§ 17989.1. Definitions.

(a) The definitions of this Article supplement and are governed by the definitions set forth in Chapter 6 (commencing with Section 42370), Part 3, Division 30 of the Public Resources Code (PRC).

(1) “Accept” means a compost facility knowingly incorporates a food service packaging item into its routine daily operations for processing at the end of the item’s intended purpose. A food service packaging item is not considered “accepted” under this Article if the compost facility that received the item does not compost the item or identifies the item as a physical contaminant. “Physical contaminant” has the same meaning as defined in the California Code of Regulations Title 14, Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(32).

(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 affect 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 17989.3-17989.6.

(3) “Collect” means that a food service packaging item is picked up and delivered to a recycling or composting facility after being used to serve or transport food or beverages.

(4) “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) or “large volume in-vessel digestion operation,” “medium volume in-vessel digestion facility,” or “limited volume in-vessel digestion
operation” as defined in Division 7, Chapter 3.2, Article 1, Section 17896.2, subsection (a).

(5) “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.

(6) “Department” means the Department of Resources Recycling and Recovery (CalRecycle).

(7) “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 food courts and dormitories, 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.

(8) “Food service packaging item” means a specific combination of the food service packaging type (e.g., plate, cup, bowl) and the material(s) the type of food service packaging is made of (e.g., polyethylene terephthalate (PET), polylactic acid (PLA)-lined paperboard).

(9) “Food service packaging manufacturer” means a person that makes the food service packaging item(s).
“Food service packaging type” or “type of food service packaging” means a product used for serving or transporting prepared, ready-to-consume food or beverages that meets one or more of the following conditions:

(A) Comes into direct contact with the prepared food or beverage;
(B) Keeps the prepared food or beverage contained while transporting it on or off a food service facility’s premises; or
(C) Aids in the consumption of the prepared food or beverage.

“Food service packaging type” does not include beverage containers or single-use disposable items, such as straws, cup lids, plastic bags, and utensils, or single-use disposable packaging for unprepared foods.

“Group of food service packaging items” or “group of items” means food service packaging items made by one or more food service packaging manufacturer(s) submitted under one application to meet the requirements of this Article.

“Hauler” has the same meaning as defined in Division 7, Chapter 9, Article 9.25, Section 18815.2, subsection (a)(32).

“Jurisdiction” has the same meaning as defined in PRC Section 40145.

“List of Approved Food Service Packaging” or “List” means the published list of the food service packaging items approved by the department for use at food service facilities.

“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.

“Material” means the type of feedstock used to make a food service packaging item including, but not limited to, glass, ceramic, metal, fiber (i.e., derived from cellulose), or plastic. Material is inclusive of any coatings or other ingredients used to make a food service packaging item. A plastic material may be identified by either the name of the plastic resin (#1-6 in accordance with PRC Sections 18013-18015) or by the name of the plastic polymer (e.g., polylactic acid).
(17) “On-site” means the location of the food service facility where the food is served and does not include centralized facilities that store food service packaging items for distribution to multiple food service facilities.

(18) “Person” has the same meaning as defined in PRC Section 40170.

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

(20) “Plastic bag” means an open-top carryout style plastic bag with handles that cannot be closed or sealed, by design.

(21) “Proposition 65 list” means the list of chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5-25249.14.

(22) “Recycling” has the same meaning as defined in PRC Section 40180.

(23) “Recycling facility” means an entity that meets the definition of “recycling center” in Division 7, Chapter 3, Article 6.0, Section 17402.5, subsection (d).

(24) “Recycling program” means a diversion program, as defined in PRC Section 40127, that is established by a California jurisdiction for the purpose of providing recycling or organics collection services to residents or businesses. A recycling program must include services provided by a hauler that is authorized under a contract, an agreement, a permit, or other authorization with a jurisdiction to regularly collect materials, as defined in subsection 17989.1(a)(16), within the jurisdiction for recycling. “Recycling program” does not include a takeback program, as defined in subsection 17989.1(a)(27).

(25) “Safe and timely manner” means a food service packaging item achieves 90 percent biodegradation within 60 days in the active compost process, as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(1), and is verified by a third-party certification entity to meet one of the following standards, as applicable:

(A) ASTM D6400 – 19: Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities, or
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.

(26) “Sort” means to manually and/or mechanically separate food service packaging items and similar constituent materials into streams for aggregation.

(27) “Takeback program” means a program that collects food service packaging items for reuse or recycling. A takeback program shall include convenient options for customers to return the food service packaging items subject to the takeback program. A takeback program may require a customer to pay a deposit or may include incentives offered by a food service packaging manufacturer or food service facility to ensure the food service packaging items are collected for reuse or recycling.

(28) “Third-party certification entity” means an independent laboratory that is ISO/IEC 17025 accredited by an International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA) signatory, and performs applicable testing methods to certify a food service packaging item. “ISO/IEC 17025” means the International Organization for Standardization/International Electrotechnical Commission general requirements for the competence of testing and calibration laboratories.

(29) “Transfer/processor” has the same meaning as in Division 7, Chapter 9, Article 9.25, Section 18815.2, subsection (a)(62).


§17989.2. List of Approved Food Service Packaging.
(a) The List of Approved Types of Food Service Packaging Items (List) published on the department’s website shall include, at a minimum, the following information for each food service packaging item:
(1) An indication that the food service packaging item is determined by the department to be reusable, recyclable, or compostable, and meets all applicable requirements of Sections 17989.3-17989.6.

(2) A description of the type of food service packaging (e.g., plate, cup, bowl, tray).

(3) The material(s) used to manufacture the food service packaging item (e.g., polyethylene terephthalate (PET), polylactic acid (PLA)-lined fiberboard).

(4) The applicable sizes, in ounces or diameter, of the food service packaging item.

(5) The name of the food service packaging manufacturer.

(6) As applicable, the names of chemicals contained in the food service packaging product, and their Chemical Abstract Service Registry Numbers (CASRN), that are included on the Proposition 65 list.

(b) The department shall establish the initial List required by subsection 42370.3(a) of the PRC, as follows:

(1) A food service packaging manufacturer, or person acting on its behalf, who wishes to have items included on the List, shall submit an application to the department pursuant to Section 17989.7 within 30 days of the date these regulations become effective.

(2) The department shall evaluate each application in the order it is received to determine if a food service packaging item meets the applicable criteria of this Article and will be added to the List.

(c) Following publication of the initial List, the department shall evaluate applications and update the List with additional food service packaging items on an ongoing basis.

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

(e) A food service packaging manufacturer, or person acting on its behalf, shall submit a new application to the department for evaluation within 30 days when non-aesthetic changes are made to an approved food service packaging item. The department shall notify the manufacturer and remove the food service packaging item from the List if the item no longer meets the applicable criteria.
(f) If the department determines that an approved food service packaging item does not meet the requirements of this Article, the department shall notify the manufacturer and remove the food service packaging item from the List.

(g) A food service packaging manufacturer, or person acting on its behalf, shall submit a new application to the department within 180 days of being notified by the department that it is evaluating the List to determine whether each of the approved food service packaging items is reusable, recyclable, or compostable. If a new application is not received within 180 days the food service packaging item may be removed from the List.


§17989.3. Public Health and Litter Impacts Criteria.

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

(1) A food service packaging item that is subject to the Toxics in Packaging Prevention Act (Health and Safety Code Sections 25214.11-25217.26) shall not contain lead, mercury, cadmium, or hexavalent chromium in an amount that may pose a threat to public health or that exceeds 100 parts per million by weight of the sum of these metals.

(2) A manufacturer, or person acting on its behalf, shall disclose the names of any chemical(s) included on the Proposition 65 list that are used in the manufacturing of a food service packaging item.

(3) A food service packaging item made from plastic or fiber and that is recyclable or compostable shall not contain PFASs, as measured by total fluorine at concentrations above 100 parts per million.

(4) If a food service packaging item is identified by another state agency, or another state or federal government organization to have the potential to contribute to an adverse public health impact (e.g., through publications or reports provided by the Office of Environmental Health Hazard Assessment’s Prop 65 program or the Department of Toxic Substances Control’s Safer
Consumer Products Program) the department may not include or remove the
food service packaging item from the List.

(5) If a food service packaging material is subject to a ban, fee for distribution
(e.g., a fee for a single use disposable cup at point of sale), or other
restrictions, at least in part due to litter or ocean debris concerns, in city or
county ordinances, the department may not include or remove food service
packaging items made from that material from the List.

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

§17989.4. Reusable Food Service Packaging Criteria.
(a) A food service packaging item is “reusable” and shall be included on the List if the
department determines it meets the requirements of Section 17989.3 and it either:

(1) Maintains its shape, structure, and function after 125 cycles in a cleaning
and sanitizing process as defined in California Health and Safety Code
Section 114101 and 114099.7, respectively, as demonstrated by a third-
party certification entity; or
(2) The manufacturer of the food service packaging item provides an express
warranty that the food service packaging item can be reused for its intended
purpose for a minimum of one-year or the manufacturer will take back and
replace the item at the manufacturer’s expense.

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

§17989.5. Recyclable Food Service Packaging Criteria.
(a) A food service packaging item is “recyclable” and shall be included on the List if the
department determines it meets the requirements of Section 17989.3 and all the following criteria:

(1) The food service packaging item shall be a minimum of two (2) inches
measured in two dimensions (i.e., a minimum surface area of four inches).
(2) The food service packaging item shall not contain additives that initiate or accelerate fragmentation.

(3) The food service packaging item is regularly collected and recycled as follows:

(A) The food service packaging material is collected by 75 percent of recycling programs and are sorted and aggregated into a single named material bale by at least 75 percent of transfer/processors, or

(B) The food service packaging item is included in a takeback program that collects at least 75 percent of the food service packaging items for reuse or recycling.

1. Takeback programs that include reuse shall indicate the number of times the food service packaging item may be reused prior to being recycled.

2. Takeback programs shall collect at least 75 percent of the food service packaging items, and all food service items collected by the takeback program shall be transported to a transfer/processor or recycling facility for aggregation into a single named material bale.

(C) For purposes of this Article, mixed paper bales are considered a single named material bale.


§17989.6. Compostable Food Service Packaging Criteria.

(a) A food service packaging item is “compostable” and shall be included on the List if the department determines it meets the requirements of Section 17989.3 and all the following criteria:

(1) The food service packaging material is regularly collected for composting by a minimum of 75 percent of organics recycling programs.

(2) The food service packaging item is accepted by at least 75 percent of compost facilities permitted to accept mixed materials.
(3) The food service packaging item biodegrades in a safe and timely manner.

(4) The food service packaging item complies with the Federal Trade Commission guides for the use of environmental monitoring claims (part 260 commencing with Section 260.1 of subchapter B of Chapter I of Title 16 of the Code of Federal Regulations).


§17989.7. Application Requirements and Submittal Process.

(a) If a food service packaging manufacturer, or person acting on its behalf, would like to add a food service packaging item to the List, an application shall be submitted to the department for each food service packaging item or group of food service packaging items that meet the applicable requirements of Sections 17989.3-17989.6. The application shall contain the following and be submitted electronically:

(1) Contact information

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

(B) Company or organization name

(C) Company or organization mailing and physical address

(D) Phone number

(E) Email address

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

(2) A statement that the application is being submitted to be considered for determining if the food service packaging item or group of items is reusable, recyclable, or compostable.

(3) A description of the food service packaging item or group of items.

(4) As applicable, a description of the material(s) used to manufacture the food service packaging item or group of items.

(5) As applicable, documentation that a food service packaging item or group of items meets the requirements of subsection 17989.3(a)(1).
(6) As applicable, the chemical name(s) and CASRN(s) to demonstrate compliance with subsection 17989.3(a)(2). Disclose whether a Proposition 65 warning is required for exposure(s) to the chemical(s) resulting from the use of the food service packaging item or group of items.

(7) As applicable, the accreditation number(s) of the ISO/IEC 17025 laboratory(ies) used to demonstrate compliance.

(8) A declaration signed under penalty of perjury by the food service packaging manufacturer or person acting on its behalf stating that all information and data submitted as part of the application is true and correct.

(b) A food service packaging manufacturer, or person acting on its behalf, shall label any portions of the application it believes are confidential or proprietary that it wants the department to maintain as confidential pursuant to Section 17989.7(f)(3). Applications submitted to the department shall not contain redactions. Any portion(s) of an application that are not labeled or identified as confidential shall be deemed a public document.

(c) In addition to the items submitted under subdivision (a), an application for a reusable food service packaging item or group of items shall include test results from a third-party certification entity that demonstrate compliance with subsection 17989.4(a)(1) or the manufacturer’s warranty as required by subsection 17989.4(a)(2).

(d) In addition to the items submitted under subdivision (a), an application for a recyclable food service packaging item or group of items shall include information to demonstrate compliance with Section 17989.5. Applications shall include:

1. The measurement of two dimensions, in inches, of the food service packaging item or each item in a group of food service packaging items.

2. A statement that the food service packaging item or group of items do not contain additives to initiate or accelerate fragmentation.

3. As Applicable, test results from a third-party certification entity that demonstrate compliance with subsection 17989.3(a)(3). Tests shall be conducted within six (6) months of the application submittal date.
(4) As applicable, information demonstrating that the food service packaging item is regularly collected for recycling as required by subsection 17989.5(a)(3).

(e) In addition to the items submitted under subdivision (a), an application for a compostable food service packaging item or group of items shall include information to demonstrate compliance with Section 17989.6. Applications shall include:

1. Information demonstrating that the food service packaging material is regularly collected for composting by a minimum of 75 percent of organics recycling programs.

2. Information demonstrating that the food service packaging item or group of items are accepted by at least 75 percent of compost facilities permitted to accept mixed materials, as defined in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(26), and that the material is not screened out for disposal prior to or after active composting.

3. Test results from a third-party certification entity that demonstrates the food service packaging item or group of items biodegrades in a safe and timely manner.

4. As applicable, test results from a third-party certification entity that demonstrate compliance with subsection 17989.3(a)(3). Tests shall be conducted within six (6) months of the application submittal date.

5. A statement that the food service packaging item or group of items complies with the Federal Trade Commission guidelines for the use of environmental monitoring claims (part 260 commencing with Section 260.1 of subchapter B of Chapter I of Title 15 of the Code of Federal Regulations).

(f) The department shall review submitted applications in the order in which they are received and as follows:

1. The department shall review each application to determine if it is complete. For purposes of this review, “complete” means that all documentation required by this section has been submitted.
(A) The department shall notify a food service packaging manufacturer, or person acting on its behalf, if the application is complete.

(B) If the department determines that an application is incomplete, the department shall notify a food service packaging manufacturer, or person acting on its behalf of this determination and shall specify the basis for the determination and the number of days allotted to provide the supporting documentation.

(2) The department shall evaluate each complete application to determine if a food service packaging item or group of items meets the applicable criteria required by this Article.

(A) Upon approval, the department shall add the food service packaging item or group of items to the List and notify the food service packaging manufacturer, or person acting on its behalf.

(B) If the department determines that a food service packaging item or group of items does not meet the applicable requirements to this Article, the food service packaging manufacturer, or person acting on its behalf shall be notified.

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


§17989.8. Noncompliant Food Service Packaging Inventories.

(a) Upon the removal of a food service packaging item or group of food service packaging items from the List pursuant to subsection 17989.2(f), a food service facility may use its remaining food service packaging item inventory under the following conditions:
The food service facility possessed that specific inventory of food service packaging item(s) before the date the List was published or subsequently updated.

The food service facility possessed that specific inventory of food service packaging item(s) before the List maintained pursuant to Section 42370.3 of the PRC was updated to remove the food service packaging item and the food service packaging item was on the List when the food service facility took possession of the food service packaging item.

The food service facility acquired that specific inventory of food service packaging items pursuant to a contract entered into before the date the List was published or subsequently updated.

The food service facility acquired that specific inventory of food service packaging item(s) pursuant to a contract entered into before the List maintained pursuant to Section 42370.3 of the PRC was updated to remove the food service packaging item and the food service packaging item was on the list when the food service facility entered into the contract.

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


§17989.9. Records.
(a) A food service facility shall provide the department with reasonable and timely access to its food service packaging item purchasing records by submitting the following information within 60 days of a written request:

(1) For reusable food service packaging items, pursuant to Section 17989.4:
invoice(s) or purchase order(s), which includes, the date(s) the food service packaging item(s) were purchased, the food service packaging material, the type of food service packaging purchased, the manufacturer of the food
service packaging item(s), and the number of food service packaging items purchased.

(2) For recyclable and compostable food service packaging items, pursuant to Section 17989.5 and 17989.6 respectively: invoice(s) or purchase order(s), which includes, the date(s) the food service packaging item(s) were purchased, the food service packaging material, the type of food service packaging purchased, the manufacturer of the food service packaging item(s), and the number of food service packaging items purchased.