

1 **Proposed Regulations**

2 **Sustainable Packaging for the State of California Act of 2018**

3
4 **TITLE 14: NATURAL RESOURCES**
5 **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**
6 **CHAPTER 4 RESOURCE CONSERVATION PROGRAMS**
7 **ARTICLE 8. SUSTAINABLE PACKAGING FOR THE STATE OF CALIFORNIA**
8

9 **§ 17989.1. Definitions.**

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

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

21 (2) "Aesthetic change" means a change in the coloration and/or treatment of a food
22 service packaging item using inks, dyes, pigments, decals, or other methods that
23 does not affect the material composition, or construction of an approved food
24 service packaging item in a manner that impacts its ability to meet all applicable
25 requirements of Sections 17989.3-17989.6.

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

29 (4) "Compost facility" has the same meaning as "compostable materials handling
30 operation" or "facility" as defined in Division 7, Chapter 3.1, Article 1, Section
31 17852, subsection (a)(12) or "large volume in-vessel digestion operation,"
32 "medium volume in-vessel digestion facility," or "limited volume in-vessel digestion

33 operation” as defined in Division 7, Chapter 3.2, Article 1, Section 17896.2,
34 subsection (a).

35 (5) “Cooking or food preparation technique” includes, but is not limited to, the
36 following:

37 (A) Cooking techniques, such as steaming, microwaving, simmering, boiling,
38 broiling, grilling, frying, or roasting.

39 (B) Beverage preparation techniques, such as blending, brewing, steeping,
40 juicing, diluting, or pouring.

41 (C) Food preparation techniques, such as defrosting, rinsing, washing, diluting,
42 cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing,
43 or icing.

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

46 (7) “Food service facility” means an operation or business that stores, prepares,
47 packages, serves, vends or otherwise provides prepared food and is also one of
48 the following:

49 (A) An operation or business that is located in a state-owned facility, including
50 but not limited to: cafeterias, restaurants, catering companies, shops,
51 markets, delis, Department of Corrections and Rehabilitation commissaries,
52 University of California food courts and dormitories, and Legislative offices.

53 (B) An operation or business operating on or acting as a concessionaire on State
54 property.

55 (C) An operation or business under contract to provide food service to a State
56 agency.

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

61 (9) “Food service packaging manufacturer” means a person that makes the food
62 service packaging item(s).

63 (10)“Food service packaging type” or “type of food service packaging” means a
64 product used for serving or transporting prepared, ready-to-consume food or
65 beverages that meets one or more of the following conditions:

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

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

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

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

78 (13)“Jurisdiction” has the same meaning as defined in PRC Section 40145.

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

82 (15)“Mass produced” means that a food or beverage product is manufactured and/or
83 packaged by a third-party not affiliated with a food service facility and is intended
84 to be sold or distributed to the general marketplace including, but not limited to,
85 food service facilities without the use of any cooking or food preparation
86 techniques.

87 (16)“Material” means the type of feedstock used to make a food service packaging
88 item including, but not limited to, glass, ceramic, metal, fiber (i.e., derived from
89 cellulose), or plastic. Material is inclusive of any coatings or other ingredients used
90 to make a food service packaging item. A plastic material may be identified by
91 either the name of the plastic resin (#1-6 in accordance with PRC Sections 18013-
92 18015) or by the name of the plastic polymer (e.g., polylactic acid).

- 93 (17) "On-site" means the location of the food service facility where the food is served
94 and does not include centralized facilities that store food service packaging items
95 for distribution to multiple food service facilities.
- 96 (18) "Person" has the same meaning as defined in PRC Section 40170.
- 97 (19) "Per- and polyfluoroalkyl substance (PFAS)" means a chemical that contains at
98 least one fully fluorinated carbon atom.
- 99 (20) "Plastic bag" means an open-top carryout style plastic bag with handles that
100 cannot be closed or sealed, by design.
- 101 (21) "Proposition 65 list" means the list of chemicals known to the State of California
102 to cause cancer, birth defects, or other reproductive harm pursuant to the Safe
103 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
104 Sections 25249.5-25249.14.
- 105 (22) "Recycling" has the same meaning as defined in PRC Section 40180.
- 106 (23) "Recycling facility" means an entity that meets the definition of "recycling center"
107 in Division 7, Chapter 3, Article 6.0, Section 17402.5, subsection (d).
- 108 (24) "Recycling program" means a diversion program, as defined in PRC Section
109 40127, that is established by a California jurisdiction for the purpose of providing
110 recycling or organics collection services to residents or businesses. A recycling
111 program must include services provided by a hauler that is authorized under a
112 contract, an agreement, a permit, or other authorization with a jurisdiction to
113 regularly collect materials, as defined in subsection 17989.1(a)(16), within the
114 jurisdiction for recycling. "Recycling program" does not include a takeback
115 program, as defined in subsection 17989.1(a)(27).
- 116 (25) "Safe and timely manner" means a food service packaging item achieves 90
117 percent biodegradation within 60 days in the active compost process, as defined
118 in Division 7, Chapter 3.1, Article 1, Section 17852, subsection (a)(1), and is
119 verified by a third-party certification entity to meet one of the following standards,
120 as applicable:
- 121 (A) ASTM D6400 – 19: Standard Specification for Labeling of Plastics Designed
122 to be Aerobically Composted in Municipal or Industrial Facilities, or

123 (B) ASTM D6868 – 19: Standard Specification for Labeling of End Items that
124 Incorporate Plastics and Polymers as Coatings or Additives with Paper and
125 Other Substrates Designed to be Aerobically Composted in Municipal or
126 Industrial Facilities.

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

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

136 (28) “Third-party certification entity” means an independent laboratory that is ISO/IEC
137 17025 accredited by an International Laboratory Accreditation Cooperation
138 Mutual Recognition Arrangement (ILAC MRA) signatory, and performs applicable
139 testing methods to certify a food service packaging item. “ISO/IEC 17025” means
140 the International Organization for Standardization/International Electrotechnical
141 Commission general requirements for the competence of testing and calibration
142 laboratories.

143 (29) “Transfer/processor” has the same meaning as in Division 7, Chapter 9, Article
144 9.25, Section 18815.2, subsection (a)(62).

145

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

148 **§17989.2. List of Approved Food Service Packaging.**

149 (a) The List of Approved Types of Food Service Packaging Items (List) published on the
150 department’s website shall include, at a minimum, the following information for each
151 food service packaging item:

- 152 (1) An indication that the food service packaging item is determined by the
153 department to be reusable, recyclable, or compostable, and meets all
154 applicable requirements of Sections 17989.3-17989.6.
- 155 (2) A description of the type of food service packaging (e.g., plate, cup, bowl, tray)
- 156 (3) The material(s) used to manufacture the food service packaging item (e.g.,
157 polyethylene terephthalate (PET), polylactic acid (PLA)-lined fiberboard).
- 158 (4) The applicable sizes, in ounces or diameter, of the food service packaging
159 item.
- 160 (5) The name of the food service packaging manufacturer.
- 161 (6) As applicable, the names of chemicals contained in the food service packaging
162 product, and their Chemical Abstract Service Registry Numbers (CASRN), that
163 are included on the Proposition 65 list.
- 164 (b) The department shall establish the initial List required by subsection 42370.3(a) of the
165 PRC, as follows:
- 166 (1) A food service packaging manufacturer, or person acting on its behalf, who
167 wishes to have items included on the List, shall submit an application to the
168 department pursuant to Section 17989.7 within 30 days of the date these
169 regulations become effective.
- 170 (2) The department shall evaluate each application in the order it is received to
171 determine if a food service packaging item meets the applicable criteria of
172 this Article and will be added to the List.
- 173 (c) Following publication of the initial List, the department shall evaluate applications and
174 update the List with additional food service packaging items on an ongoing basis.
- 175 (d) The department shall notify the Department of General Services and the public within
176 30 days of making any changes to the List.
- 177 (e) A food service packaging manufacturer, or person acting on its behalf, shall submit a
178 new application to the department for evaluation within 30 days when non-aesthetic
179 changes are made to an approved food service packaging item. The department
180 shall notify the manufacturer and remove the food service packaging item from the
181 List if the item no longer meets the applicable criteria.

182 (f) If the department determines that an approved food service packaging item does not
183 meet the requirements of this Article, the department shall notify the manufacturer and
184 remove the food service packaging item from the List.

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

191

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

194 **§17989.3. Public Health and Litter Impacts Criteria.**

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

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

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

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

208 (4) If a food service packaging item is identified by another state agency, or
209 another state or federal government organization to have the potential to
210 contribute to an adverse public health impact (e.g., through publications or
211 reports provided by the Office of Environmental Health Hazard Assessment's
212 Prop 65 program or the Department of Toxic Substances Control's Safer

213 Consumer Products Program) the department may not include or remove the
214 food service packaging item from the List.

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

220

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

223 **§17989.4. Reusable Food Service Packaging Criteria.**

224 (a) A food service packaging item is “reusable” and shall be included on the List if the
225 department determines it meets the requirements of Section 17989.3 and it either:

226 (1) Maintains its shape, structure, and function after 125 cycles in a cleaning
227 and sanitizing process as defined in California Health and Safety Code
228 Section 114101 and 114099.7, respectively, as demonstrated by a third-
229 party certification entity; or

230 (2) The manufacturer of the food service packaging item provides an express
231 warranty that the food service packaging item can be reused for its intended
232 purpose for a minimum of one-year or the manufacturer will take back and
233 replace the item at the manufacturer’s expense.

234

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

237 **§17989.5. Recyclable Food Service Packaging Criteria.**

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

241 (1) The food service packaging item shall be a minimum of two (2) inches
242 measured in two dimensions (i.e., a minimum surface area of four inches).

243 (2) The food service packaging item shall not contain additives that initiate or
244 accelerate fragmentation.

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

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

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

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

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

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

263

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

266 **§17989.6. Compostable Food Service Packaging Criteria.**

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

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

272 (2) The food service packaging item is accepted by at least 75 percent of
273 compost facilities permitted to accept mixed materials.

- 274 (3) The food service packaging item biodegrades in a safe and timely manner.
275 (4) The food service packaging item complies with the Federal Trade
276 Commission guides for the use of environmental monitoring claims (part
277 260 commencing with Section 260.1 of subchapter B of Chapter I of Title
278 16 of the Code of Federal Regulations).

279

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

282 **§17989.7. Application Requirements and Submittal Process.**

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

288

(1) Contact information

289

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

290

(B) Company or organization name

291

(C) Company or organization mailing and physical address

292

(D) Phone number

293

(E) Email address

294

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

296

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

299

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

300

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

302

(5) As applicable, documentation that a food service packaging item or group
303 of items meets the requirements of subsection 17989.3(a)(1).

- 304 (6) As applicable, the chemical name(s) and CASRN(s) to demonstrate
305 compliance with subsection 17989.3(a)(2). Disclose whether a Proposition
306 65 warning is required for exposure(s) to the chemical(s) resulting from the
307 use of the food service packaging item or group of items.
- 308 (7) As applicable, the accreditation number(s) of the ISO/IEC 17025
309 laboratory(ies) used to demonstrate compliance.
- 310 (8) A declaration signed under penalty of perjury by the food service packaging
311 manufacturer or person acting on its behalf stating that all information and
312 data submitted as part of the application is true and correct.
- 313 (b) A food service packaging manufacturer, or person acting on its behalf, shall label any
314 portions of the application it believes are confidential or proprietary that it wants the
315 department to maintain as confidential pursuant to Section 17989.7(f)(3). Applications
316 submitted to the department shall not contain redactions. Any portion(s) of an
317 application that are not labeled or identified as confidential shall be deemed a public
318 document.
- 319 (c) In addition to the items submitted under subdivision (a), an application for a reusable
320 food service packaging item or group of items shall include test results from a third-
321 party certification entity that demonstrate compliance with subsection 17989.4(a)(1)
322 or the manufacturer's warranty as required by subsection 17989.4(a)(2).
- 323 (d) In addition to the items submitted under subdivision (a), an application for a
324 recyclable food service packaging item or group of items shall include information to
325 demonstrate compliance with Section 17989.5. Applications shall include:
- 326 (1) The measurement of two dimensions, in inches, of the food service
327 packaging item or each item in a group of food service packaging items.
- 328 (2) A statement that the food service packaging item or group of items do not
329 contain additives to initiate or accelerate fragmentation.
- 330 (3) As Applicable, test results from a third-party certification entity that
331 demonstrate compliance with subsection 17989.3(a)(3). Tests shall be
332 conducted within six (6) months of the application submittal date.

333 (4) As applicable, information demonstrating that the food service packaging
334 item is regularly collected for recycling as required by subsection
335 17989.5(a)(3).

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

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

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

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

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

353 (5) A statement that the food service packaging item or group of items
354 complies with the Federal Trade Commission guidelines for the use of
355 environmental monitoring claims (part 260 commencing with Section
356 260.1 of subchapter B of Chapter I of Title 15 of the Code of Federal
357 Regulations).

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

360 (1) The department shall review each application to determine if it is complete.
361 For purposes of this review, “complete” means that all documentation
362 required by this section has been submitted.

363 (A) The department shall notify a food service packaging manufacturer,
364 or person acting on its behalf, if the application is complete.

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

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

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

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

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

385

386 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
387 Sections 42370.2, 42370.3, 42370.4, and 42370.5, Public Resources Code.

388 **§17989.8. Noncompliant Food Service Packaging Inventories.**

389 (a) Upon the removal of a food service packaging item or group of food service packaging
390 items from the List pursuant to subsection 17989.2(f), a food service facility may use
391 its remaining food service packaging item inventory under the following conditions:

392 (1) The food service facility possessed that specific inventory of food service
393 packaging item(s) before the date the List was published or subsequently
394 updated.

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

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

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

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

412

413 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
414 Sections 42370.2, 42370.3, and 42370.4, Public Resources Code.

415 **§17989.9. Records.**

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

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

423 service packaging item(s), and the number of food service packaging items
424 purchased.

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

431

432 Authority cited: Sections 40401, 40502, and 42370.2, Public Resources Code. Reference:
433 Sections 42370.5 Public Resources Code.

434