

**CalRecycle Responses to 2<sup>nd</sup> 15-day Comments (12/12/2020 – 12/28/2020)**  
**Proposed Regulations for the Sustainable Packaging for the State of California Act of 2018**  
**Sorted by Proposed Regulation Section Number**

Regulation Section(s)	Comment Number	Commenter Affiliation	First Name	Last Name	Comment	CalRecycle Response	Revisions Needed
<b>General Comments</b>							
General Comments	W01-01	American Chemistry Council (ACC)	Tim	Shestek	The ACC and Commenters (see Index for full list) stated they “are committed to supporting policies and programs that increase the amount of food service packaging diverted from disposal through enhanced recycling and recovery efforts. However, the Commenters continue to have serious concerns with the Department’s proposal as a whole, as well as with several provisions that were added to the latest version of the Revised Proposed Regulations. The principal issues detailed in our First Comment Letter and in our Second Comment Letter (collectively, “Previous Comment Letters”) remain.”	This is a general comment that does not suggest a specific change to the revised regulation or raise an issue related to the rulemaking process.  CalRecycle responded to each of the ACC’s comments that were submitted during the 45-day and 15-day comment periods.	No
General Comments	W01-02	American Chemistry Council (ACC)	Tim	Shestek	The Revised Proposed Regulations continue to set forth a regulatory framework that will impede California from building a robust and innovative recycling economy.	This is a general comment that does not suggest a specific change to the revised regulation or raise an issue related to the rulemaking process.  CalRecycle responded to each of the ACC’s comments that were submitted during the 45-day and 15-day comment periods.	No
General Comments	W01-45	American Chemistry Council (ACC)	Tim	Shestek	The Commenters restate and incorporate the comments made in their previous comment letters by reference. Apart from the issues referenced in this letter, the changes made by the Department in the Revised Proposed Regulations do not address the comments raised in our Previous Comment Letters. We hereby restate the comments raised in our First Comment Letter and incorporate it by reference as if fully set forth herein. The Commenters restate the comments raised in our Second Comment Letter and incorporate it by reference as if fully set forth herein.	This is a general comment that does not suggest a specific change to the revised regulation or raise an issue related to the rulemaking process.  CalRecycle responded to each of the ACC’s comments that were submitted during the 45-day and 15-day comment periods.	No
General Comments	W01-46	American Chemistry Council (ACC)	Tim	Shestek	The Commenters appreciate the opportunity to share our views and concerns on the Revised Proposed Regulations. We urge the Department to revise the language in the Revised Proposed Regulations, in light of our comments, in order to adhere to the mandates of SB 1335 and to promote innovation and investments in the State’s recycling sector.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  CalRecycle responded to each of the ACC’s comments that were submitted during the 45-day and 15-day comment periods.	No
General Comments	W02-01	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	We are writing to provide feedback on the draft proposed regulations, which mandates that foodservice packaging distributed on state property be reusable, recyclable, or compostable. 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. Regarding the assertion that the proposed regulation is arbitrary and imposes an undue burden see first 15-day comment responses W02-02 through W02-13.	No

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General Comments	W03-02	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) that provides, "When recycling facilities are available to a substantial majority of consumers or communities where the item is sold, marketers can make unqualified recyclable claims." The term "substantial majority," as used in this context, means at least 60 percent. Packaging and product manufacturers have made significant investments to boost recycling access rates and to nurture markets, using the FTC Green Guides 60 percent threshold as the uniform standard. The proposed regulations still do not align with this and we believe they should.	See 45-day comment response W06-02.	No
General Comments	W03-04	AMERIPEN	Dan	Felton	Imposing differing and conflicting requirements could disincentivize future investments and efforts that will strengthen recycling infrastructure and markets even further.	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 W06-02 regarding recycling infrastructure.	No
General Comments	W03-08	AMERIPEN	Dan	Felton	We also 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. Focusing solely on the end-of-life attributes of certain packaging materials could in the end be more harmful to the environment.	See 45-day comment response W14-07.	No
General Comments	W05-03	Association of Compost Producers (ACP)	Dan	Noble	The order of priority for food service packaging materials should be: 1) reusable, 2) recyclable, and 3) compostable being a distant third choice, and only in a program that does not allow for non-compostable plastic can contaminate compost products.	See 45-day comment response W07-01.	No
General Comments	W05-06	Association of Compost Producers (ACP)	Dan	Noble	For the most part, we agree with the wording of the latest Dec 2020 Third Draft Updates of the "Sustainable Packaging for the State of California Act of 2018." Our comments highlight the areas that we believe warrant further consideration from both a compost production and compost market development perspective.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
General Comments	W05-07	Association of Compost Producers (ACP)	Dan	Noble	Our comments focus on the market forces influencing the use compostable plastics that will make these regulations meaningful within local and regional healthy soil market applications statewide. Therefore, we have both an environmental protection and environmental enhancement market perspective.	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 Comments	W05-08	Association of Compost Producers (ACP)	Dan	Noble	Part of our resource and economic expansion efforts are now in the process of harmonizing our environmental enhancement market perspectives on SB 1335 with the Governor’s Executive Order N-82-20 (Oct. 7, 2020). This EO “Launches Innovative Strategies to Use California Land to Fight Climate Change, Conserve Biodiversity and Boost Climate Resilience.” It does this using a comprehensive land-based, healthy soil building strategy.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
General Comments	W05-09	Association of Compost Producers (ACP)	Dan	Noble	We request that CalRecycle support California composters in this mission to build healthy soil with ever higher quality compost! We need to all be on the same page relative to using our soils to not only protect, but enhance, the air, water, and biodiversity of our natural, working, and urban lands. They need to be ever more biologically active and supportive to be resilient to the climate crisis induced perturbations that we are facing. Whether compostable plastics will help us support our mission to achieve our climate agenda is still very much an open question.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
General Comments	W08-06	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	BPI has a long history of engagement with CalRecycle on science-driven regulations and policies to support development of the state’s composting sector. Compostable products have been shown to increase organics diversion, and with this in mind SB 1335 could be a continuation of California’s leadership in environmental stewardship. Instead, the draft SB 1335 regulation would be a de facto ban because no compostable products meet the new criteria. This will impact our industry’s ability to aid in meeting California’s goals, with corresponding negative impacts on organics diversion and climate targets.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  See first 15-day comment response W08-03.	No
General Comments	W09-02	California Compost Coalition (CCC)	Neil S.R.	Edgar	Compostable plastics frequently are a contamination problem for recycling facility operators and remanufacturers. These regulations, and the impacted industries, could benefit greatly from a standard which could require listed packaging to be “readily and easily identifiable” as either compostable or recyclable so that source separation options are obvious to both consumers and facility operators, providing a pathway to reduced contamination.	See first 15-day comment response W06-01 and 45-day comment response W09-01.	No
General Comments	W09-06	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.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
General Comments	W09-07	California Compost Coalition (CCC)	Neil S.R.	Edgar	We are unclear on who will be responsible for verifying how many programs are accepting recyclable or compostable materials.	See 45-day comment response W09-11.	No

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General Comments	W10-03	California Restaurant Association	Katie	Hansen	Revisions to Sections 17989.4 and 17989.5 require the respective food service packaging item to be collected by 60 percent of recycling or composting programs statewide with increased thresholds over time. While this is an improvement over the last draft of the regulation, our concerns remain the same. We are concerned that the thresholds are too high and when combined with section 17989.2 (b)(1-4) it will result in a de facto ban or fewer food service packaging items for food service facilities to use on the List. This will lead to an increase in costs for food service facilities and potential difficulty in obtaining the needed quantity of food service packaging items if there are only one or two approved vendors in each category on the List.	See first 15-day comment responses W08-03 and W07-12. See also 45-day comment responses W10-03, W07-02, and W06-12.	No
General Comments	W12-04	Clean Seas Lobbying Coalition	Genevieve	Abedon	In addition to saving what the departments estimates as \$300,000 in annual litter clean-up costs by reducing the number of non-reusables, non-recyclables, and non-compostables used at food service facilities, the 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
General Comments	W12-20	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 of the Department's Initial Statement of Reasons.	See 45-day comment response W15-31.	No
General Comments	W12-40	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
General Comments	W16-01	Foodservice Packaging Institute (FPI)	Natha	Dempsey	FPI believes in using sustainable and safe materials, reducing waste by recycling or composting, and protecting public health through the use of sanitary foodservice packaging items. However, FPI still has significant concerns. Like the last draft, 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.	See first 15-day comment response W08-03, W07-12, and W12-01, and 45-day comment response W07-02.	No

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General Comments	W16-02	Foodservice Packaging Institute (FPI)	Natha	Dempsey	In addition to the overall concern, coupled with FPI's comments on the second draft submitted October 20, 2020, you will find below detailed comments on the current draft regulations.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process. CalRecycle responded to the comments submitted by the commenter during the first 15-day comment period.	No
General Comments	W16-09	Foodservice Packaging Institute (FPI)	Natha	Dempsey	We request a revisit to the comments submitted by FPI on October 20, 2020, as illustrated above.	See first 15-day comment responses W12-01 through W12-11.	No
General Comments	W23-01	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	We continue to be very concerned with several sections of the revised proposed regulations. These proposed changes do little to assuage our fears the proposed regulations will have a detrimental effect on California residents and businesses.	This comment does not suggest any changes to the revised regulation or raise an issue related to the rulemaking process.  CalRecycle published its Economic and Fiscal Impact Statement (EIS) and an accompanying Appendix as part of the initial 45-day comment period, and a revised EIS was made available for public comment as part of a 15-day comment period. Both versions of the EIS estimated the economic impacts to small and typical businesses, as well as individuals. The department estimates that increased costs of compliant food service packaging for food service facilities will largely be passed along to the consumer, who is estimated to pay an additional \$1.50 per year. The Form 399 and Appendix indicate and explain these estimated increased costs.	No
General Comments	W23-02	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	PLASTICS restates our concerns from our May 21, 2020 and October 20, 2020 Comment Letters. Apart from the new issues referenced below, the changes made by CalRecycle in the Revised Proposed Regulations do not address the concerns raised in our First and Second Comment Letters. Accordingly, we restate the comments raised in those letters and incorporate them here by reference.	See first 15-day comment responses W17-01 through W17-05 and 45-day comment responses W25-01 through W25-19.	No
General Comments	W25-11	Reusable Businesses Coalition	Dagny	Tucker	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 Comments	W04-02, Anchor Packaging LLC, David Johnson W15-02, Fabri-kal, Michael A. Roeder W17-02, Huhtamaki, Inc., Paul Huckins W18-02, INEOS Styrolution, Ricardo Cuetos W19-02, LK Packaging, Glen Adamik W20-02, Michelman, Emily Williams W21-02, Pactiv Evergreen, Lynn M. Dyer W22-02, Paper Machinery Corporation, Michael S. Kazmierski W26-02, Seda North America, Robert Kovach W28-02, Vegware Packaging, Inc., Julia Wetstein				We are a proud member of the Foodservice Packaging Institute, and we ask you to carefully consider their more thorough comments. From our standpoint, more work needs to be done on these proposed regulations, otherwise there will be dire consequences for our company, our supply chain, the State of California and its residents.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  See responses to W16-01 through W16-09.	No
General Comments	W01-14	American Chemistry Council (ACC)	Tim	Shestek	The Department has failed to fulfill its procedural obligations mandated under the California Administrative Procedure Act (APA) and the California Environmental Quality Act (CEQA), as it has failed to properly evaluate the economic and environmental impacts that will be caused by requiring a showing of “sufficient commercial value” in order for food service packaging to be deemed “recyclable.”	Regarding CEQA, the requirements of CEQA are not relevant to the department’s obligations under the APA. See first 15-day comment response W01-22 and 45-day comment response PH01-07.  CalRecycle disagrees with the commenter’s statement that the department failed to evaluate the economic and environmental impacts caused by requiring applicants to show “sufficient commercial value.”  Regarding the economic impacts of this requirement, providing information demonstrating that a material is available for sale for recycling requires a negligible additional burden. Furthermore, the department’s EIS provided conservative estimates that remain appropriate because the food service packaging manufacturers will review the same types of information they would have reviewed under the previous draft of the proposed regulation, which specified that materials must be sorted and aggregated into “single named material bales.”  Regarding environmental impacts, providing information demonstrating that there is a market for food service packaging items or materials does not entail any environmental impact.	No

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General Comments	W01-15	American Chemistry Council (ACC)	Tim	Shestek	Even if it were permissible for the Department to evaluate whether there is sufficient commercial value - which it is not - requiring a showing of "sufficient" commercial value will have economic and environmental impacts that CalRecycle must analyze under the legal requirements imposed by the APA and CEQA. These analyses that are necessary to lawfully promulgate this rulemaking.	<p>CalRecycle disagrees with the suggestion that it is not "permissible" for the department to evaluate whether an application shows that a food service packaging item has "sufficient commercial value to be marketed for recycling." CalRecycle's authority to make this evaluation is clear pursuant to PRC subsections 42370.2(d)(3) and 42370.2(d)(6).</p> <p>PRC subsection 423070.2(d)(6) directs CalRecycle to determine whether a type of food service packaging is "recycled in sufficient quantity, and is of sufficient quality, to maintain a market value." This clearly authorizes CalRecycle to consider, in connection with recyclability determinations, whether a type of food service packaging has sufficient value to be sold for recycling.</p> <p>PRC subsection 423070.2(d)(3) directs CalRecycle to consider whether food service packaging is "regularly sorted and aggregated into defined streams for recycling processes." This is related to the criterion in PRC subsection 423070.2(d)(6) because when food service packaging is "recycled in sufficient quantity" and "of sufficient quality... to maintain a market value," such recycling would be expected to entail the food service packaging being "regularly sorted and aggregated into defined streams for recycling processes." The proposed regulation incorporates these concepts by requiring applicants to demonstrate, for example, that there is a market price for the food service packaging, which would be expected to exist only if the food service packaging is being "regularly sorted and aggregated into defined streams for recycling."</p> <p>Moreover, the criteria stated in PRC subsection 42370.2(d) are not exhaustive; they are factors that the department must "consider, at a minimum." As explained above, PRC subsection 42370.2(d) expressly authorizes the department to consider whether an application shows that a food service packaging item has "sufficient commercial value to be marketed for recycling," but even if it did not do so, the statute does not prohibit such a consideration.</p> <p>See response to W01-14 regarding CalRecycle's consideration of economic and environmental impacts in revising "single named material bale" to "sufficient commercial value."</p>	No

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General Comments	W01-16	American Chemistry Council (ACC)	Tim	Shestek	Under the APA, CalRecycle must assess the potential for adverse economic impacts on California business enterprises and individuals as part of its effort to avoid the imposition of “unnecessary or unreasonable regulations.”	CalRecycle published its EIS and the accompanying Appendix as part of the initial 45-day comment period, and a revised EIS was made available for public comment as part of a 15-day comment period. See 45-day comment responses PH01-07 and W04-48.	No
General Comments	W01-17	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle is required to prepare an economic impact analysis addressing whether and to what extent the Proposed Regulations will impact the creation of new businesses and jobs in the State, as well as the impacts to investments and/or incentives for innovation in the State	The EIS addresses the number of jobs eliminated or created; CalRecycle does not expect the loss or creation of industry jobs as a direct result of SB 1335 (see STD. Form 399 and Appendix, Section A.6.).  CalRecycle disagrees that it has inadequately addressed the economic impacts of the proposed regulation. Government Code subsection 11346.3(b)(1) specifies the considerations that agencies are obligated to assess in an economic impact assessment for non-major regulations, and CalRecycle’s EIS assesses each of those considerations.  See also 45-day comment responses PH01-07 and W04-48.	No
General Comments	W01-18	American Chemistry Council (ACC)	Tim	Shestek	CEQA requires a full evaluation of all impacts that may result from the Department’s rulemaking.	See first 15-day comment response W01-22 and 45-day comment response PH01-07.	No
General Comments	W01-19	American Chemistry Council (ACC)	Tim	Shestek	The Department has failed to properly assess the economic impacts that will be caused by the Revised Proposed Regulations, including the newly revised language requiring a showing of “sufficient commercial value.”	See response to W01-17 regarding CalRecycle’s assessment of economic impacts. See also 45-day comment responses PH01-07 and W04-48.  See response to W01-14 regarding CalRecycle’s consideration of economic impacts in revising “single named material bale” to “sufficient commercial value.”	No
General Comments	W01-20	American Chemistry Council (ACC)	Tim	Shestek	According to the Department’s Initial Statement of Reasons and Revised Economic and Fiscal Impact Statement, “no businesses will be eliminated” and “no change is expected” to investments or incentives for innovation in the State as a result of the Proposed Regulations. In light of the Department’s latest revisions and additions to the Revised Proposed Regulations, these conclusions are not supported by substantial evidence in the record, and must be reanalyzed.	See response to W01-17 regarding CalRecycle’s assessment of economic impacts. See also 45-day comment responses PH01-07 and W04-48.  Furthermore, the comment does not identify, and CalRecycle is not aware of, any specific amendments in the final version of the proposed regulation that would materially affect the conclusions stated in the Revised EIS.	No



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General Comments	W01-21	American Chemistry Council (ACC)	Tim	Shestek	Under the Department’s new proposal, some materials could have a market value, but the Department nonetheless concludes their market value is insufficient. Impacts resulting from this newly proposed restriction on whether a material is “recyclable” have not been analyzed.	See response to W01-14 regarding CalRecycle’s consideration of economic impacts in revising “single named material bale” to “sufficient commercial value.”  The commenter’s assertion that CalRecycle “nonetheless concludes their market value is insufficient,” reflects a misreading of the proposed regulatory language, which requires “sufficient commercial value to be marketed for recycling,” rather than setting any threshold for “market value.” In other words, the proposed language does not require CalRecycle to judge whether “market value is insufficient”; rather, if there is any market value for recycling purposes, it necessarily satisfies the requirement to have “sufficient commercial value to be marketed for recycling.”	No
General Comments	W01-23	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle has not satisfied its procedural obligations under the APA because it has not adequately assessed the potential adverse economic impacts that will be caused by promulgation of a requirement for “sufficient” market value, and it has not fully estimated the costs associated with such a requirement.	See response to W01-14 regarding CalRecycle’s consideration of economic impacts in revising “single named material bale” to “sufficient commercial value.”  See response to W01-21 regarding the assertion that the proposed regulation requires “sufficient’ market value.”	No
General Comments	W01-24	American Chemistry Council (ACC)	Tim	Shestek	Such stifling of recycling markets will affect California’s ability to meet its ambitious recycling goals, and prevent realization of one of the goals of SB 1335, with resulting adverse impacts to the environment associated with litter, waste management, and climate change. CalRecycle has not addressed these environmental and economic impacts in its CEQA and APA analyses, and it must do so in order to promulgate a rule that requires “sufficient commercial value” in recycling markets.	See response to W01-14 regarding CalRecycle’s consideration of economic and environmental impacts in revising “single named material bale” to “sufficient commercial value.”	No
General Comments	W01-47	American Chemistry Council (ACC)	Tim	Shestek	We request the Department revisit its statutory obligations under the APA and CEQA in order to ensure that all impacts of the Revised Proposed Regulations, including those that may be unintended, are appropriately evaluated.	See response to W01-14 regarding CalRecycle’s consideration of economic and environmental impacts in revising “single named material bale” to “sufficient commercial value.”	No
General Comments	W04-01, Anchor Packaging LLC, David Johnson W13-01, Clearwater Paper, Steve Bowden W15-01, Fabri-kal, Michael A. Roeder W17-01, Huhtamaki, Inc., Paul Huckins W18-01, INEOS Styrolution, Ricardo Cuetos W19-01, LK Packaging, Glen Adamik W20-01, Michelman, Emily Williams W21-01, Pactiv Evergreen, Lynn M. Dyer W22-01, Paper Machinery Corporation, Michael S. Kazmierski W26-01, Seda North America, Robert Kovach W28-01, Vegware Packaging, Inc., Julia Wetstein				We fully support policies and programs that result in more foodservice packaging being recycled or composted. However, we are very concerned that the December 11, 2020, version of CalRecycle’s draft regulations will not lead to the use of more sustainable packaging, but instead eliminate foodservice packaging from all state-owned/operated foodservice facilities.  Based on the proposed “recyclable” and “compostable” criteria, we do not believe that ANY foodservice packaging will meet the “recyclable” or “compostable” criteria. This would have dire consequences for foodservice 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 first 15-day comment response W08-03, W07-12, and W12-01, and 45-day comment response W07-02.	No

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General Comments	W10-01	California Restaurant Association	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. 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. Such surety has been turned on its head in the midst of the current public health and economic crisis associated with COVID-19. The global pandemic has dramatically altered restaurant industry operations on both private and state properties. Food service establishments in many state properties have either been closed or had drastically reduced operation hours, and consequently have used relatively little single-use food service packaging and certainly have struggled to generate any meaningful revenue. The economic health of these establishments 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 response W11-01.	No
General Comments	W14-01	Paper Machinery Corp	David	Hampson	I am totally opposed to doing away with paper cups. These are critical to fighting COVID.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  The regulation does not identify any specific type of food service packaging (e.g., paper cups) that will or will not be included on the List. The department will evaluate food service packaging items on a case-by-case basis via the application process. Food service packaging manufacturers are required to provide information in their applications demonstrating their food service packaging items meet all applicable regulatory requirements.	No

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<b>§17989. Definitions.</b>							
17989(a)(8) (A)	W11-01	Californians Against Waste	Nick	Lapis	Add Community Colleges to the definition of “food service facility.” The current list of state agencies includes important facilities such as UC’s and CSU’s, but is still missing community colleges. These public education institutes should not be left out of this program. The language should read: Cafeterias, restaurants, catering companies, shops, markets, delis, Department of Corrections commissaries, Universities of California, <u>California Community Colleges</u> and California State Universities food courts and dormitories, Fairs & Expositions, and Legislative offices.	See 45-day comment response W13-11.	No
17989(a)(8) (A)	W12-05	Clean Seas Lobbying Coalition	Genevieve	Abedon	Currently the University of California food courts and dormitories are the only academic institutions listed. We still suggest adding “Community Colleges” to the definition.	See 45-day comment response W13-11.	No
17989(a)(8) (A)	W27-01	Surfrider Foundation	Miho	Ligare	We commend CalRecycle for adding the California State Universities, but would like to see Community Colleges added under “food service facility.”	See 45-day comment response W13-11.	No
17989(a) (18)	W12-06	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) (23)	W12-07	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest striking “with handles” so as not to leave a loophole in the definition and set an unintended precedent for future regulations.	See first 15-day comment response W09-09 and 45-day comment response W15-06.	No
17989(a) (26)	W01-40	American Chemistry Council (ACC)	Tim	Shestek	The revised proposed regulations continue to contravene SB 1335’s mandate to include recycling technologies that produce feedstocks for new products. SB 1335 requires that CalRecycle’s criteria for “recyclable” packaging consider whether the packaging material “regularly becomes feedstock that is used in the production of new products.” The Revised Proposed Regulations continue to contravene the statutory mandate and legislative intent of SB 1335 by restricting recycling to a limited set of methods that exclude certain advanced technologies enabling post-use plastic packaging to be recycled into feedstocks to produce new products. This statutory directive supports the inclusion of such technologies within the definition of “recyclable” because they enable post-use plastics to be returned to their chemical building blocks, which is the foundation of the circular economy. However, the Revised Proposed Regulations continue to incorporate an outdated definition of recycling that excludes certain existing technologies and does not take into account technological advancement.	SB 1335 does not authorize CalRecycle to adopt an updated definition of “recycling,” which has a statutory definition. See first 15-day comment response W01-03 and 45-day comment responses W04-02 and W04-06.	No

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17989(a) (26)	W01-41	American Chemistry Council (ACC)	Tim	Shestek	Our First Comment Letter provides detailed comments on why this definition of “recycling” is improperly narrow, inconsistent with SB 1335, and unsupported by substantial evidence. The Commenters have proposed an alternative definition of “recycling” in the First Comment Letter to ensure that advanced technologies are included as an acceptable method towards qualification for recycling under the proposed framework and to remove arbitrary barriers to recycling. The Commenters urge CalRecycle to adopt this alternative definition.	See response to W01-40 regarding the definition of “Recycling.”  See also first 15-day comment response W01-03 and 45-day comment response W04-02.	No
17989(a) (26)	W01-42	American Chemistry Council (ACC)	Tim	Shestek	Local and other state governments recognize that advanced recycling is critical to achieving their jurisdictions’ recycling goals. Other states have enacted legislation, recognizing advanced recycling technologies as critical to recycling. Although such a non-waste designation may be beyond CalRecycle’s rulemaking authority at this time, SB 1335 explicitly requires CalRecycle to include within the scope of “recyclable” recycling methods that process packaging into manufacturing feedstocks.	See response to W01-40 regarding the definition of “Recycling.”  See also first 15-day comment response W01-03 and 45-day comment response W04-02.	No
17989(a) (26)	W01-43	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle should recognize the important role of advanced recycling technologies in fulfilling this statutory mandate and revise the definition of “recycling” in the revised proposed regulations as requested in the First Comment Letter.	See response to W01-40 regarding the definition of “Recycling.”  See also first 15-day comment response W01-03 and 45-day comment response W04-02.	No
17989(a) (26)	W01-44	American Chemistry Council (ACC)	Tim	Shestek	There is increasing evidence advanced recycling technologies are not only a critical tool for increasing recycling rates for plastics, but also a viable option for recycling. Packaging recycled in this manner falls within the scope of “recyclable” under SB 1335 because it “regularly becomes feedstock that is used in the production of new products.” By ignoring this important avenue of recycling, CalRecycle not only forecloses significant opportunities to achieve California’s recycling goals, but it also contravenes the explicit mandate of the statute.	See response to W01-40 regarding the definition of “Recycling.”  See also first 15-day comment response W01-03 and 45-day comment response W04-02.	No
17989(b)	W02-02	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	We recommend the addition of ISO 18606 to the list of relevant standards.	See first 15-day comment response to W02-06.	No

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17989(b)(6)	W12-08	Clean Seas Lobbying Coalition	Genevieve	Abedon	Labs must be vetted (checked) by a designated California agency or designee that the labs are accredited to ISO 17025 and there are no issues or red flags raised against the lab. In the field of biodegradability testing, there are labs that certify product per ASTM/ISO standard that cannot be validated by other labs. What does not appear to be specified is under which authority accreditation is given to the lab using ISO 17025. Will CalRecycle be doing this? Does the State have a unit that provides accreditation to labs? It may be useful to maintain list of approved labs for testing – the BPI and EU certifications have approved labs validated by third party.	<p>CalRecycle is not an authorized accreditation body, and therefore cannot provide ISO/IEC accreditation nor validate if there are issues with individual accredited labs. This suggestion falls outside of CalRecycle’s authority and the scope of the rulemaking.</p> <p>An organization or body that oversees the accreditation process, an association that represents laboratories, or the International Laboratory Accreditation Cooperation would be more appropriate entities to maintain an accurate and updated list of accredited laboratories.</p> <p>See response to W16-04 regarding the accreditation process.</p>	No

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<b>§17989.1. List of Approved Food Service Packaging.</b>							
17989.1(a)(5)	W12-09	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 (DTSC) Candidate Chemicals list since it is already mentioned in Public Health and Litter Impacts Criteria, and harmonizes how both the Legislature and state regulators have considered toxicity beyond just cancer and reproductive harm. It is also the list used by DTSC to evaluate toxic chemicals and their impacts in food contact materials under the Safer Consumer Products program.	See 45-day comment response W15-16.	No
17989.1(b)	W12-10	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest adding reusability for consistency so it reads “when making reusability, recyclability and compostability determinations...” with reference to Section 17989.3.	See first 15-day comment response W09-15.	No
17989.1(b)	W12-21	Clean Seas Lobbying Coalition	Genevieve	Abedon	We support 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 PLA-coated paperboard cups, where allowed by the recycling service provider.”	See 45-day comment response W15-31.	No
17989.1(b)	W12-28	Clean Seas Lobbying Coalition	Genevieve	Abedon	We support allowing such packaging to be used by facilities who are serviced by a composter that accepts and processes the material. For instance, the List could something like “Ingeo PLA-coated paperboard cups, where allowed by the compost service provider.”	See 45-day comment response W15-31.	No

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17989.1(c) (1)	W01-36	American Chemistry Council (ACC)	Tim	Shestek	The 30-day timeline for submitting an application to the department is unreasonable, given the amount of information that is now required to be included. Subsection 17989.1(c)(1) provides that a food service manufacturer seeking to have a food service packaging item included on the List must submit an application to the Department within 30 days of the Department posting the Revised Proposed Regulations on its website after approval by the Office of Administrative Law. The Commenters have serious concerns with this timeline, and believe it is impractical, given the extensive amount of information now required to be submitted with an application under the revised language in Section 17989.6.	The 30-day timeframe to submit an application after approval by the Office of Administrative Law (OAL) refers only to food service packaging items that may be included on the initial List of Approved Food Service Packaging. The timeframe is required to ensure that CalRecycle can evaluate applications and meet the statutory requirement that it publish the initial list within 90 days after OAL approval. CalRecycle cannot modify statutory deadlines. Nevertheless, food service packaging manufacturers may submit applications at any time, and CalRecycle will review applications on an ongoing basis. CalRecycle will follow the timelines described in Section 17989.6 to determine if applications are complete and evaluate if the food service packaging items meet the applicable criteria. Items that meet the criteria will be approved and added to the List.	No
17989.1(c) (1)	W01-38	American Chemistry Council (ACC)	Tim	Shestek	The arbitrary and unreasonable deadline for application submissions in Section 17989.1(c)(1) of the Revised Proposed Regulations should be revisited by the Department. The Commenters request that the Department provide manufacturers with no less than 90 days to submit an application after the final regulations become effective.	See response to W01-36 regarding timelines for applications.	No
17989.1(c) (2)	W01-39	American Chemistry Council (ACC)	Tim	Shestek	In order to avoid unintended market disruptions during the period of the Department's initial review of application submissions, which will undoubtedly be lengthy given the large amount of data that it will now be required to review, a corresponding deadline should be imposed on the Department's review of an application in Section 17989.1(c)(2).	See first 15-day comment response W12-10 and 45-day comment response W06-08.	No
17989.1(e)	W12-11	Clean Seas Lobbying Coalition	Genevieve	Abedon	We commend the addition of a process for removing food service packaging from the List. We suggest adding "no more than XX days" so that there is a finite time for which an item/material must be determined as removable from the List or not.	See first 15-day comment response W09-17.	No
17989.1(f)	W02-03	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	This goes beyond the Proposition 65 statute. This regulation should be consistent with Proposition 65 and should not represent scope creep. Proposition 65 only requires a warning if a chemical exceeds a "safe harbor" value. It does not require any information if a company has determined that the chemical used is within the safe harbor.	See 45-day comment response W04-33.	No

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17989.1(f)	W23-04	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	CalRecycle overreaches jurisdiction on administering and enforcing Proposition 65 and regulated metals. Subsection 17989.1(f) is unnecessary as written, as the Proposition 65 and heavy metal regulations are enforced by the Office of Environmental Health Hazard Assessment (OEHHA) and the DTSC. It is unnecessary to duplicate the oversight effort. Furthermore, CalRecycle proposes to impose timelines to comply that are more stringent than the original regulations. OEHHA gives business 12 months to comply when new chemicals are listed, whereas CalRecycle's proposal only gives 60 days. This section should be removed entirely, and Subsection 17989.6(a)(6) should also be removed.	<p>CalRecycle disagrees with the commenter's assertions regarding department overreach and the necessity of this subsection.</p> <p>PRC subsection 42370.2(g) authorizes CalRecycle to consider potential impacts on public health, including evaluating information from programs such as the Toxics in Packaging Prevention Act overseen by DTSC and the Proposition 65 list overseen by OEHHA. The proposed regulations do not require the department to administer or enforce these programs. Rather, Section 17989.6 requires manufacturers to disclose whether a food service packaging item contains regulated metals (subsection (a)(5)) or requires a Proposition 65 warning (subsection (a)(6)) in their initial applications, and subsection 17989.1(f) provides that the department will inform manufacturers of changes to the definition of "regulated metals" and the Proposition 65 list. Upon such notification, the manufacturer has 60 days to inform the department whether its food service packaging items contain the chemical at issue. Such information is relevant to the department's exercise of its authority to reevaluate the List, including with respect to criteria concerning potential impacts on public health.</p> <p>See also 45-day comment response W04-33.</p>	No
17989.1(g)	W07-10	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	This establishes a maximum time to be on the List. There should be a minimum time frame instead, so long as the product formulation has not changed. For instance, if the regulation required third-party validation of the ASTM standards, it could state that products must be reevaluated no less than every 3 years by that certifier, which is common practice. Without this, the department could require the manufacturer to submit a new application at any time, without any stated reason.	<p>CalRecycle disagrees with the commenter's suggestion to revise the timeframe for reviewing and evaluating the food service packaging items on the List. The proposed regulations are consistent with statutory requirements pursuant to PRC subsection 42370.3(b) which requires CalRecycle to review and evaluate the List regularly, which must be "no less than once every five years." The commenter's assertion that subsection 17989.1(g) "establishes a maximum time to be on the list" is inaccurate; rather, it establishes a maximum time before the entire list will be reviewed and evaluated.</p> <p>Subsection 17989.1(e) specifies the process that the department shall follow if a food service packaging item is determined to no longer meet the requirements of the regulation. This process is intended to provide sufficient notification to food service packaging manufacturers of the potential removal of an item from the List and allow for the submittal of written comments and additional information.</p>	No

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17989.1(g)	W23-05	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Section 17989.1(g) should be revised to improve predictability by CalRecycle. This section only includes the maximum amount of time that a product can be on the List before needing to be reviewed and evaluated. This enables CalRecycle to arbitrarily review a product as frequently as it would like, putting an undue burden on the manufacturer to respond as required. A product that has been approved for the List should not need to be reviewed again for a minimum of five years.	See response to W07-10.	No

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<b>§17989.2. Public Health and Litter Criteria.</b>							
17989.2	W01-04	American Chemistry Council (ACC)	Tim	Shestek	The Revised Proposed Regulations also continue to impose arbitrary and unsupported material restrictions and chemical disclosure obligations on food service packaging items under the guise of “public health and litter impact criteria.”	See 45-day comment responses PH01-05 and PH01-06.	No
17989.2	W01-05	American Chemistry Council (ACC)	Tim	Shestek	CalRecycle does not have the expertise or authority to adopt the type of chemicals regulations that it is proposing here, including the authority to remove a product from the List based on the potential to contribute to litter, public health or wildlife impacts, 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 responses PH01-05 and PH01-06.	No
17989.2	W01-25	American Chemistry Council (ACC)	Tim	Shestek	The Department’s revised “public health and litter impacts criteria” is still fatally flawed, as it exceeds the scope of the authorizing statute and contains arbitrary and specious standards. 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.	See 45-day comment responses PH01-05 and PH01-06.	No
17989.2	W01-26	American Chemistry Council (ACC)	Tim	Shestek	The requirements contained in Section 17989.2 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 responses PH01-05 and PH01-06.	No
17989.2	W01-27	American Chemistry Council (ACC)	Tim	Shestek	SB 1335 does not authorize the Department to establish a fourth set of “criteria” in its implementing regulations that in effect authorize the Department to remove a food service packaging item from the List for reasons that do not pertain to whether the item is “reusable,” “recyclable,” or “compostable,” as defined by the Department. Thus, we continue to maintain that Section 17989.2 must be deleted in its entirety.	See 45-day comment responses PH01-05 and PH01-06.  CalRecycle disagrees that Section 17989.2 should be removed. This subsection establishes the criteria to minimize litter and public health and wildlife impacts associated with a food service packaging item.	No



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17989.2	W01-28	American Chemistry Council (ACC)	Tim	Shestek	The most recent changes made to Section 17989.2 still do not address the unreasonably vague and arbitrary nature of the standards proposed by the Department as “public health and litter impacts criteria.”	See 45-day comment responses PH01-05, PH01-06, and W04-37.  CalRecycle provided a summary of the revisions made to Section 17989.2 in the Final Statement of Reasons.	No
17989.2	W23-06	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Section 17989.2 should be removed in its entirety. 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.	CalRecycle disagrees that Section 17989.2 should be removed. This subsection establishes the criteria to minimize litter and public health and wildlife impacts associated with a food service packaging item.  See 45-day comment responses PH01-05 and PH01-06.  PRC subsection 42370.2(g) allows for consideration of information from the U.S. Food and Drug Administration (USFDA), OEHHA, and DTSC. See also 45-day comment response W10-07.	No
17989.2	W23-07	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 draft regulations.	Improperly discarded single-use food service packaging contributes to environmental pollution, adversely impacts wildlife, and poses potential health risks to communities across the state. According to the National Oceanic and Atmospheric Administration (NOAA), approximately 80 percent of marine debris comes from land-based sources, with food and beverage packaging making up the largest component of that debris. These types of food service packaging materials can enter the marine environment through inefficient or improper waste management, intentional or accidental littering, and stormwater runoff.  See also 45-day comment response PH01-06.	No
17989.2	W27-02	Surfrider Foundation	Miho	Ligare	We are in support of Section 17989.2, which takes litter and ocean debris concerns as criteria. When considering alternative products, regrettable substitutions must not be made that may have worse or the same impacts on our communities, human health, and the environment.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.2(a)	W09-03	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 address 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

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17989.2(a)	W12-01	Clean Seas Lobbying Coalition	Genevieve	Abedon	While we are happy to see some of our suggestions incorporated into the second and third drafts, our two main suggestions remain to keep the regulations strong with robust criteria, without loopholes, for reusable food service packaging, and ensure that any recyclable or compostable food service packaging does not contain toxic chemicals, including, but not limited to, per- and polyfluoroalkyl substances (PFAS).	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>The revised regulation already requires that food service packaging items made from plastic or fiber and that are recyclable or compostable may not contain total fluorine at concentrations above 100 parts per million (ppm), which is a proxy for measuring the class of PFASs and their breakdown products as outlined in subsection 17989.2(a)(3).</p>	No
17989.2(a)	W12-14	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly urge that the subsections 17989.2(a)(4)-(5) reinstated and the revised subsection 17989.2(b)(1)-(4) be deleted. As written in draft 2, bans or indications of impacts on humans, wildlife, or the environment by other authoritative bodies would inform and prompt investigation by the department in order to determine if further restrictions or regulation are required. In draft 3 however, it is up to CalRecycle to determine if there is a potential health or environmental problem and then establish if other entities with more expertise in toxic chemicals either banned or indicated that a chemical caused a health, wildlife, or litter problem. The draft 3 language leaves it up to the department to decide if something is problematic and then see if those other actions have been taken elsewhere.	To the extent that any previous version of the proposed regulations might have been interpreted to provide for CalRecycle “to determine if further restrictions or regulation are required,” such a meaning would have exceeded CalRecycle’s authority because SB 1335 does not authorize any “restrictions or regulation” other than inclusion or exclusion from the List. The revisions to Section 17989.2 more clearly establish the relevant criteria and the process the department must follow in determining that a food service packaging item may have the potential to contribute to litter or public health or wildlife impacts and therefore should be considered for removal from the List.	No

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17989.2(a) (1)	W12-12	Clean Seas Lobbying Coalition	Genevieve	Abedon	We oppose the removal of “may pose a threat to public health” since removing that could be limiting. By taking this phrase out, the regulations could unintentionally limit establishing future restrictions of regulated metals if new science demonstrates a health threat at a level below 100 ppm. We suggest adding it back in.	<p>CalRecycle disagrees that adding “may pose a threat to public health” is appropriate. The department revised the language in the Third Draft Proposed Regulations to be consistent with the requirements of the Toxics in Packaging Prevention Act, which limits the sum of all regulated metals under the Act to 100 ppm by weight. In the Third Draft Proposed Regulations, subsection 17989.2(b) addresses whether an item should be removed from the List based on the determination that it poses a threat to public health, regardless of whether the Toxics in Packaging Prevention Act applies, so the language referenced is redundant. See response to W12-14 regarding subsection 17989.2(b).</p> <p>Regarding the potential for “new science” to demonstrate a health threat, subsection 17989.2(b) of the proposed regulations include a process for the department to determine whether a food service packaging item has the potential to contribute to public health impacts. This multi-step process includes identifying the potential of an item to contribute to an adverse impact, evaluating information from a government agency or other organization, and consulting with OEHHA or DTSC, as applicable. If “new science” becomes available, the department will follow this process to determine whether an item should be potentially removed from the List.</p>	No
17989.2(a) (2)	W01-32	American Chemistry Council (ACC)	Tim	Shestek	There is no rational basis for requiring Proposition 65-related disclosures. The Commenters continue to have concerns with the reference to the Proposition 65 list in the Department’s proposed “public health and litter impacts criteria.”	See response to W01-33.	No
17989.2(a) (2)	W01-33	American Chemistry Council (ACC)	Tim	Shestek	Apart from exceeding the statutory authority conferred by SB 1335, this requirement is arbitrary inasmuch as it does not achieve the Department’s stated objective of “minimizing public health and litter impacts.” It is unclear how disclosing the Proposition 65-listed chemicals that are used in the manufacturing of a food service packaging item is relevant to the purpose of the statute or will be rationally applied to inform any work undertaken by the Department in implementing SB 1335. This disclosure alone provides little to no information on where or how that chemical is used in manufacturing the product, if or how a person may be exposed to the chemical, or whether the exposure levels fall within regulatory established “safe harbor levels.”	<p>PRC subsection 42370.2(g) grants CalRecycle the authority to consider potential litter, public health, and wildlife impacts and grants the department the authority to consider information from USFDA, OEHHA, and DTSC. Considering whether a food service packaging item contains chemicals on the Proposition 65 list is consistent with the department’s authority to consider information from OEHHA, and requiring disclosure of such chemicals is consistent with the requirement under PRC subsection 42730.2(g) that the department “take into account potential impacts on... public health” in developing its regulation.</p> <p>See also 45-day comment response W04-33.</p>	No
17989.2(a) (2)	W01-34	American Chemistry Council (ACC)	Tim	Shestek	It is also still unclear how the Department will consider food service packaging items that have safe use determinations (SUDs).	See 45-day comment response W04-33.	No

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17989.2(a) (2)	W01-35	American Chemistry Council (ACC)	Tim	Shestek	The Proposition 65 list is not a list of restricted chemicals and it would be improper for the Department to utilize this information as a back-door approach to removing certain food service packaging items from the List. The Commenters continue to question the basis for requiring Proposition 65-related disclosures in the Department's proposal, and urge the Department to revisit its "public health and litter criteria" as a whole.	The regulation requires disclosure of chemicals on the Proposition 65 list. This requirement neither restricts the use of these chemicals in food service packaging items, nor is it tantamount to making an item's presence on the Proposition 65 listing a basis for potential removal from the List. Other provisions of the proposed regulation provide for removal of an item from the List; for example, subsection 17989.2(b) provides for removal based on the potential to contribute to litter or public health or wildlife impacts.  See response to W01-33 regarding the Proposition 65 list. See also 45-day comment response W04-33.	No
17989.2(a) (2)	W12-13	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
17989.2(a) (3)	W07-11	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The language "total fluorine" should read as "total organic fluorine." Fluorine naturally occurs in minerals mined from the earth in inorganic form. To properly account for fluorine from a PFA, the total fluorine content must subtract the contribution from inorganic fluorine. Furthermore, standardized methods for performing this measurement should be provided, not a list of instruments which might be used within those methods.	While inorganic fluorine may also be present in a food service packaging item, CalRecycle's literature review found that products "likely containing fluorinated compounds" had higher levels of detected total fluorine than those with a "low fluorine designation." Thus, even if inorganic fluorine is present in a food service packaging item, total fluorine will likely occur below the 100 ppm limit. These conclusions were supported by external scientific peer review.  See response to W23-08 regarding the identified analytical techniques for measuring total fluorine.	No
17989.2(a) (3)	W12-02	Clean Seas Lobbying Coalition	Genevieve	Abedon	Many chemicals in food packaging "persist in the environment after use, and are associated with harm to humans and to wildlife..." 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. 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)	W23-08	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Subsection 17989.2(a)(3) should be removed. This section is beyond the scope of CalRecycle's authority. Additionally, the update includes a list of instruments, but not a test method, further highlighting the lack of expertise of CalRecycle in this subject matter.	<p>CalRecycle disagrees that this subsection should be removed. This subsection establishes the threshold for an allowable amount of total fluorine as a proxy for determining the presence of PFASs to minimize impacts on public health and wildlife.</p> <p>See 45-day comment response PH01-05 regarding CalRecycle's authority to consider litter, public health, and wildlife impacts.</p> <p>CalRecycle included in the Third Draft Proposed Regulations analytical techniques (instrumentation) that were used in the studies referenced in the Initial Statement of Reasons. There is no current standardized test method to test for total fluorine in food service packaging. Therefore, no test method was included. The department elected to provide examples of techniques that an ISO/IEC 17025:2017 accredited laboratory may use to measure total fluorine in food service packaging, while also keeping the regulation open considering a standardized test method may be developed in the future.</p>	No
17989.2(b)	W02-04	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	This language is far broader than the previous language included in the document and could be construed to be any food service packaging.	See response to W12-14.	No
17989.2(b)	W02-05	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The current language is not clearly tied to the underlying legislation. Suggest rewording to: "contribute to litter or public health or wildlife impacts after use, then it shall follow the process"	<p>PRC subsection 42370.2(g) grants CalRecycle the authority to consider potential impacts of littered food service packaging on the environment in the development of its criteria. Statute does not indicate or specify at what stage in a food packaging item's life these potential impacts must be considered.</p> <p>See response to W12-14 regarding the department's process for considering litter or public health or wildlife impacts.</p>	No
17989.2(b)	W07-05	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	On the topic of litter, this is caused either by behavioral issues or accidental leakage during collection/processing, and it is not a property inherent to the product, or something associated with procurement in state facilities. We strongly support efforts to reduce litter and leakage into the environment, which is a major environmental concern, but it is not an implementable process as written.	<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 the proposed regulations exceed CalRecycle's authority, see 45-day comment response PH01-05.</p>	No

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17989.2(b)	W10-02	California Restaurant Association	Katie	Hansen	CRA 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 focus of these regulations should be on the composition of certain types of food packaging products and their ability to be recycled or composted, not what kinds of ordinances Cities and Counties choose to pass or not pass. The revisions to this section of the regulation are an improvement. CalRecycle should evaluate both sides of the public record, not just the support side, when it comes to a food service packaging item or material subject to a ban, fee for distribution, or other restrictions at the local level.	See 45-day comment response W08-15 and first 15-day response W07-08 regarding CalRecycle's consideration of local ordinances.  Regarding evaluation of both sides of the public record, the Third Draft Proposed Regulation provides for such evaluation because "evaluat[ing] the ordinance and its supporting documentation" reasonably includes examination of the opposition to the ordinance and documentation that might respond to the supporting documentation.	No
17989.2(b) (4)	W01-29	American Chemistry Council (ACC)	Tim	Shestek	Subsection 17989.2(b)(4) permits the Department to remove a food service packaging item from the List if it is "subject to a ban, fee... or other restriction imposed pursuant to city or county ordinances," if there is "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." This criterion lets any single government entity's finding drive the listing outcome no matter how outdated, flawed or ineffective it may be.	This comment incorrectly suggests that the mere existence of documentation in support of an ordinance or other restriction could be the basis under Section 17989.2 for removing an item from the List. To the contrary, CalRecycle must take the steps set forth in subsection 17989.2(b), including following the specified in subsection 17989.1(e), before removing a food service packaging item from the List. This process allows the manufacturer and the public to submit written comments and relevant information that the department must evaluate before issuing a final determination. If CalRecycle issues a preliminary determination to remove an item based on documentation in the public record of an ordinance that no longer applies to the item, the manufacturer and the public may submit updated information and comments to the department for review and evaluation.	No
17989.2(b) (4)	W01-30	American Chemistry Council (ACC)	Tim	Shestek	The specious nature of this criterion seemingly provides the Department with unlimited and arbitrary authority to veto any item from inclusion on the List, as any product has the potential to become litter. To show the arbitrary nature of the proposed criterion, it begs asking what kind of packaging does not have any "potential" to contribute to litter? This type of unfettered authority is plainly inconsistent with the language and intent of SB 1335.	This comment incorrectly claims that this subsection provides for "unlimited and arbitrary authority" with respect to a determination that an item has "potential to contribute to litter." To the contrary, it sets forth five items that CalRecycle must address in making such a determination.  See also response W01-29 and 45-day responses PH01-05 and PH01-06.	No
17989.2(b) (4)	W01-31	American Chemistry Council (ACC)	Tim	Shestek	The Commenters continue to oppose the Department's attempt to confer itself with the authority to remove a food service packaging item from the List based solely on a purported finding of a "potential" contribution to litter, public health or wildlife impacts.	See 45-day comment responses PH01-05 and PH01-06.	No
17989.2(b) (4)	W02-06	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	A food service packaging item subject to a ban, fee for distribution, or other restrictions may or may not be rooted in its' contribution to litter or ocean debris concerns. This section should focus on actual impacts to ocean debris/litter, not on public sentiment which may not be fully informed on all products that fall under these ordinances.	See response W01-29 and 45-day comment response W08-15.	No

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<b>§17989.3. Reusable Food Service Packaging Criteria.</b>							
17989.3	W03-06	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
17989.3	W11-02	Californians Against Waste	Nick	Lapis	The regulations continue to overlook traditional reusable foodware, such as metal silverware, ceramic plates, and glasses, by requiring either a laboratory accreditation or written express warranty. While the intent behind this criteria precludes regrettable substitutions, the practical application would exclude the traditional reusable foodware found at most dine-in restaurants or cafeterias. The requirement for third party verification will have the opposite effect by burdening small “mom and pop” restaurants to jump through bureaucratic hoops to verify their common-sense reusable foodware. In order to avoid this, especially at a time when the restaurant industry is struggling the most, we suggest that this criteria apply only to plastic, fiber and foil products. Alternatively, we suggest that ceramic, porcelain, glass and metal are excluded from the criteria.	See 45-day comment response W13-01.  Moreover, this comment incorrectly suggests that the proposed regulation might affect the use of silverware. “Food service packaging” does not include utensils, however, so there is no prohibition under SB 1335 or the proposed regulation concerning them.	No
17989.3	W12-03	Clean Seas Lobbying Coalition	Genevieve	Abedon	Without a strong set of reusability 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.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  Reusable food service packaging items must satisfy one of the requirements in Section 17989.3 to be deemed eligible for the List of Approved Food Service Packaging.	No
17989.3	W12-15	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 included in the List, even if this means some sort of exemption from the requirements, and encourage reusable takeback programs for takeout and delivery food packaging.	See 45-day comment response W13-01 regarding automatic approval of reusable materials.  See 45-day comment response W15-25 regarding encouraging takeback programs for reusable food service packaging items.	No

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17989.3	W12-18	Clean Seas Lobbying Coalition	Genevieve	Abedon	Just like the provisions for recyclable materials that require demonstration that the products are collected and recycled, programs for reusables need to demonstrate that the reusable items are both reusable and effectively reused. Thus, we strongly suggest adding a third requirement to encourage reusable takeback programs for reusable packaging used for takeout and delivered meals and beverages. Something along the lines of “17989.3 (a)(3) A description of how the packaging will be part of a reuse takeback program, demonstrating how the plan for reuse will allow for the packaging to meet the (1) and (2) requirements if for some reason they don’t come with both an express warranty and third-party certification.”	See 45-day comment response W05-02 regarding verification of reuse.  See 45-day comment response W15-25 regarding encouraging takeback programs for reusable food service packaging items.	No
17989.3	W12-19	Clean Seas Lobbying Coalition	Genevieve	Abedon	The department could also consider a tracking and reporting requirement as opposed to a collection standard.	See 45-day comment response W15-26.	No
17989.3	W25-01	Reusable Businesses Coalition	Dagny	Tucker	There are potential loopholes in the reusable criteria by which any reusable manufacturer or service provider could claim that their containers can be reused, even if they are conventionally disposed of after a single-use, as evidenced by the thicker “reusable” plastic bags that are permissible under SB 270. Strengthening the criteria we could avert a situation where a reusable claim is made but not followed through, therefore increasing the amount of (thicker) plastic entering the waste stream.	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 recommends that the proposed regulation exclude items from the List if they are “conventionally disposed of,” CalRecycle has not adopted such an approach because “conventionally disposed of” is ambiguous.  A food service packaging manufacturer must provide proof that the food service packaging item can withstand at least 780 wash cycles or provide a copy of an express, written warranty to purchasers of the item that their item shall be able to be used for its intended purpose for a minimum of one year.	No
17989.3	W25-02	Reusable Businesses Coalition	Dagny	Tucker	We want to encourage reusable takeback programs and assure that the traditional dine-in reusables used in food service facilities such as ceramic, porcelain, glass and metal are included in the list of approved items, even if this means some sort of exemption from the requirements.	See 45-day comment response W13-01 regarding “traditional” reusable food ware.  See 45-day comment response W15-25 regarding encouraging takeback programs for reusable food service packaging items.	No



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17989.3	W25-05	Reusable Businesses Coalition	Dagny	Tucker	Just like the provisions for recyclable materials that require demonstration that the products are collected and recycled, programs for reusables need to demonstrate that the reusable items are both reusable and reused. Thus, we strongly suggest adding a third requirement to encourage reusable takeback programs. Something along the lines of “17989.3 (a)(3) A description of how the packaging will be part of a reuse takeback program, demonstrating how the plan for reuse will allow for the packaging to meet the (1) and (2) requirements if for some reason they don’t come with both an express warranty and third party certification.”	See 45-day comment response W05-02 regarding verification of reuse.  See 45-day comment response W15-25 regarding encouraging takeback programs for reusable food service packaging items.	No
17989.3	W25-06	Reusable Businesses Coalition	Dagny	Tucker	The department could also consider a tracking and reporting requirement as opposed to a collection standard.	See 45-day comment response W15-26.	No
17989.3	W27-03	Surfrider Foundation	Miho	Ligare	Without a strong set of criteria, any product manufacturer could claim that their product can be reused, even if it is conventionally disposed of after a single-use, as evidence by the thicker “reusable” plastic bags that are permissible under SB 270.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  Reusable food service packaging items must satisfy one of the requirements in Section 17989.3 to be deemed eligible for the List.	No
17989.3	W27-04	Surfrider Foundation	Miho	Ligare	It is also imperative that traditional dine-in reusables used in food-service facilities such as ceramic, porcelain, glass, and metal are not excluded from the List. Thus, we strongly suggest that the department specifically include these materials in this section.	See 45-day comment response W13-01 regarding “traditional” reusable food ware.	No
17989.3	W27-05	Surfrider Foundation	Miho	Ligare	Traditional dine-in reusables used in food-service facilities such as ceramic, porcelain, glass, and metal should also be included and encouraged as part of the reusable takeback program.	See 45-day comment response W13-01 regarding “traditional” reusable food ware.  See 45-day comment response W15-25 regarding encouraging takeback programs for reusable food service packaging items.	No
17989.3(a)	W12-16	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest striking “either of.” Otherwise a company could give a one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered “reusable.”	See 45-day comment response W29-05.	No
17989.3(a)	W25-03	Reusable Businesses Coalition	Dagny	Tucker	We strongly suggest striking “either of.” Otherwise a company could give a one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered “reusable.”	See 45-day comment response W29-05.	No

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17989.3(a) (1)	W03-07	AMERIPEN	Dan	Felton	“Number of cycles,” arbitrarily assigned in the proposed regulations at 780 to meet the reusable definition, is not a requirement in Section 42370.2(c) that requires CalRecycle to consider if the packaging is durable and washable for multiple uses. Lifecycle impacts will depend on more variables than reuse cycles and the number of cycles will be encouraged by good business practices.	See first 15-day comment response W12-04 and 45-day comment response W15-20 regarding the rationale for the number of cycles.  See 45-day comment response W14-07 regarding lifecycle analyses.	No
17989.3(a) (1)	W12-17	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest changing “or” to “and.” We need both criteria to be required to ensure that the materials used are truly durable and thus truly reusable. Otherwise a manufacturer can opt for just the one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered “reusable.”	See 45-day comment response W29-05.	No
17989.3(a) (1)	W16-03	Foodservice Packaging Institute (FPI)	Natha	Dempsey	While FPI appreciates the removal of the more vague “third-party certification” from subsection 17989.3(a)(1) in the current draft, simply including “test results from an ISO/IEC 17025:2017 accredited laboratory” does not address the arbitrary number of cycles included to define a foodservice packaging item as “reusable”.	See first 15-day comment response W12-04 and 45-day comment response W15-20.	No
17989.3(a) (1)	W16-04	Foodservice Packaging Institute (FPI)	Natha	Dempsey	An ISO/IEC 17025:2017 accredited laboratory does not give any indication of the level of expertise a lab may have in the specific testing of reusable foodservice packaging, only that it meets the general requirements for the competence, impartiality and consistent operation of laboratories.	This comment suggests that CalRecycle should modify the proposed regulation to include scrutiny of the expertise of laboratories “in the specific testing of reusable foodservice packaging.” Such a change would be inappropriate and unnecessary. There is no accreditation for such expertise, and it is beyond CalRecycle’s purview to verify the competence of individual labs. The ISO/IEC 17025:2017 is appropriate because it sets an internationally recognized standard for the competence of testing laboratories.	No
17989.3(a) (1)	W25-04	Reusable Businesses Coalition	Dagny	Tucker	We strongly suggest changing “or” to “and.” We need both criteria to be required to ensure that the materials used are truly durable and thus truly reusable. Otherwise a manufacturer can opt for just the one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered “reusable.”	See 45-day comment response W29-05.	No
17989.3(a) (1)	W27-06	Surfrider Foundation	Miho	Ligare	We appreciate the higher number of cycles compared to the previous versions. However, we suggest using the definition in San Francisco’s bill, “designed and manufactured to maintain its shape and structure, and to be materially durable for repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse.”	See first 15-day comment response W12-04 and 45-day comment response W15-20.	No

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<b>§17989.4. Recyclable Food Service Packaging Criteria.</b>							
17989.4	W01-03	American Chemistry Council (ACC)	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 response to W01-40 regarding the definition of "Recycling." See also first 15-day comment response W01-03 and 45-day comment response W04-02.	No
17989.4	W03-05	AMERIPEN	Dan	Felton	It appears that CalRecycle will rely heavily upon recycling program and takeback operators to make decisions about packaging and drive the thresholds, rather than CalRecycle being responsible for determining what packaging is actually "recyclable" depending on collection and recycling system capabilities and markets. We do not believe this is the right approach and 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 first 15-day comment response W04-04 and 45-day comment response W10-03.	No
17989.4	W06-01	The Association of Plastic Recyclers (APR)	Stephen	Alexander	We support the intent to increase use of recyclable packaging materials. However, it's not at all apparent to us that the current draft of the proposed regulations allows for adequate food service packaging that can meet the recyclability standards and timelines proposed, and continue to offer consumers suitable, safe and reliable packaging alternatives. Successful recycling is an integrated system that relies on a combination of good collection and sortation infrastructure, adequate volumes of recycled materials to be processed, and consistent end market demand for recycled resins. It's not clear to us that the "high bar" as set by these regulations is realistic and achievable in this context, or that it offers a successful pathway to increased diversion and recycling.	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 what constitutes "recyclable" should specifically accommodate existing food service packaging, as opposed to focusing on the extent to which items are actually recycled, CalRecycle disagrees. See 45-day comment response W04-02.  See response to W01-40 regarding the definition of "Recycling." See also first 15-day comment response W01-03.	No
17989.4	W12-25	Clean Seas Lobbying Coalition	Genevieve	Abedon	We also suggest adding somewhere: "Establishing minimum postconsumer recycled content requirements for food service packaging in order to create or enhance markets for recycled material."	See first 45-day comment response W27-01 regarding CalRecycle's authority to establish postconsumer recycled content requirements.	No

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17989.4	W12-26	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 strongly suggest adding to the criteria, §17989.4 (a)(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 W15-34.	No
17989.4(a) (1)	W12-22	Clean Seas Lobbying Coalition	Genevieve	Abedon	The 2 inch by 2-inch dimension is too small, even in at least two dimensions, 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)	W12-23	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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17989.4(a)(3)(A)	W01-06	American Chemistry Council (ACC)	Tim	Shestek	The new restrictions added to the recyclable criteria and corresponding application provisions, requiring manufacturers to demonstrate that foodservice packaging items are made of materials that have “sufficient commercial value to be marketed for recycling” are inconsistent with SB 1335, arbitrary, and not sufficiently considered. Subsection 17989.4(a)(3) of the Revised Proposed Regulations creates a new criterion to be “recyclable” — packaging must be made of materials that have “sufficient commercial value to be marketed for recycling.” This is contrary to the statute’s recyclable criteria, and it is beyond the Department’s authority to impose such economic criteria.	<p>CalRecycle disagrees with the commenter’s suggestion that the clarifications to the criteria in subsection 17989.4(a)(3) are contrary to the recyclable criteria set out in statute or beyond the department’s authority. See response to comment W01-15. The revisions to this section are necessary to clarify the expectations regarding how the department will determine whether a material has a market value in a manner that is consistent with PRC subsection 42370.2(d)(6). Certain materials, such as polyethylene terephthalate (PET) plastic or corrugated cardboard, have consistently held a market value and are sorted into single named material bales. However, the department received stakeholder feedback that not all recycled materials are sorted into single named material bales. To remedy this discrepancy, and to better represent the flow of recycled materials, the recyclability criteria in subsection 17989.4(a)(3)(A) were 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.” This language aligns closely with the considerations put forward in statute.</p> <p>In addition, this criterion is not “arbitrary” or “capricious” because whether there is a market for a material to be recycled is directly relevant to whether it is reasonable and practical for the Department to consider such a material “recyclable” under the regulation.</p> <p>CalRecycle’s authority to make this evaluation is clear from PRC subsections 42370.2(d)(3) and 42370.2(d)(6). See also response to W01-15.</p>	No
17989.4(a)(3)(A)	W01-07	American Chemistry Council (ACC)	Tim	Shestek	SB 1335 clearly defines what the Department shall consider when defining “recyclable” and “sufficient commercial value” is outside the statutory mandate and therefore outside CalRecycle’s authority to include this criterion within its regulations. The statute requires that CalRecycle consider whether the “material is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value.”	See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.	No

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17989.4(a)(3)(A)	W01-08	American Chemistry Council (ACC)	Tim	Shestek	In the statute, the word “sufficient” appears directly before the words “quantity” and “quality.” “Sufficient” does not appear before “market value,” and it does not modify that term. In fact, the statute puts no qualifier on “market value.” To read “sufficient commercial value” into the statute is outside the Department’s authority. CalRecycle cannot rewrite the statute and require a showing of “sufficient commercial value.”	See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.  Regarding the assertion that the absence of a qualifier on “market value” in the statute means that CalRecycle is improperly reading a requirement into the statute, CalRecycle disagrees. The statute expressly concerns the link between “maintain[ing] a market value” and whether a material is recycled. The clear meaning of the statute is that CalRecycle should consider whether an item has market value for recycling. The regulatory language proposed in subsection 17989.4(a)(3) incorporates this concept.	No
17989.4(a)(3)(A)	W01-09	American Chemistry Council (ACC)	Tim	Shestek	The fact the statute lacks any requirement for “sufficient” commercial value is appropriate considering how recycling markets operate. As with many commodity markets, significant fluctuations occur with some regularity due to a range of economic conditions. Prices can change from year to year, and there can be dramatic fluctuations within a single year, even in long-established commodity markets. These fluctuations reflect a range of contributing factors and are not determinative of whether recycling a particular commodity is a viable enterprise over the long term.	PRC subsection 42370.2(d) provides the minimum criteria the director shall consider for determining recyclability. The proposed regulation reflects the extent to which CalRecycle considered that collection, baling, and sorting can be verified by data sources within the authority of the department or the state to collect or obtain. See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.	No
17989.4(a)(3)(A)	W01-10	American Chemistry Council (ACC)	Tim	Shestek	We request that CalRecycle revise the proposal to remove the words “sufficient commercial” in subsections 17989.4(a)(3)(A) and (B) and state that the packaging must be made of materials that have “value to be marketed for recycling.” We also request CalRecycle remove the words “sufficient commercial” from subsection 17989.6(d)(4) regarding application requirements and state only that the application include evidence of “value to be marketed for recycling.”	See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.  The suggested change is inappropriate because the value of “materials” is not relevant outside the context of the items they comprise.  To the extent the commenter objects to the phrase “sufficient commercial,” CalRecycle disagrees that removing it would change the application of the phrase “value to be marketed for recycling,” so no change is necessary to address the commenter’s concern. Regarding the meaning of the proposed regulatory language, see response to W01-21.	No

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17989.4(a) (3)(A)	W01-11	American Chemistry Council (ACC)	Tim	Shestek	Even if it were within CalRecycle’s statutory authority to include a criterion for “sufficient market value,” which it is not, the Revised Proposed Regulations are arbitrary, capricious or otherwise not in accordance with law.	See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.  This comment misquotes the proposed regulatory language, which does not include “sufficient market value” as a criterion. See response to W01-21.  In addition, this criterion is not “arbitrary” or “capricious” because whether there is a market for a material to be recycled is directly relevant to whether it is reasonable and practical for the department to consider such a material “recyclable” under the regulation.	No
17989.4(a) (3)(A)	W01-12	American Chemistry Council (ACC)	Tim	Shestek	The term “sufficient market value” is too imprecise and vague to be applied by the Department. The Department has not proposed criteria to guide its determinations of what would be sufficient. Absent such criteria, any determination would be impermissibly arbitrary.	This comment misquotes the proposed regulatory language, which does not include “sufficient market value” as a criterion.  To the extent this comment concerns the appropriateness of the requirement that items “have sufficient commercial value to be marketed for recycling,” as stated in the revised subsection 17989.4(a)(3), see responses to W01-06, W01-15, and W01-21.	No
17989.4(a) (3)(A)	W01-13	American Chemistry Council (ACC)	Tim	Shestek	By forcing manufacturers to make such a showing, CalRecycle would be imposing a significant burden on food service packaging manufacturers to show commercial value in recycling but not imposing this burden on other manufacturers of products that must be recycled in California, potentially violating food service manufacturers’ due process rights. To avoid these results, the Department should remove the words “sufficient commercial” from the Revised Proposed Regulations as requested above.	See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.  See response to W01-14 regarding CalRecycle’s consideration of economic and environmental impacts in revising “single named material bale” to “sufficient commercial value.”	No
17989.4(a) (3)(A)	W01-22	American Chemistry Council (ACC)	Tim	Shestek	Like many developing operations, efficiencies and other improvements are gained over time, so a commercial operation that had lower financial margins initially may be far more financially attractive later on. To require a “sufficient commercial value” at the outset for a material to be considered “recyclable” would stymie innovation in the recycling sector and have the potential to shut down potential markets for recyclables before they can establish themselves. California would miss the economic and environmental benefits that comes from increased recycling.	See response to W01-14 regarding CalRecycle’s consideration of economic and environmental impacts in revising “single named material bale” to “sufficient commercial value” and response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.	No

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17989.4(a)(3)(A)	W02-07	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	This language has the potential to create confusion when applied to individual products. Recommend the language be changed to, "...have sufficient commercial value to be marketed for recycling, and are is are when sorted and aggregated into defined streams (e.g., mixed paper, PET)..."	CalRecycle disagrees that the revised language has the potential to create confusion when applied to individual products. The requirements in subsection 17989.4(a)(3)(A) apply to the materials that comprise food service packaging items that "are sorted and aggregated into defined streams." The proposed revision would not improve the clarity of the regulatory language.  See response to W01-15 regarding appropriateness of the "sufficient commercial value" criterion.	No
17989.4(a)(3)(A)	W03-01	AMERIPEN	Dan	Felton	Within the newly revised proposed regulations, there are new requirements for food service packaging to "have sufficient commercial value to be marketed for recycling" in order to be considered "recyclable." This requires food packaging manufacturers to demonstrate that their materials have been available for sale for recycling and at readily available prices during the 12-month period preceding their application. This approach of determining commercial value based on current end market data is flawed and should not be implemented, as recycling markets can be inconsistent and can change frequently throughout any given 12-month period.	See response to W01-15 regarding appropriateness of the "sufficient commercial value" criterion.  This comment incorrectly asserts that the proposed regulation requires manufacturers to show that materials have been "available for sale for recycling and at readily available prices during the 12-month period preceding their application." While such a showing is sufficient to satisfy the "marketed for recycling" element, it is not the exclusive manner of satisfying it. Rather, as stated in subsection 17989.6(d)(4)(A), this requirement is met if the materials at issue are identified on the List. Also, the department may deem this requirement met based on market data and other information regarding the materials.	No
17989.4(a)(3)(A)-(B)	W03-04	AMERIPEN	Dan	Felton	We continue to have concerns with the 60 percent collection and processing threshold in the proposed regulations, as this sets an arbitrary number that is outside the control of food service packaging manufacturers.	Regarding the claim that the proposed regulation sets an arbitrary threshold, see first 15-day comment response W01-12 and 45-day comment response W10-03.  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)	W06-02	The Association of Plastic Recyclers (APR)	Stephen	Alexander	Subsection 17989.4(a)(3) of the Revised Proposed Regulations creates a new criterion that in order be "recyclable," packaging must be made of materials that have "sufficient commercial value to be marketed for recycling." Recyclable materials are commodities and significant fluctuations are common, both year-over-year and within a given year, even in long-established recycled material markets. These reflect a variety of domestic and global market factors, including added or disrupted market capacity, increased demand patterns, or an influx of low-priced virgin materials. If a material must be collected by 60 to 75 percent of recycling or takeback programs, also requiring, let alone defining, "sufficient commercial value to be marketed for recycling," seems an unnecessary addition.	See response to W01-15 regarding appropriateness of the "sufficient commercial value" criterion.	No



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17989.4(a)(3)(A)	W12-24	Clean Seas Lobbying Coalition	Genevieve	Abedon	We commend the addition of language to assure recycling markets. We suggest replacing “have sufficient commercial value to be marketed for recycling,” with “Whether the food service packaging material is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value.”	See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.	No
17989.4(a)(3)(A)	W16-05	Foodservice Packaging Institute (FPI)	Natha	Dempsey	The new requirement set in subsection 17989.4(a)(3)(A), requiring recyclable material to have “sufficient commercial value to be marketed for recycling” and further defined under subsection 17989.6(d)(4)(A) is concerning to us. Requiring this criterion be met holds no other precedent and feels outside the scope of SB 1335.	See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.	No
17989.4(a)(3)(A)	W16-06	Foodservice Packaging Institute (FPI)	Natha	Dempsey	Economic markets fluctuate, evaluating over a twelve-month period may not offer a sufficient observation of the marketplace and therefore, could lead to the elimination of quality recyclable materials. We suggest the elimination of the “sufficient commercial value to be marketed for recycling” criterion from the draft.	See response to W03-01 regarding relevance of the twelve-month period preceding the application.  See response to W01-15 regarding appropriateness of the “sufficient commercial value” criterion.  See response to W01-14 regarding CalRecycle’s consideration of economic and environmental impacts in revising “single named material bale” to “sufficient commercial value.”	No
17989.4(a)(3)(A)	W16-07	Foodservice Packaging Institute (FPI)	Natha	Dempsey	FPI appreciates the removal of the term “single named material bale” within subsection 17989.4 (a)(3)(A), however, we still believe the thresholds set in subsection 17989.4(a)(3)(A) offers an unmanageable timeline for the foodservice packaging industry and our members’ customers. 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.	See first 15-day response W12-06.	No

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<b>§17989.5. Compostable Food Service Packaging Criteria.</b>							
17989.5	W05-01	Association of Compost Producers (ACP)	Dan	Noble	Composters should be free to accept feedstocks which they believe will produce the highest quality products, be they private, municipal, or non-profit.	To the extent this comment asserts that the proposed regulation should not restrict the types of materials that may be accepted by compost facilities, see response to 45-day comment W07-01.	No
17989.5	W05-02	Association of Compost Producers (ACP)	Dan	Noble	The central pillar of “compost quality” is the USCC STA Certified Compost standard that serves specified compost uses that are determined by the user of the compost product that is require for their specific application.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  See response to W24-03 regarding the National Organic Program.	No
17989.5	W05-04	Association of Compost Producers (ACP)	Dan	Noble	Compostable plastic usually arrives at the compost facility commingled with non-compostable plastic, and therefore becomes a Trojan Horse for plastic contamination of the composting piles.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.5	W05-05	Association of Compost Producers (ACP)	Dan	Noble	Pure compostable plastic is not an acceptable material to receive organic certification of the compost, therefore, depending on the local markets for compost, they can have the effect of decreasing the price of the finished compost.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  See response to W24-03 regarding the National Organic Program.	No
17989.5	W07-01	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The draft regulation continues to modify the ASTM standards for compostability without any apparent scientific or evidence-based approach. These changes will arguably not benefit composters, and will make it difficult for any compostable products to qualify for use in state venues. The State of California has an opportunity with SB1335 to not only chart a course on single-use items used at state facilities, but to make progress toward its climate goals by helping these facilities divert food waste from landfill with the use of certified compostable products.	CalRecycle disagrees with the commenter’s statement that the Third Draft Proposed Regulations modify the existing ASTM standards. See first 15-day comment response W10-03.  CalRecycle also disagrees with the commenter’s assertion that the ASTM-related criteria lacks a “scientific or evidence-based approach.” See 45-day response W08-10 regarding the 60-day timeframe to demonstrate sufficient biodegradation.  Regarding the commenter’s statement that the criteria will make it difficult for any products to qualify for use at state facilities, CalRecycle notes that its role is not to predetermine which items will or will not qualify as compostable. Rather, SB 1335 requires CalRecycle to develop criteria for determining whether a food service packaging item is compostable, and it sets forth factors that CalRecycle, at a minimum, must consider. In particular, PRC Section 42370.2(e)(3) expressly concerns whether a particular item is regularly processed by current compost facilities.	No

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17989.5	W07-02	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	All of the problems could be addressed and remain in line with the intent of the legislature if CalRecycle instead adhered to the current definition of “compostable” as it exists in statute today (PRC Division 30, Part 3, Chapter 5.7 Subsection 42355-42358.5), and simply added a requirement of a third-party verification that includes a test on total organic fluorine.	See 45-day comment response W08-07 regarding a suggested definition of “Compostable.”  See response to W12-01 regarding the total fluorine test to determine the presence of PFASs. See also 45-day comment response PH01-06.	No
17989.5	W07-03	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	State-owned or leased venues served by composters that accept certified compostable products should be able to purchase items meeting the statutory definition for compostability, as they do today. The regulation could require a state-owned venue to provide an annual letter from its composting processor indicating they accept certified compostable items.	CalRecycle disagrees with the commenter’s suggestion to allow state-owned venues to provide annual letters indicating that composters accept certified compostable items. Compostable food service packaging items must meet all of the applicable criteria in the SB 1335 regulations.  See W15-31 regarding consideration of a regional or local approach. To provide flexibility for food service packaging manufacturers, the Third Draft Proposed Regulation allows for a takeback program option for compostable food service packaging that mirrors that established for the recyclability criteria in Section 17989.4.	No
17989.5	W07-04	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Compostability must be determined by performance and characteristics of the finished item. Throughout the regulation, and especially in [§17989(a)(18), §17989.1(a)(3)], [§17989.1(a)(5)], there are requirements to disclose formulations. This is unnecessary, as performance and safety criteria are ensured by the standard specifications ASTM D6400 and ASTM D6868. Disintegration rate is a function of the finished article and its physical form. Finally, compostable products are already subject to Prop65, so there should be no reason to require additional reporting requirements.	The regulation does not require the disclosure of “formulations”; rather, the regulation requires a description of the materials that comprise a food service packaging item and disclosure of certain chemicals pursuant to the criteria in Section 17989.2. The material description is necessary to ensure that the department can evaluate and verify information submitted by food service packaging manufacturers to demonstrate that a food service packaging item meets all applicable criteria prior to publishing it on the List. CalRecycle will then post that information as part of the List so that food service facilities have information about the specific material composition of a food service packaging item to determine if it meets their needs.  See 45-day comment response W04-33.	No

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17989.5	W07-06	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Definitions of compostability have been updated, but remain flawed and unscientific.	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>CalRecycle disagrees with the commenter’s suggestion that the criteria for compostable food service packaging items in the proposed regulation are “unscientific.” The regulation does not include a definition of “Compostable,” but rather specifies multiple criteria that determine if a food service packaging item is compostable in the current statewide infrastructure.</p> <p>Subsection 17989.5(a)(2)(A) specifically requires that compostable food service packaging items meet existing ASTM standards, which stakeholders have argued are scientifically-based industry standards for determining the compostability of plastic items. Subsection 17989.5(a)(2)(B) is based on typical processing timeframes at California composting facilities and therefore applies a stricter biodegradation timeframe to be consistent with those industry practices. See also 45-day comment response W08-10.</p> <p>The compostable criteria specified in the Third Draft Proposed Regulations include requirements that help ensure compostable food service packaging items included on the List will break down in a safe and timely manner and become “part of usable compost” as directed by statute.</p>	No
17989.5	W07-13	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	We feel the most impactful change would be to use the definition of “compostable” that is already defined in California statute (PRC Division 30, Part 3, Chapter 5.7 Subsection 42355-42358.5), and require companies to provide a third-party verification. This would resolve the scientific issues, the need for CalRecycle to interpret tests and confidential formulas, the need for monitoring expiration of test reports, the need to revalidate products, etc.	<p>See 45-day comment response W08-07 regarding a suggested definition of “Compostable.”</p> <p>See also response to W08-02 regarding the department’s application review process.</p>	No
17989.5	W07-14	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	If there are concerns about the performance of compostable products in real world composting facilities, those should be addressed outside of the regulatory process in an open, transparent, and scientific manner.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.5	W09-01	California Compost Coalition (CCC)	Neil S.R.	Edgar	We are pleased to see CalRecycle taking a largely practical approach to setting these packaging guidelines which could help minimize contamination in food waste feedstocks from State food production providers which are received by our member facility operators. We have comments and requests for clarification on some remaining issues which we would like to see addressed in the next draft of regulations.	This comment does not suggest any specific changes to the revised regulation or raise an issue related to the rulemaking process. CalRecycle responded to each comment raised by the commenter during the 45-day and 15-day comment periods.	No

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17989.5	W09-05	California Compost Coalition (CCC)	Neil S.R.	Edgar	<p>We recommend a field disintegration validation process be required, by the end of 2022, which would clearly identify which compostable materials meet compost manufacturing timelines, in order for products to continue to be listed beyond January 1, 2023.</p> <p>We are aware that compostability depends greatly on the type of composting technology employed at an individual facility, as well as the manner in which composting is conducted. 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.</p>	<p>See 45-day comment response W09-06 regarding field testing.</p> <p>See response to W07-09 regarding CalRecycle's selection of biodegradation as the preferred criteria for compostability.</p>	No

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17989.5	W09-11	California Compost Coalition (CCC)	Neil S.R.	Edgar	CCC proposes additional requirements to assure that the compostable products, most likely compostable plastics take steps to become listed with the National Organic Program (NOP) as a synthetic material which is allowed for use in organic input material production; this is a lengthy petition process which should be undertaken as quickly as possible. Compostable products to be listed in January 2026, should be required to already have their petition process concluded, and all synthetic materials which are unsuitable for organic production should be excluded from future listing until the issue is resolved. Composters will be required to receive, process and market significantly higher volumes of organic materials, as they are diverted from landfilling, under the requirements of SB 1383. The expectation of CCC and other experts is that the large proportion of this composted material will be sold into agricultural markets. Farmers who currently buy compost for application onto fields producing food crops are almost exclusively requiring materials registered under the California Department of Food and Agriculture's (CDFA) Organic Input Materials program, where CDFA has responsibility to assure that compost and other inputs meet the NOP standards. These NOP standards do not allow unauthorized synthetics, like compostable plastics, in compost feedstocks. Most of these compostable products in feedstocks are currently being screened out by composters and other organic materials processors to be landfilled. This adds unnecessary cost to composting programs, for transportation and disposal of the materials, as well as jeopardizing the Organic status of their finished product, should the removal process not be deemed "robust" by CDFA inspectors during routine audits.	See response to W24-03 regarding the National Organic Program (NOP).	No
17989.5	W12-27	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 at 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	W12-29	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 response to W07-03 regarding a regional approach to the compostable criteria. See also 45-day comment response W15-31.	No

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17989.5	W23-09	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	This section creates impractically stringent requirements that exceed those found in the FTC Green Guides, which set up a set of requirements that unreasonably impact the use of industrially compostable plastic or plastic-coated products by state venues.	CalRecycle disagrees with the commenter's statement that the regulation creates impractically stringent requirements. See first 15-day comment response W08-03 and 45-day comment response W07-02.  CalRecycle also disagrees with the commenter's suggestion that the threshold for "compostable" should be based solely on the FTC Green Guides. See also 45-day comment response W06-02.	No
17989.5	W23-10	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	The definition of "compostable" is already defined in California statute in PRC Division 30, Part 3, Chapter 5.7 Subsection 42355-42358.5. CalRecycle's proposal for creating a separate definition for compostable is unnecessary. CalRecycle should be consistent and use the existing definition or seek to change it, rather than create its own.	See 45-day comment response W08-07 regarding a suggested definition of "Compostable."	No
17989.5	W23-21	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	To address the intent of the legislature with SB1335, the regulations for compostable products can be drafted to simply require product meet the current definition of "compostable" as described in statute, requiring third-party certification to ensure a PFA requirement is met, allowing composters to decide which feedstocks they wish to accept so they can inform their generators. This would do so without exceeding CalRecycle's statutory authority and unnecessarily requesting proprietary information on products material and formulations. The List would be supported by robust and rigorous third-party certification programs such as the Biodegradable Products Institute.	See 45-day comment response W08-07 regarding a suggested definition of "Compostable."  See response to W12-01 regarding the total fluorine test to determine the presence of PFASs.  See 45-day comment response W07-01 regarding acceptance of feedstocks.  See 45-day comment response W18-08 regarding disclosure of proprietary information.	No
17989.5	W24-01	Recology	Christine	Wolfe	Regarding compostability, we want to ensure that compostable products are safe to be incorporated into soil amendments for organic agricultural operations; and capable of disintegration and biodegradation within the timeframes and other process parameters that are the new regulatory realities at California compost facilities.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.5	W24-02	Recology	Christine	Wolfe	The Department should require that product manufacturers test their product in a California compost facility within one year after listing and submit the results of those tests to the Department. The resulting data would not only provide information to the Department as it reviews the list, but would aid in rectifying the differences between laboratory testing methods and performance in on-the-ground conditions in California that will be necessary to improve performance of these products in the long-term.	See first 15-day comment response W05-03 and 45-day comment response W09-06 regarding field testing.	No

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17989.5	W24-03	Recology	Christine	Wolfe	In support of SB 1383 implementation and the continued success of compost markets, the Department should require that products and/or materials included on the list be included on the National List of Allowed and Prohibited Substances of USDA's National Organics Program and meet CDFA's requirements for its Organic Input Material Program.	CalRecycle disagrees with the suggested requirement that materials included on the List be included on the USDA NOP and meet the CDFA Organic Input Material Program. The criteria in this regulation were developed in accordance with the considerations established in PRC subsections 42370.2(e)(1) through 42370.2(e)(4). Neither the statute nor the regulation prohibit any entity from pursuing NOP certifications, or other similar programs, or from following the recommendations of the National Organic Standards Board.	No
17989.5(a)	W05-10	Association of Compost Producers (ACP)	Dan	Noble	<p>Based on a recent survey of ACP compost producers an overwhelming majority "Do not want plastics in their organic feedstocks coming into compost facilities." A small minority are "currently composting food scraps that include compostable plastics."</p> <p>By lowering the bar from 75% minimum programs to "at least 50 %" "prior to Jan. 1, 2026" accepting compostable feed service packaging materials, does give a specific 5-year timeframe for Jurisdictions and there recycling programs to develop their programs from 50% to 75% acceptance. While most composters do not want to even deal with this material, as our survey results show, it may be possible that in five years, those composters who are working directly with the food service packaging material providers, may develop the market sufficiently to meet this objective. However, unless the food service packaging industry makes this worth the compost producer's increased investment to manage and compost these materials, this will likely not come to pass.</p>	<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 the proposed regulation establishes unrealistic thresholds, see first 15-day comment response W08-03 and 45-day comment response W07-02.</p>	No
17989.5(a) (1)	W16-08	Foodservice Packaging Institute (FPI)	Natha	Dempsey	The thresholds set to determine if a foodservice packaging item is "compostable" (sections 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 too short a timeframe and requires infrastructure development, education and communications campaigns for municipalities and residents.	See first 15-day comment response W08-03 and 45-day comment response W07-02.	No



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17989.5(a)(1)(A)	W07-07	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	It is irrelevant how many facilities across the state accept compostable products. Composters obtain feedstocks locally, based on their processing capabilities and the terms of their contracts. This is different from recycling where statewide or global markets may have a significant impact. State venues contracted with processors that accept compostable products should be permitted to purchase any foodservice item that has been certified to meet the ASTM standards.	See response to W07-03 regarding a regional approach to the compostable criteria. See also 45-day comment response W15-31.	No
17989.5(a)(1)(A)	W09-08	California Compost Coalition (CCC)	Neil S.R.	Edgar	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.	To the extent this comment asserts that the proposed regulation should not include collection frequency as a criterion relevant to compostability, CalRecycle disagrees because PRC Section 42370.2(e)(3) expressly requires consideration of “[w]hether the food service packaging is regularly collected and accepted.”  See also 45-day comment response W07-02 regarding collection and acceptance thresholds.	No
17989.5(a)(1)(A)	W09-09	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.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.5(a)(1)(A)	W09-10	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 first 15-day comment response W06-07 and 45-day comment response W09-11.	No
17989.5(a)(1)(A)–(B)	W12-30	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest a higher percentage of 60 percent prior to January 1, 2026.	CalRecycle disagrees with the commenter’s suggestion to increase the initial compostable collection and acceptance threshold to 60 percent. The threshold of 50 percent was established to align with the diversion goals of SB 1383 (Lara, Chapter 395, Statutes of 2016). See also 45-day comment response W15-37.	No
17989.5(a)(1)(A)	W23-11	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	It is irrelevant how many facilities in the state accept compostable products. Composters are best positioned to understand what works within their systems and should have the freedom to choose. State venues and facilities should be able to contract with a composter and purchase compostable products that meet the ASTM standards.	See response to W07-03 regarding a regional approach to the compostable criteria. See also 45-day comment response W15-31.	No

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17989.5(a)(1)(B)	W07-08	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The takeback program as outlined is not feasible for compostable products. First, there are many entities involved before an item reaches the food service provider at a state facility, and it is typically the facility management (not the food service provider) contracting with waste haulers. So there is no way for a manufacturer of a material/product to know where it will be sold or used. Second, it will be nearly impossible to determine the volume of compostable products recovered, as they are collected together with food scraps. This is different from recycling, where materials are collected and sorted by type, and a volume could be determined.	CalRecycle disagrees with the commenter's suggestion that the compostable takeback program option is not feasible. The department added this takeback option in the Third Draft Proposed Regulations to provide an alternative option for food service facilities to distribute compostable food service packaging items that may not meet the statewide collection and acceptance thresholds. A takeback program is not required, but is an additional pathway for manufacturers to demonstrate compliance with the compostable criteria.	No
17989.5(a)(1)(B)	W23-12	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Section 17989.5(a)(1)(B) and the related Section 17989.6(e) is impractical as written. For a product that is intended to be composted, the percentage of items composted by someone other than the takeback program is not included.	CalRecycle disagrees with the commenter's suggestion that subsections 17989.5(a)(1)(B) and 17989.6(e) are impractical. The intent of these subsections is to provide an alternative option for manufacturers of compostable food service packaging to demonstrate compliance with the compostable criteria. A manufacturer has the flexibility to choose whether to demonstrate compliance with the statewide collection and acceptance thresholds in subsection 17989.5(a)(1)(A) or the takeback program requirements in subsection 17989.5(a)(1)(B).	No
17989.5(a)(1)(B)	W23-13	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	The section also references recycling which is out of scope for the section.	CalRecycle disagrees that subsection 17989.5(a)(1)(B) references the term "recycling." This subsection describes the takeback program requirements as one option to demonstrate compliance with the compostable criteria and does not require "recycling."	No
17989.5(a)(1)(B)	W23-14	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Whereas recycled products are sorted, compostable products are disposed of with organic materials which would make it difficult to measure the amount of a product recovered.	<p>The proposed regulations do not specify a methodology or a form of measurement that must be used to demonstrate that a takeback program recovers the required threshold amounts of compostable or recyclable food service packaging items.</p> <p>Whether a compostable food service packaging item contains food or organic materials is irrelevant. At compost facilities, compostable food service packaging items are purposefully mixed with other organic materials to create the feedstock blend that will be turned into useable compost through the compost process.</p> <p>The takeback program must demonstrate that it recovers at least half of the items it distributes (until January 1, 2026, when that amount increases to 75 percent). Additionally, a takeback program must demonstrate recovered packaging is accepted by a compost facility, which is information that can be readily provided.</p>	No

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17989.5(a) (2)	W02-08	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	(2) is unnecessary and duplicative of (3), which already includes requirements to lawfully label a product as compostable. Suggest deleting (2).	CalRecycle disagrees that this language is unnecessary and duplicative. See response to W23-15 regarding the differences between the criteria in subsections 17989.5(a)(2) and (3).	No
17989.5(a) (2)	W02-09	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	We appreciate the distinction of materials that are non-plastic containing that are regularly accepted by composters and recommend this language remain if this section is retained.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.	No
17989.5(a) (2)	W08-02	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	CalRecycle would be taking on the intensive role of third-party certifiers by having CalRecycle staff review and interpret complicated test reports and confidential formulas, making its own determinations rather than relying on existing expert institutions. BPI has several hundred certification projects under review at any one time, following a complex and transparent third-party process with intricate rules, 1 with over 10,000 certified products published in our online database. Our 300+ Member companies in CA and around the world design foodservice ware to meet our certification standards.	CalRecycle disagrees with the commenter's assertion that the department would be taking on the role of a third-party certification entity. The department will review applications to evaluate whether food service packaging items meet all the applicable criteria required by the final regulation for compostable food service packaging items, which will include reviewing test reports demonstrating biodegradation results. This will not require interpretation of confidential formulas.	No
17989.5(a) (2)	W08-03	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	BPI is ready and willing to work with CalRecycle and California composters on a science-based approach to field validation of the ASTM standards to address any concerns with real-world conditions. The ASTM standards are based on a 5-year study looking at the science of composting, which included field-validation. (A summary of the standards development process was submitted to CalRecycle in November.)	See first 15-day comment response W05-02 regarding the 5-year study.  See 45-day comment response W09-06 regarding field testing.	No

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17989.5(a)(2)	W08-04	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Besides BPI's public comments, you can refer to emails exchanged on 11/03/20 with Zack Bradford and Daphne Molin where we explain the intentionally conservative nature of standardized tests, and how stopping a biodegradation test at 60 days will not benefit composters.	<p>CalRecycle appreciates BPI's engagement to clarify their positions on many aspects of the proposed regulation.</p> <p>Regardless of whether standardized tests are conservative, relying on such standardized tests would require data showing that standardized laboratory tests can practically and accurately be translated to use in the field, and CalRecycle was not presented with such data.</p> <p>Regarding the assertion that "stopping a biodegradation test at 60 days will not benefit composters," no revision is necessary because the Third Draft Proposed Regulations does not require a biodegradation test to stop at 60 days. The regulation requires the biodegradation test to be performed in accordance with test methods specified in the ASTM D6400-19 or D6868-19 standard specifications and requires the applicant to submit the test reports resulting from these tests. The department will review these test reports to determine if the item under consideration has met the requirement of 90% biodegradation within 60 days. The Third Draft Proposed Regulations requires no additional testing, does not modify existing ASTM standards, and does not stop testing that would be conducted as part of ASTM certification.</p>	No
17989.5(a)(2)(A)	W23-15	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Section 17989.5(a)(2)(A) is redundant with Section 17989.5(a)(3) that follows.	CalRecycle disagrees with the commenter's statement that subsection 17989.5(a)(2)(A) is redundant with subsection 17989.5(a)(3). Subsection 17989.5(a)(2)(A) establishes the criterion that compostable food service packaging items must meet the requirements of ASTM D6400-19 or D6868-19, as applicable. Subsection 17989.5(a)(3) establishes the requirement that any food service packaging items labeled "compostable" meet existing laws in the California PRC related to labeling.	No
17989.5(a)(2)(A)–(B)	W02-10	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	These sections should be amended to include ISO 18606 which better incorporates paper-based products into the methodology and was developed with paper-based products in mind. ASTM D6868-19 was developed by the ASTM D20 Plastics committee and was not developed with the unique attributes of fiber-based products in mind.	See first 15-day comment response W02-06.	No

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17989.5(a) (2)(B)	W07-09	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	<p>This section has gone back and forth in redefining the ASTM standards. It now requires just biodegradation in 60 days, rather than the previous draft requiring both biodegradation and disintegration in 60 days. This is not an improvement. We have noted many times it is disintegration, not biodegradation that determines the rate of breakdown at a composting facility.</p> <p>Prematurely stopping any ASTM test, or changing the requirements in any way, must be based on scientific evidence and reasoning.</p> <p>Since the October comments, CalRecycle has received the 5-year ISR study from ASTM that details how the ASTM standards were created, and the field validation that was done. This should be sufficient for accepting the definition of compostability in the current California statute.</p>	<p>CalRecycle disagrees with the commenter’s suggestion that disintegration, not biodegradation, is the most appropriate metric to assess the performance of compostable plastic food service packaging. Disintegration without biodegradation may not capture the presence of microplastics in finished compost, as they are not readily visible and much smaller than visual contaminants in compost. Biodegradation ensures that the item is broken down by microbial degradation, preventing the release of fragmented microplastics into the environment via the application of compost. Therefore, biodegradation, not disintegration, is the more suitable criterion for determining whether the food service packaging item will satisfactorily “break down or otherwise become part of usable compost,” as directed by statute.</p> <p>See response to W08-04 regarding the commenter’s assertion that the department will be “stopping any ASTM test,” including reference to the 5-year ISR study.</p> <p>See 45-day comment response W08-07 regarding a suggested definition of “Compostable.”</p>	No

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17989.5(a) (2)(B)	W08-01	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The primary concern is that changing the biodegradation test to 60 days is, in effect, arbitrarily modifying the ASTM compostability standards which were developed by a committee of scientists specializing in organic chemistry, soil science, and material engineering. These tests have been used for over 20 years and are consistent with global norms and standards (e.g. EN 13432, ISO 17088). The ASTM standards already define compostability in California statute. Establishing a new timeframe must be scientific and evidence-based. However, to our knowledge CalRecycle has not received field testing data showing that compostable products meeting the ASTM standards fail to consistently break down in well-managed facilities.	<p>See first 15-day comment response W10-03 regarding modifying the ASTM standards.</p> <p>See 45-day comment response W08-07 regarding a suggested definition of “Compostable.”</p> <p>See response to W07-06 regarding the scientific basis for the compostability criteria. See also 45-day comment response W08-10.</p> <p>Regarding the commenter’s statement that “CalRecycle has not received field testing data showing that compostable products meeting the ASTM standards fail to consistently break down in well-managed facilities,” conversely, no stakeholders provided CalRecycle with evidence that compostable products that meet either the ASTM 6400-19 or ASTM D6868-19 standard specifications will biodegrade in commercial California compost facilities. In fact, there is widespread acknowledgement that many compostable plastic products do not meet the processing timeframe for current practices at California compost facilities. CalRecycle was also unable to obtain data demonstrating that products achieving 90% biodegradation in a lab within 180 days will achieve 90% biodegradation within 60 days at commercial compost facilities in California, hence the proposed regulations include a stricter requirement: a compostable plastic food service packaging item must achieve 90 percent biodegradation within 60 days to match California composting practices.</p> <p>See 45-day comment response W09-06 regarding field testing.</p>	No
17989.5(a) (2)(B)	W08-05	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	Disintegration is the more relevant metric for what happens in a real-world compost facility, measuring whether the item physically breaks down to avoid contamination, rather than biodegradation, an invisible process.	See response to W07-09 regarding CalRecycle’s selection of biodegradation as the preferred criteria for compostability.	No
17989.5(a) (2)(B)	W09-04	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.	<p>This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.</p> <p>See response to W07-09 regarding CalRecycle’s selection of biodegradation as the preferred criteria for compostability.</p> <p>See 45-day comment response W09-06 regarding field testing.</p>	No

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17989.5(a) (3)	W12-31	Clean Seas Lobbying Coalition	Genevieve	Abedon	Why is this limited to only Section 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.”	See first 15-day comment response W09-43.	No
17989.5(a) (2)(B)	W23-16	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Section 17989.5 (a)(2)(B) is not scientifically valid. It is an arbitrary adjustment to an internationally recognized standard without justification.	See response to W07-06 regarding the scientific basis for the compostability criteria.  Regarding the commenter’s statement that the 60-day timeframe is a modification of existing ASTM standards, see first 15-day comment response W10-03.  See first 45-day comment response W08-10 regarding the assertion that the 60-day timeframe is arbitrary.	No
17989.5(a) (2)(B)	W23-17	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Biodegradation is the rate at which microbes convert an article to CO2 in a laboratory environment and cannot be observed at a composting facility; only disintegration can be observed at a composting facility.	The criteria in Section 17989.5 are dependent on laboratory testing, not field testing. See 45-day comment response W09-06 regarding field testing.  See response to W07-09 regarding CalRecycle’s selection of biodegradation as the preferred criteria for compostability.	No
17989.5(a) (2)(B)	W23-18	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	In the case of disintegration, it is not possible to correlate performance in the lab to performance in the field without a robust and scientific survey, making sure the outcome is statistically relevant. A robust correlation was performed when the lab standards were developed.	CalRecycle disagrees with the commenter’s suggestion that “a robust correlation” was performed when the ASTM standards were developed. See first 15-day comment response W05-02 regarding the 5-year study.  See also 45-day comment response W09-06 regarding field testing.  Regarding disintegration, CalRecycle removed the 90% disintegration within 60 days requirement in the Third Draft Proposed Regulation. See response W07-09 regarding CalRecycle’s selection of biodegradation as the preferred criteria for compostability.	No

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<b>§17989.6. Application Requirements and Submittal Process.</b>							
17989.6	W03-09	AMERIPEN	Dan	Felton	The timeline of application submittals and approvals in the current proposed regulations are not equivalent to the additional requirements put on manufacturers. There also needs to be a reasonable timeline established for these businesses to implement new requirements while also maintaining current business operations.	See response to W01-36 regarding timelines for applications.  See first 15-day comment response W12-10 and 45-day comment response W06-08 regarding timelines for departmental review.  Regarding the implementation timeline for foodservice facilities, statute is clear that these facilities must not dispense prepared food using food service packaging that is not on the List of Approved Food Service Packaging Items on and after the date the List is published, barring certain circumstances. Section 17989.7 clarifies the circumstances under which a food service facility may use food service packaging items that are not on the List.	No
17989.6	W03-10	AMERIPEN	Dan	Felton	Switching to different packaging requires testing to validate hygiene and safety and may require development of new operational procedures to support new items. The proposed regulations will jeopardize the ability of foodservice facilities to maintain their business even as they act in good faith to comply with those regulations.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  Food service facilities may choose to purchase food service packaging items that are certified to be hygienic and food-grade safe. However, this attribute is not a contributing factor in a food service packaging item's ability to be reusable, recyclable, or compostable, and is therefore not a requirement of these regulations.	No
17989.6	W03-11	AMERIPEN	Dan	Felton	The proposed regulations do not specify a maximum time for CalRecycle to issue determinations for initial applications and when the department determines that a new application is needed. This 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. We therefore recommend that that final regulations instead consider initial and new manufacturer applications on an annual basis, at a minimum, and that the CalRecycle be required to issue determinations for both types of applications within a reasonable and defined time (i.e., 60 days).	See 45-day comment response W06-08.	No



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17989.6	W03-12	AMERIPEN	Dan	Felton	Material recycling markets are notoriously volatile and often unpredictable. We therefore encourage CalRecycle to integrate flexibility into List determinations so that abrupt changes are not made during periodic down markets. Removing a recyclability determination from a material that is experiencing a short-term market disruption or price drop may jeopardize long-term efforts and investment needed to sustain and strengthen recycling infrastructure and end markets.	See 45-day comment response W06-09.	No
17989.6	W07-12	Biodegradable Products Institute (BPI)	Rhodes	Yepsen	The Application Requirements and Submittal Process is unnecessarily complicated for compostable products. As it is drafted now, CalRecycle would be taking on the intensive role of third-party certifiers by having CalRecycle staff review and interpret complicated test reports and confidential formulas, making its own determinations rather than relying on existing scientific methods and expert institutions. Determination of compostability using the ASTM standards is based on a multitude of considerations. Plus, this section says test reports are only valid for 6 months, which is arbitrary and unreasonable considering some tests in ASTM standards take 6 months, not including preparation and report generation, and cost tens of thousands of dollars each. This sets a financial hurdle for small to mid-sized companies that have already done these tests, and cannot afford to redo them at California's whim.	<p>CalRecycle disagrees with the commenter's statement that the application requirements and submittal process is unnecessarily complicated. Section 17989.6 requires test reports to include information specified in the criteria for reusable, recyclable, or compostable food service packaging, but submission of entire formulas is not required. See response to W07-04 regarding formulations.</p> <p>CalRecycle also disagrees with the suggestion that CalRecycle would be taking on the role of third-party certifiers. See response to W08-02 regarding the department's application review process.</p> <p>Regarding the statement that "test reports are only valid for 6 months," the Third Draft Proposed Regulations specifies that total fluorine tests must be completed no more than six months prior to the application submittal date and does not indicate that test results submitted are no longer valid after six months. Subsection 17989.6(e)(2) clarifies that ASTM tests demonstrating biodegradability must be completed no more than five years prior to the application submittal date.</p>	No
17989.6(c)	W25-10	Reusable Businesses Coalition	Dagny	Tucker	<p>We strongly suggest adding a third requirement to encourage reusable takeback programs when reusable packaging is used for take-out and delivered meals and beverages, similar to the robust requirements for a takeback program added for recyclability and compostability.</p> <p>Suggested language:  17989.6(c)(3) A takeback program shall be satisfactory if it demonstrate that products in the reuse system are used at least 780 cycles in a cleaning and sanitizing process, and if the following requirements are met, as applicable:</p> <p>(i) The information submitted includes the name and physical address for food service facilities dispensing food service</p>	<p>The commenter's suggested revision would not be appropriate or necessary because the takeback criterion it describes would be redundant with the criterion set forth in subsection 17989.3(a)(1) concerning 780 use cycles. Moreover, assuming the "reusability requirement" means that a product must survive 780 use cycles, it is unclear what it would mean for a reuse program to satisfy such a requirement on a periodic basis (such as during a 12-month period or a shorter period extrapolated over an entire year), as described in the proposed revision.</p> <p>See also 45-day comment responses W15-25, regarding encouraging takeback programs for reusable food service packaging items, and W05-02, regarding verification of reuse.</p>	No

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					<p>packaging items for takeout meals and beverages in the takeback program or intended to be included in the takeback program.</p> <p>(ii) For a program that has been operating for at least one year, the information submitted demonstrates that the program met the reusability requirement for at least one 12-month period during the five years immediately preceding the date of the application.</p> <p>(iii) For a program that has not been operating for at least one year, the information submitted includes the date the program began operating and demonstrates that the program's performance to date, extrapolated over an entire year, satisfies the reusability requirement.</p> <p>(iv) For a program that has not yet begun operating, the information submitted includes at least the following details concerning the program: description of the food service packaging items and any other products that the program will recover; program locations and methods of recovering food service packaging items; the anticipated start date of the program; specific mechanisms for enabling and incentivizing customers to participate; plans to conduct educational outreach and marketing activities to raise awareness of the program; names of the entities that will operate or partner with the program, including reusable and/or refillable service providers; and performance information (e.g., recovery rates of food service packaging items), if available, concerning similar takeback programs under similar circumstances. Inclusion of a food service packaging items on the List based in part on this information shall not occur until the manufacturer informs the department that the takeback program has begun operating, and the inclusion shall be conditional, such that the item shall be removed from the List unless the manufacturer supplements its application with information demonstrating that the program's performance, extrapolated over an entire year, satisfies the annual percentage recovery requirement. Such supplemental information shall be provided no later than seven months after the program began operating.</p> <p>(v) For a takeback program that has not been in operation for at least one year or has not begun operations at the time of the application, inclusion of a food service packaging item on the List based in part on their inclusion in the takeback program shall be conditional, such that the item shall be removed from the List unless the manufacturer supplements its application with</p>		

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					information demonstrating that the program satisfied the reusability requirement over a 12-month period. Such supplemental information shall be provided no later than 14 calendar months after the program began operating.		
17989.6(a) (4)	W23-03	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Compostable items should not need to disclose materials or ingredients. Throughout the proposed regulations, CalRecycle exhibits a fundamental misunderstanding of organics processing and compostability. Compostability is determined on a per article basis using performance criteria. It is irrelevant what material or ingredients the article is made of and it is unnecessary for CalRecycle to force companies to disclose proprietary formulation information. ASTM 6400-19, which is incorporated by reference requires that products that are considered industrially recyclable must show there are no adverse impacts on the ability of compost to support plant growth and “must not introduce unacceptable levels of regulated metals or hazardous substances into the environment.” This requirement is also true for ASTM D6868-19. This unnecessary reporting requirement found in subsections 17989(a)(18), 17989.1(a)(3), 17989.1(b), 17989.1(f), and 17989.6(a)(4) should be removed.	<p>CalRecycle disagrees that subsections 17989(a)(18), 17989.1(a)(3), 17989.1(b), and 17989.6(a)(4) should be removed. The materials comprising a food service packaging item can determine whether it is collected and processed at recycling and composting facilities across the state. Submission of entire formulas is not required, only the materials that comprise the food service packaging item and disclosure of certain chemicals pursuant to the criteria in Section 17989.2. The department’s materials list will assist applicants in demonstrating that their food service packaging items meet the applicable recyclable and compostable criteria. Inclusion of the food service packaging items’ materials on the List will provide information to food service facilities when making purchases for their business operations.</p> <p>The department also disagrees that subsection 17989.1(f) should be removed. The requirements in subsection 17989.1(f) provide food service packaging manufacturers with necessary information regarding their items’ List eligibility.</p> <p>Subsection 17989.6(b) allows the applicant to label any information in their application as confidential or proprietary. See also 45-day comment response W18-08.</p>	No
17989.6(a) (6)	W12-32	Clean Seas Lobbying Coalition	Genevieve	Abedon	“A disclosure whether a Proposition 65 warning is required.” should be revised to read, “A disclosure whether any Proposition 65, DTSC candidate chemical, or PFAS are included in the material...” Labeling rules are limited, but the presence of these chemicals have far reaching implications for recyclability and compostability. For this reason, their presence, regardless of labeling requirements is necessary information for the department and will also help drive innovation toward safer materials.	See first 15-day comment response W09-45 and 45-day comment responses W15-40 and W15-16.	No
17989.6(a) (6)	W25-07	Reusable Businesses Coalition	Dagny	Tucker	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, (and add) DTSC candidate chemicals, or PFAS are included in the material.	See first 15-day comment response W09-45 and 45-day comment responses W15-40 and W15-16.	No

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17989.6(a) (8)	W02-11	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	It is unclear why there has been a removal of the “person acting on its behalf” from the text. Recommend leaving in the regulation.	In the Third Draft Proposed Regulations, the definition of “food service packaging manufacturer” incorporates “persons acting on the food service packaging manufacturer’s behalf.” This rendered all other references to persons acting on the manufacturer’s behalf redundant, so they were removed.	No
17989.6(c)	W12-33	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest striking “either of.” Otherwise a company could give a one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered “reusable.”	See 45-day comment response W29-05.	No
17989.6(c)	W12-35	Clean Seas Lobbying Coalition	Genevieve	Abedon	<p>We strongly suggest adding a third requirement after line 597 to encourage reusable takeback programs when reusable packaging is used for take-out and delivered meals and beverages, similar to the robust requirements for a takeback program added for recyclability starting on page 21, line 617 through page 23, line 686 (and compostability further down.)</p> <p>17989.6 (c)(3) A takeback program for reusable packaging for take-out and delivered meals and beverages shall be satisfactory if it demonstrates that products in the reuse system are used at least 780 cycles in a cleaning and sanitizing process, and if the following requirements are met, as applicable</p> <ul style="list-style-type: none"> <li>(i) The information submitted includes the name and physical address for food service facilities dispensing food service packaging items in the takeback program or intended to be included in the takeback program.</li> <li>(ii) For a program that has been operating for at least one year, the information submitted demonstrates that the program met the reusability requirement for at least one 12-month period during the five years immediately preceding the date of the application.</li> <li>(iii) For a program that has not been operating for at least one year, the information submitted includes the date the program began operating and demonstrates that the program’s performance to date, extrapolated over an entire year, satisfies the reusability requirement.</li> <li>(iv) For a program that has not yet begun operating, the information submitted includes at least the following details concerning the program: description of the food service packaging items and any other products that the program will recover; program locations and methods of recovering</li> </ul>	See response to comment W25-10.	No

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					<p>food service packaging items; the anticipated start date of the program; specific mechanisms for enabling and incentivizing customers to participate; plans to conduct educational outreach and marketing activities to raise awareness of the program; names of the entities that will operate or partner with the program, including reusable and/or refillable service providers; and performance information (e.g., recovery rates of food service packaging items), if available, concerning similar takeback programs under similar circumstances. Inclusion of a food service packaging item on the List based in part on this information shall not occur until the manufacturer informs the department that the takeback program has begun operating, and the inclusion shall be conditional, such that the item shall be removed from the List unless the manufacturer supplements its application with information demonstrating that the program's performance, extrapolated over an entire year, satisfies the annual percentage recovery requirement. Such supplemental information shall be provided no later than seven months after the program began operating.</p> <p>(v) For a takeback program that has not been in operation for at least one year or has not begun operations at the time of the application, inclusion of a food service packaging item on the List based in part on their inclusion in the takeback program shall be conditional, such that the item shall be removed from the List unless the manufacturer supplements its application with information demonstrating that the program satisfied the reusability requirement over a 12-month period. Such supplemental information shall be provided no later than 14 calendar months after the program began operating.</p>		
17989.6(c)	W25-08	Reusable Businesses Coalition	Dagny	Tucker	We strongly suggest striking "either of." Otherwise a company could give a one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered "reusable."	See 45-day comment response W29-05.	No
17989.6(c) (1)	W12-34	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest changing "or" to "and." We need both 17989.3 (a)(1) and (2) to be required in order to ensure that the materials used are truly durable and thus truly reusable. Otherwise a manufacturer can opt for just the one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered "reusable."	See 45-day comment response W29-05.	No

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17989.6(c) (1)	W25-09	Reusable Businesses Coalition	Dagny	Tucker	We strongly suggest changing “or” to “and.” We need both 17989.3 (a)(1) and (2) to be required in order to ensure that the materials used are truly durable and thus truly reusable. Otherwise a manufacturer can opt for just the one-year warranty that their single-use product will remain reusable for one year or else they will take it back and replace it, resulting in a highly disposable item that would be considered “reusable.”	See 45-day comment response W29-05.	No
17989.6(d) (1)	W12-36	Clean Seas Lobbying Coalition	Genevieve	Abedon	The 2 inch by 2-inch dimension is too small, even in at least two dimensions, 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)	W12-37	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
17989.6(d) (4)(A)	W01-37	American Chemistry Council (ACC)	Tim	Shestek	With respect to an application for a recyclable food service packaging item, subsection 17989.6(d)(4)(A) now requires that a manufacturer submit information demonstrating that the materials in the food service packaging item “have been available for sale for recyclable, at readily available prices ... during the 12 month period preceding the application.” The newly proposed language in subsection 17989.6(d)(4)(B) similarly requires an extensive amount of information on takeback programs to be compiled and submitted with an application. It is not feasible for manufacturers to collect and submit all of the newly required data within a 30-day timeframe.	See response to W01-36 regarding timelines for applications.  Additionally, for applications that are deemed to be incomplete or to not contain information demonstrating the item’s ability to meet the criteria, food service packaging manufacturers will have 30 days to provide supplemental information.	No

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17989.6(d)(4)(A)	W02-12	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	The requirements in (A) for recycling are far more restrictive than those required in (B) takeback program. This is easily remedied by duplicating the language in (B) to apply for products that are new entrants to the marketplace.	<p>CalRecycle disagrees with the assertion that the requirements in (A) are more restrictive than the requirements in (B) and further disagrees that the requirements in (A) and (B) should be identical. The requirements in (A) assess recyclability of food service packaging in all recycling programs operating throughout the state while the requirements in (B) assess the recyclability of food service packaging that is subject to a takeback program that may only operate in niche markets or limited geographic areas. The requirements in (A) cannot be identical to the requirements in (B) as distinct criteria is needed to assess whether or not food service packaging is recyclable through either recycling programs or takeback programs.</p> <p>The materials list described in subsection 17989.1(b) will include materials that the department determines meet certain recyclability or compostability criteria. If the material comprising a recyclable food service packaging item does not appear on that list, the applicant can choose to submit documentation demonstrating the item satisfies criteria of either subsection 17989.6(d)(4)(A) or 17989.6(d)(4)(B) in their application.</p>	No
17989.6(e)	W23-19	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	Section 17989.6 creates a registration process that is unnecessarily complicated for compostable products and erect unnecessary hurdles for companies. As it is drafted now, CalRecycle would be taking on the intensive role of third-party certifiers by having CalRecycle staff review and interpret complicated test reports and confidential formulas, making its own determinations rather than relying on existing scientific methods and expert institutions. Determination of compostability using the ASTM standards is based on a multitude of considerations.	See response to W08-02 regarding the department's application review process.	No
17989.6(e)	W23-20	Plastics Industry Association (PLASTICS)	Shannon V.	Crawford	This section says test reports are only valid for 6 months, which is arbitrary and unreasonable considering some tests in ASTM standards take 6 months and costs tens of thousands of dollars each. This sets a financial hurdle for any small or mid-sized companies that have already done these tests and cannot afford to redo them at California's whim. It would be much more efficient for CalRecycle to accept already existing third party certification.	See response to W07-12 regarding the timeline for completion of test reports.	No

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17989.6(e) (1)–(2)	W05-11	Association of Compost Producers (ACP)	Dan	Noble	The new wording in this regulatory version is acceptable to the compost industry. However, whether this program is achievable or not within any given local jurisdiction within the proposed timeframe, will be based not so much on meeting these “Application Requirements,” rather, it will hinge mainly on whether the food service packaging industry can get these materials authorized as a “Certified Organic” soil amendment ingredient. If this does not occur, this will have the effect of driving the food service packaging market away from compostability toward the reuse and recycling markets. This forecasted result is acceptable to compost producers, since it removes all plastic material from the feedstock stream.	This comment does not suggest any specific changes to the revised regulation or raise issues related to the rulemaking process.  See response to W24-03 regarding the National Organic Program.	No
17989.6(e) (1)(A)	W12-38	Clean Seas Lobbying Coalition	Genevieve	Abedon	We suggest replacing “recycling service providers” with “composting service providers.”	CalRecycle disagrees with the suggested revision because the definition of “Recycling program” includes organic waste collection services.	No
17989.6(e) (2)–(3)	W02-13	American Forest & Paper Association (AF&PA)	Elizabeth	Bartheld	These sections should be amended to include ISO 18606 which better incorporates paper-based products into the methodology. ASTM D6868-19 was not developed with the unique attributes of fiber-based products in mind.	See first 15-day comment response to W02-06.	No
17989.6(f)	W03-14	AMERIPEN	Dan	Felton	We are also concerned that the proposed regulations do not allow an adequate phased pathway for existing foodservice packaging that may currently be considered disposable to achieve a “recyclable” or “compostable” determination, as mandated in SB 1335. The packaging is either listed or not. We believe the regulations should include a process whereby CalRecycle can direct packaging manufacturers on how to achieve a satisfactory determination within a designated amount of time, rather than simply removing the non-compliant packaging from the List and requiring the manufacturer to submit a new application for that packaging at such time it is no longer considered disposable. Having a phased in pathway will support material recovery investments and will be the most successful way to reach the targets outlined in the proposed regulations.	See first 15-day comment response W04-10 and 45-day comment response W06-12.	No
17989.6(g)	W12-39	Clean Seas Lobbying Coalition	Genevieve	Abedon	We strongly suggest striking “other than an aesthetic change” 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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<b>§17989.7. Noncompliant Food Service Packaging Inventories.</b>							
17989.7	W03-13	AMERIPEN	Dan	Felton	Section 17989.7 of the proposed regulations specifies conditions under which inventories of foodservice packaging not on the List may be used. These conditions are not realistic and do not adequately contemplate the actual amount of time that may be needed to replace such packaging. In the event packaging design or formats changes are required to replace non-compliant foodservice packaging, time will be needed for packaging manufacturers to design, test and qualify new items and suppliers and then work with foodservice operators to address operational impacts and ramp up supplies. CalRecycle should recognize these facts and include longer compliance timeframes within the regulations to eliminate and replace non-compliant packaging.	Section 17989.7 does not specify timeframes for food service facilities to replace their food service packaging items, but rather clarifies the acceptable circumstances under which a food service facility may use food service packaging items that are not on the List of Approved Food Service Packaging.	No

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<b>§17989.8. Records.</b>							
					No comments were submitted on this section.		