



NOTICE OF PROPOSED RULEMAKING

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 Act

Sections: 17989 – 17989.8

PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (department) proposes to add to the California Code of Regulations, Title 14, Division 7, Chapter 4, Article 8 commencing with Section 17989. The proposed regulation is intended to clarify processes and develop criteria to determine the types of food service packaging that are reusable, recyclable, or compostable as required by the Sustainable Packaging for the State of California Act (referred to throughout as the “Act”) [Chapter 610, Statutes of 2018 (Allen, Senate Bill 1335)].

PUBLIC HEARING

A public hearing to receive public comments has been scheduled for April 28, 2020. The hearing will be held at the:

Joe Serna Jr., Cal EPA Building
Byron Sher Auditorium
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at **2:00 PM on April 28, 2020** and will conclude after all testimony is given. The department requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheelchair accessible. If you have any questions, please contact SB1335@calrecycle.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation to the department. **The written comment period for this rulemaking closes on April 28, 2020.** The department will also accept written comments during the public hearing described above. Please submit your written comments to:

Andrew Parrish
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
FAX: (916) 319-7291
E-MAIL: SB1335@calrecycle.ca.gov

AUTHORITY AND REFERENCES

Public Resources Code Sections 40401, 40502, and 42370.2 provide authority for this regulation. The following is a list of references cited in this proposed regulation: Public Resources Code Sections 42370, 42370.1, 42370.2, 42370.3, 42370.4, 42370.5, 42370.6, 42370.7.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Integrated Waste Management Act (Division 30 (commencing with section 40000) of the Public Resources Code) gives the department authority to provide for the protection of public health, safety, and the environment through waste prevention, waste diversion, and safe waste processing and disposal. Public Resources Code sections 40502 requires the department to adopt rules and regulations to implement the California Integrated Waste Management Act. Packaging represents nearly one-fourth of materials landfilled in California and single use food service packaging is a significant component of these discards. Implementation of the Act will assist in achieving the goal of 75 percent recycling, composting, or source reduction of solid waste as required by AB 341 (Chesbro, Chapter 476, Statutes of 2011) due to the increased utilization of food service packaging that is reusable, recyclable, or compostable. In addition, the state will realize a reduction in greenhouse gas emissions as a result of fewer food service packaging items being sent to landfills.

Improperly discarded single use food service packaging contributes to environmental pollution, adversely impacts wildlife, and poses potential health risks to communities across the state. Food service packaging that is littered contaminates the state's waterways and has the potential to release toxic ingredients into the environment,

negatively impacting soil and water quality. The department estimates \$300,000 in annual litter cleanup costs may be saved as a result of reducing the amount of non-recyclable food service packaging used at state food service facilities. Additionally, non-recyclable or non-compostable food service packaging is a contaminant when it is placed in a recycling or composting container, which reduces the effectiveness of those programs. For example, non-recyclable food packaging that is placed in a recycling container may impact the physical properties of recyclable materials collected through the program and harm the overall economic and technical viability of the recycling program.

The Act will further the department's ability to meet its statewide recycling and diversion goals by establishing new food service packaging requirements on state food service facilities that will increase the distribution of food service packaging that is compatible with California's recycling and composting programs. Specifically, the Act requires the department to evaluate food service packaging items based on criteria unique to the state (such as existing infrastructure, material markets, material composition, and potential environmental impacts) to ensure that only reusable, recyclable, or compostable food service packaging is used by state facilities.

Specifically, the proposed regulation will:

1. Clarify definitions
2. Specify the information that will be published on the List of Approved Types of Food Service Packaging Items (List)
3. Establish criteria to evaluate the potential impact of food service packaging on litter, public health, and wildlife
4. Establish criteria for determining how food service packaging will be evaluated in order to be considered reusable
5. Establish criteria for determining how food service packaging will be evaluated in order to be considered recyclable
6. Establish criteria for determining how food service packaging will be evaluated in order to be considered compostable
7. Specify the administrative procedures to submit an application for a food service packaging item, or group of items, to be added to the List
8. Specify the conditions under which remaining inventories of noncompliant food service packaging items, or groups of items, may be used
9. Specify record keeping requirements

The statutory requirements, together with the clarification provided by the proposed regulation, will assist in the effective implementation of the Act by establishing administrative procedures for maintaining the List, submitting applications, and making records available. In addition, the criteria to determine if food service packaging is reusable, recyclable, or compostable will help protect the state's recycling and composting infrastructure as well as public health and the environment.

During informal rulemaking, staff organized numerous stakeholder meetings and held two workshops on April 10, 2019 and June 4, 2019, to solicit feedback on draft concepts and regulatory text. The comments and input received at these events, additional written correspondence, and feedback solicited from multiple state departments and other interested entities further aided the development of the content that was incorporated into the proposed regulation.

CONSISTENCY EVALUATION

After conducting an evaluation of existing state regulations, the department found that these are the only regulations dealing with determining types of food service packaging that are reusable, recyclable, or compostable. The department determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations and that the department is the only agency that can implement this proposed regulation.

PLAIN ENGLISH REQUIREMENTS

Department staff prepared the proposed regulation pursuant to the standard of clarity specified in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed regulation is considered non-technical and is written to be easily understood by those parties that will use them.

FORMS INCORPORATED BY REFERENCE

No documents or forms are incorporated by reference in the proposed regulation.

MANDATED BY FEDERAL LAW OR REGULATIONS

Federal law or regulations do not contain comparable requirements.

OTHER STATUTORY REQUIREMENTS

The result of the external scientific peer review of the scientific basis of the proposed regulation pursuant to Health and Safety Code section 57004 will be posted on the department's website at: <https://www.calrecycle.ca.gov/laws/rulemaking/foodservice/>.

LOCAL MANDATE

The department has determined that the proposed regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACT

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT REQUIRING REIMBURSEMENT

The department has determined that the proposed regulations do not result in costs to any local agency or school district, which must be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 of Division 4 of the Government Code Section 17500 et seq.

COSTS OR SAVINGS TO ANY STATE AGENCY

The total annual direct costs to the state are estimated to total \$2.3 million, which will be incurred by the department, the Department of General Services (DGS), and food service operations at certain state agencies as described below.

The department will incur approximately \$152,000 in costs, pursuant to an approved FY19-20 Budget Change Proposal to employ one permanent Senior Environmental Scientist (Specialist). This position, funded by the Integrated Waste Management Account, is developing the regulation and will oversee implementation of the department's responsibilities pursuant to the Act.

DGS anticipates it will incur costs related to updating and executing food service contracts; however, it did not provide an estimated amount of the fiscal impact. Because DGS will not be able to estimate its total annual costs until the List is published,¹ the department accounted for an annual nominal cost to DGS of about \$38,000.

While many food service facilities will be able to pass their increased costs on to their customers, certain agencies (e.g., prisons, hospitals, military, fire protection, and conservation corps) do not sell their food and therefore will not be able to pass on these additional costs. The department estimates the cost impact to these state agencies will be approximately \$2.1 million. The department anticipates funding to cover these cost impacts may be requested in subsequent budgets by the impacted agencies beginning in Fiscal Year 2021-2022.

NON-DISCRETIONARY COSTS OR SAVINGS TO LOCAL AGENCIES

The department has determined that the proposed regulation does not impose any non-discretionary costs or savings upon any local agencies.

COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE

The department has determined that that the proposed regulation will not impact federal funding to the state.

HOUSING COSTS

The department has determined that the proposed regulation will not have an effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE

The department has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. While manufacturers of food service packaging will be responsible for bearing costs of approximately \$1 million in the first year of implementation, these costs represent an insignificant proportion of the profits made on these products. Food service facilities will bear most of the remainder of the costs of the regulation. These increased costs are not significant and are expected to largely be passed on to customers.

The department has estimated that approximately 20 food service packaging manufacturers will be impacted by these regulations and will bear approximately \$1 million in regulatory costs (\$50,000 per manufacturer) every 5 years. These costs include testing the performance of food service packaging items, data acquisition, and costs to prepare and submit an application. The department estimates that approximately 4,430 food service facilities will be impacted by these regulations and will bear approximately \$5 million in regulatory costs (approximately \$1,100 per food service facility) every year. These costs include increased costs to purchase compliant food service packaging items and administrative costs to review the approved List, maintain records, and ensure compliance.

The department anticipates that the financial impact on a food service facility or a food service packaging manufacturer as a result of the regulation will vary depending on its size and operations. The modest cost increase for food service packaging borne by food service facilities will be passed on to customers (on average \$1.50 per customer per year) and to state agencies that provide (not sell) meals (approximately \$2 million per year for all impacted state agencies). Food service packaging manufacturers are primarily large businesses but may also include some small businesses that manufacture niche products. All businesses will incur costs based on the number of food service packaging items they manufacture and sell to food service facilities. Large businesses that sell more food service packaging items will incur greater costs than small businesses that manufacture fewer food service packaging items. The result is that large manufacturers will pay a greater proportion of the regulatory costs than the smaller manufacturers.

The department estimates that the costs for food service packaging manufacturers to comply with these regulations is approximately \$1 million every 5 years compared to more than \$20 billion in annual revenues.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

CREATION OR ELIMINATION OF JOBS WITHIN CALIFORNIA

One Senior Environmental Scientist (Specialist) job was created at the department beginning in Fiscal Year 2019-2020² to develop and implement the regulations. This position will conduct ongoing evaluations of food service packaging and establish and update the List. The statute requires DGS to update its website and ensure that any relevant contract or agreement is updated to conform to these regulations. DGS did not identify a fiscal impact associated with contracting for reusable, recyclable, or compostable food service packaging that is above and beyond its existing workload.³ The regulations require food service facilities to maintain records that are consistent with existing business practices, and to provide information to the department, upon request. The department anticipates the nominal work associated with these tasks will be performed by existing employees.

The department does not expect the loss or creation of industry jobs as a direct result of the regulation. However, the department used the REMI economic model to estimate the indirect and induced impacts of the regulations to the California economy (Table 1). The results of the REMI economic model show a slight decrease in the forecasted GDP and employment growth due to (1) the increased administrative costs and testing by food service packaging manufacturers, (2) the increased costs of food service packaging being passed on to consumers, and (3) changes in consumer and government spending patterns. As a result of this change in employment growth, we anticipate a reduction in personal income growth. The decrease in employment and personal income growth is not specific to the impacted industries, but rather is spread out over the entire economy as a result of a decrease in state GDP growth.

Table 1: REMI Model Economic Output

Output Year	2022	2023	2024
Total State GDP	\$3,190,000 M	\$3,270,000 M	\$3,350,000 M
Decreased State GDP	\$4.0 M	\$5.0 M	\$5.0 M
Total Net Employment Decrease	60 jobs	68 jobs	65 jobs
Total Personal Income Decrease	\$4 M	\$5 M	\$5 M

CREATION OF NEW BUSINESSES OR ELIMINATION OF EXISTING BUSINESSES WITHIN CALIFORNIA

The department does not anticipate the loss or creation of businesses as a direct result of the regulation. However, the department elected to use the REMI economic model to estimate the indirect and induced impacts of the regulations to the California economy. The results of the REMI economic model show a slight decrease in the forecasted employment growth due to (1) the increased administrative and testing costs required for food service packaging manufacturers, (2) the increased costs of food service packaging being passed on to consumers, and (3) changes in consumer and government spending patterns. The REMI model shows a decrease of 60 jobs in 2022, 68 jobs in 2023, and 65 jobs in 2024. However, the decrease in employment is not specific to the impacted industries (food service facilities and food service packaging manufacturers), but rather is spread out over the entire economy as a result of a decrease in the state Gross Domestic Product growth.

EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE

The department anticipates a small increased demand for compliant food service packaging items within the state. Food service packaging manufacturers that produce a portfolio of items may shift their production from those that are likely to be deemed noncompliant to those that may be deemed compliant.

BENEFITS OF THE REGULATION

The benefit of the proposed regulation is the protection of public health and the environment. The benefits associated with the regulation include the following:

1. Reduction of litter and cleanup costs, improved water quality, and reduced impacts to wildlife: Increasing the use of reusable, recyclable, or compostable food service packaging items in state facilities will result in less litter in the state's waterways and marine environments where it harms wildlife and destroys habitats. Reducing litter cleanup costs will help alleviate the burden on local communities. The department estimates \$300,000 in annual litter cleanup costs may be saved as a result of reducing the amount of non-recyclable food service packaging used at food service facilities.
2. Increased recovery and reuse: Materials that have robust recycling markets are more likely to be collected for recovery. Much of the food service packaging currently sold in the state, despite labeling claims of "recyclable" or "compostable," are not compatible with California's infrastructure and are often contaminants that negatively impact recycling and composting programs. The criteria required by the Act and the proposed regulation will help harmonize recovery and reuse requirements throughout the state and will help the state in achieving its 75 percent source reduction, recycling, and composting goal.
3. Reduction in greenhouse gas emissions: Materials that can be composted and are accepted at compost facilities are more likely to be diverted from landfills. Diverting compostable food service packaging and the associated food waste to compost facilities will help the department achieve its organic waste diversion goals and reduce greenhouse gas emissions associated with landfilling organic materials, as required by SB 1383 (Lara, Chapter 395, Statutes of 2016).
4. Reducing toxic chemicals in food service packaging items: Certain chemicals, such as per- and polyfluoroalkyl substances can be harmful to humans and wildlife. The regulations will reduce the amount of these chemicals contained in food service packaging. The magnitude of the reduction in toxic chemicals is unknown, but the reduction will have positive environmental and public health benefits.

COST IMPACT ON REPRESENTATIVE PERSON OR BUSINESS

The regulations will have measurable impacts on two industries: food service facilities and food service packaging manufacturers. Food service facilities will incur costs to comply with this proposed regulation because compliant food service packaging items are often slightly more expensive than the noncompliant items and due to minor recordkeeping requirements imposed by the Act. Food service facilities that sell meals may pass these minor increased costs on to their customers. Individuals who are given (not sold) meals, such as at prisons, hospitals, and military facilities, will not experience a cost difference because they do not purchase these meals. Food service packaging

manufacturers that seek to be included on the List will incur costs to prepare and submit documentation to the department, including product test results and other required information to demonstrate compliance with the criteria established by the regulation.

BUSINESS REPORT

The proposed regulation does not require businesses to submit routine reports; however, the proposed regulation does require a food service packaging manufacturer to submit documentation to prove that a type of food service packaging meets the criteria for reusable, recyclable, or compostable. The documentation must be included in an application that is submitted for a food service packaging item, or group of items, to the department for evaluation. Food service packaging items that meet the applicable criteria will be added to the List of Approved Food Service Packaging. The documentation required by food service packaging manufacturers is necessary for the health, safety, and welfare of the people of the state and it is necessary that the proposed regulation apply to businesses that manufacture food service packaging.

EFFECT ON SMALL BUSINESS

The department estimates that 97%⁴ of the 4,450 food service facilities are small businesses with fewer than 100 employees.⁵ The remaining 3% of impacted food service facilities are institutional food service operations at prisons, hospitals, universities, and military facilities with more than 100 employees. The California Department of Rehabilitation Business Enterprise Program constitutes approximately 50 of the impacted food service facilities. The federal and state statutes governing the Department of Rehabilitation Business Enterprise Program provide a "priority" for blind vendors to operate food service facilities in federal and state government buildings.

The department estimates fewer than 20 food service packaging manufacturers will be impacted by the regulation. This estimate is based on the number of food service packaging manufacturers identified in data provided by the DGS^{6,7} and Sysco. The department staff conducted research and determined that approximately 25% of the impacted food service packaging manufacturers are small businesses with fewer than 100 employees. Business employment data was obtained from information published in corporate reports and on the business's website. Third-party sites such as zoominfo.com and owler.com were used when information was not available directly from the business.⁸

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less

burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Andrew Parrish
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
PHONE: (916) 341-6458
FAX: (916) 319-7291
E-MAIL: Andrew.Parrish@calrecycle.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed to:

Daphne Molin
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
PHONE: (916) 341-6221
FAX: (916) 319-7291
E-MAIL: Daphne.Molin@calrecycle.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The department will have the entire rulemaking file, and all information that provides the basis for the proposed regulation, available for inspection and copying throughout the rulemaking process. For more timely access to the proposed text of the regulation, and in the interest of waste prevention, interested parties are encouraged to access the department's Internet webpage at:

<https://www.calrecycle.ca.gov/laws/rulemaking/foodservice>.

Copies of the rulemaking file may also be obtained by contacting Andrew Parrish or Daphne Molin using the contact information above, or by submitting a request to: SB1335@calrecycle.ca.gov. As of the date this notice is published in the Notice

Register, the rulemaking file consists of this notice, the proposed text of the regulation, the economic and fiscal impact statement, the documents relied upon for the proposed action, and the initial statement of reasons (ISOR).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The department may adopt the proposed regulation substantially as described in this notice. If the department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available to the public for at least 15 days before the department adopts the regulation as revised. Requests for the modified text should be made to the contact person named above. The department will transmit any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; and all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. The department will accept written comments on the modified regulation for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

The Final Statement of Reasons will be made available at the Internet webpage listed above or may be attained by contacting the individuals named above.

¹ California Department of Finance. 2018. Bill Analysis, SB 1335 (Allen).

² California Department of Resources Recycling and Recovery. 2019. Budget Change Proposal

³ California Department of Finance. 2018. Bill Analysis, SB 1335 (Allen).

⁴ Hansen, Katie. 2019. Senior Legislative Director, California Restaurant Association. September 24.

⁵ Subsection (1)(A) of Subdivision (d) of Section 14837 of the Government Code.

⁶ Department of General Services. 2017. Contract Pricing.

⁷ Department of General Services. 2018. Pricing Worksheet.

⁸ California Department of Resources Recycling and Recovery. 2019. "Packaging manufacturer research."