiring a manufacturer to submit a new application every time there is a slight change in the formula of an item is unnecessarily burdensome, both for the manufacturers in preparing and submitting new applications and for CalRecycle in reviewing such a large volume of applications. Such an onerous requirement goes beyond the statutory authority and intent of SB 1335. As such, subsection 17989.6(g) should be revised by adding the following clause to the end of the provision “...that materially affects the item’s conformity with the criteria contained in Section 17989.3, 17989.4 or 17989.5.”	CalRecycle disagrees with this suggestion because an “aesthetic change,” as defined in Section 17989, does not affect the material composition. Therefore, a non-aesthetic change would constitute a change in material composition and could potentially change the food service packaging item’s ability to meet the public health and litter impact criteria outlined in Section 17989.2, as well as the reusable, recyclable, and compostable criteria outlined in Sections 17989.3, 17989.4, and 17989.5. See 45-day comment response PH01-05 regarding CalRecycle’s authority to consider potential litter, public health, and wildlife impacts. See 45-day comment response PH01-06 regarding the scientific basis for the public health and litter criteria.	No

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17989.6(g)	W09-50	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest adding aesthetic changes as well since, for example, dyes can come in contact with food and can contain toxic chemicals.	See 45-day comment response PH06-11.	No

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§17989.7. Noncompliant Food Service Packaging Inventories.							
17989.7(a)(1)-(4)	W01-18	American Chemistry Council (ACC) and Contributors	Tim	Shestek	Subsections 17989.7(a)(1) to (4) enumerate the criteria under which a food service facility may use a food service packaging item that is not on the List. Although it appears that the Department only intended for one of the four conditions to be met in order to qualify for the provision allowing facilities to use existing inventories, the Revised Proposed Regulations are ambiguous in this regard, and could be interpreted to mean that all four conditions must be met. As such, the Commenters request that the Department clarify the intended meaning of Section 18989.7 by replacing the phrase “under the following conditions” on with “if any of the following conditions are met.”	CalRecycle agrees with the commenter’s suggestion that clarification is needed with regard to the conditions that must be met in order for a food service facility to use a food service packaging item that is not on the List. Subsection 17989.7(b) has been revised in the Third Draft Proposed Regulations as follows: (b) Upon the removal of a food service packaging item or group of food service packaging items from the List pursuant to subsection 17989.1(f), a <u>A food service facility may not use its remaining a food service packaging item inventory that is not unless the item is on the List published by the department pursuant to Section 42370.3 of the PRC</u> Public Resources Code, except that a food service facility may use a food service packaging item under any of the following conditions:	Yes

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§17989.8. Records.							
					No comments were submitted on this section.		