

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Resources Recycling and  
Recovery**

**Regulatory Action:**

**Title 14, California Code of Regulations**

**Amend section: 17989**

**NOTICE OF APPROVAL OF CHANGES  
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,  
Section 100**

**OAL Matter Number: 2022-0304-02**

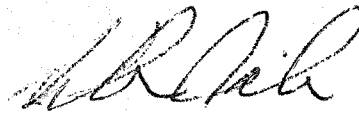
**OAL Matter Type: Nonsubstantive (N)**

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This change without regulatory effect by the Department of Resources, Recycling and Recovery updates the definition of "food service packaging" to align with statutory changes made by Assembly Bill 1570 (Stats. 2021, ch. 755, sec. 5).

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

**Date: April 18, 2022**



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**Nicole C. Carrillo  
Attorney**

**For: Kenneth J. Pogue  
Director**

**Original: Rachel Machi Wagoner, Director  
Copy: Daniel Zlatnik**

## **TITLE 14: NATURAL RESOURCES**

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

#### **CHAPTER 4 RESOURCE CONSERVATION PROGRAMS**

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

##### **§17989. Definitions.**

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

- (1) "Accepted" means knowingly incorporated by a compost facility into the compost facility's routine daily operations for processing at the end of a food service packaging item's intended purpose. A food service packaging item is not considered "accepted" under this Article if the compost facility that received the item does not compost the item or identifies the item as a physical contaminant. "Physical contaminant" has the same meaning as defined in the California Code of Regulations Title 14, Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(32).
- (2) "Aesthetic change" means a change in the coloration and/or treatment of a food service packaging item using inks, dyes, pigments, decals, or other methods that does not change the material composition or construction of an approved food service packaging item in a manner that impacts its ability to meet all applicable requirements of Sections 17989.2 through 17989.5.
- (3) "Collected" means picked up and delivered to a recycling or composting facility after being used to serve or transport food or beverages.
- (4) "Composting" has the same meaning as defined in Public Resources Code Section 40116.1.
- (5) "Compost facility" has the same meaning as "compostable materials handling operation" or "facility" as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(12).
- (6) "Cooking or food preparation technique" includes, but is not limited to, the following:
  - (A) Cooking techniques, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.

- (B) Beverage preparation techniques, such as blending, brewing, steeping, juicing, diluting, or pouring.
  - (C) Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, or icing.
- (7) “Department” means the Department of Resources Recycling and Recovery (CalRecycle).
- (8) “Food service facility” means an operation or business that stores, prepares, packages, serves, vends, or otherwise provides prepared food and is also one of the following:
- (A) An operation or business that is located in a state-owned facility, including but not limited to: cafeterias, restaurants, catering companies, shops, markets, delis, Department of Corrections and Rehabilitation commissaries, University of California and California State University food courts and dormitories, fairs, expositions, and legislative offices.
  - (B) An operation or business operating on or acting as a concessionaire on State property.
  - (C) An operation or business under contract to provide food service to a State agency.
- (9) “Food service packaging item” means a specific combination of the food service packaging type (e.g., plate, cup, bowl) and the materials the type of food service packaging is made of (e.g., polyethylene terephthalate (PET), polylactic acid (PLA)-lined paperboard).
- (10) “Food service packaging manufacturer” or “manufacturer” means a person that makes the food service packaging items, and includes persons acting on the food service packaging manufacturer’s behalf.
- (11)(A) “Food service packaging type” or “type of food service packaging” means a product that is used for serving or transporting prepared, ready-to-consume food or beverages and meets one or more of the following criteria:

- (i) It comes into direct contact with the prepared food or beverage;
  - (ii) It keeps the prepared food or beverage contained while transporting it on or off a food service facility's premises; or
  - (iii) It aids in the consumption of the prepared food or beverage
- (B) "Food service packaging type" does not include beverage containers (as defined in Public Resources Code Section 42370.1(a)), ~~or single-use disposable items, such as~~ straws, cup lids, plastic bags, ~~and~~ utensils, or single-use disposable packaging for unprepared foods, or other types of items excluded pursuant to Public Resources Code section 42370.1(c)(2).
- (12) "Group of food service packaging items" or "group of items" means food service packaging items made by one or more food service packaging manufacturers and submitted under one application to meet the requirements of this Article.
- (13) "Hauler" has the same meaning as defined in Division 7, Chapter 9, Article 9.25, Section 18815.2, subsection (a)(32).
- (14) "Jurisdiction" has the same meaning as defined in Public Resources Code Section 40145.
- (15) "Large volume transfer/processing facility" has the same meaning as defined in Division 7, Chapter 3, Article 6.0, Section 17402, subsection (a)(8).
- (16) "List of Approved Food Service Packaging" or "List" means the list, published by the department pursuant to Public Resources Code Section 42370.3, of the following:
- (A) Food service packaging items approved by the department for use at food service facilities; and
  - (B) Materials that the department determines satisfy the criteria stated in subsection 17989.4(a)(3)(A) or 17989.5(a)(1)(A).
- (17) "Mass produced" means that a food or beverage product is manufactured and/or packaged by a third party not affiliated with a food service facility and is intended to be sold or distributed to the general marketplace, including,

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

- (18)“Material” means the particular ingredient or combination of ingredients, such as a feedstock, coating, layer, or other tangible constituent matter, that partially or wholly constitute a food service packaging item. A material shall be described by its identifying characteristics, such as its form (e.g., thermoform) and combination or integration of ingredients (e.g., PLA-lined paperboard), when consideration of those characteristics is necessary to determine compliance with this Article. A plastic material shall be identified by the name of the plastic resin (#1-6 in accordance with Public Resources Code Sections 18013 through 18015), the name of the plastic polymer (e.g., polylactic acid), or both (e.g., PET #1).
- (19)“Mixed material” has the same meaning as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(26).
- (20)“Organic waste” has the same meaning as defined in Public Resources Code Section 42649.8, subsection (d).
- (21)“Person” has the same meaning as defined in Public Resources Code Section 40170.
- (22)“Per- and polyfluoroalkyl substance (PFAS)” means a chemical that contains at least one fully fluorinated carbon atom.
- (23)“Plastic bag” means an open-top, carryout-style plastic bag that has handles and is designed not to be closeable or sealable.
- (24)“Prepared food” means a food or beverage prepared for consumption on or off a food service facility’s premises, using any cooking or food preparation technique. “Prepared food” does not include prepackaged, sealed food that is mass produced by a third party off the premises of the food service facility.
- (25)“Proposition 65 list” means the list published in the California Code of Regulations Title 27, Division 4, Chapter 1, Article 9, Section 27001 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,

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

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

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

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

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

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

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

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

- (3) ASTM D6868-19, "Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities," ASTM International, October 2019.
- (4) ISO 14855-1:2012, "Determination of the ultimate aerobic biodegradability of plastic materials under controlled composting conditions – Method by analysis of evolved carbon dioxide – Part 1: General method," International Organization for Standardization, December 2012.
- (5) ISO 14855-2:2018, "Determination of the ultimate aerobic biodegradability of plastic materials under controlled composting conditions – Method by analysis of evolved carbon dioxide – Part 2: Gravimetric measurement of carbon dioxide evolved in a laboratory-scale test," International Organization for Standardization, July 2018.
- (6) ISO/IEC 17025:2017, "General requirements for the competence of testing and calibration laboratories," International Organization for Standardization/ International Electrotechnical Commission, November 2017.

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