State of California
Office of Administrative Law

In re:
Department of Resources Recycling and Recovery

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections: **17988.1, 17988.2, 17988.3, 17988.4, 17988.5, 17988.6, 17988.7**
Amend sections:
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2019-0606-01

OAL Matter Type: Regular (S)

The Department of Resources Recycling and Recovery proposed this action to adopt seven regulations under a new article that establish an administrative certification fee and procedures for certifying reusable grocery bags by reusable grocery bag producers manufacturing, importing, distributing, or selling reusable grocery bags in California.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/17/2019.

Date: July 17, 2019

Richard L. Smith
Richard L. Smith
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Scott Smithline, Director
Copy: Kate Nitta

REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z- 2018-0601-01	2019-0606-01S	

For use by Office of Administrative Law (OAL) only

RECEIVED DATE. PUBLICATION DATE

JUN 01 '18 JUN 15 '18

Office of Administrative Law

NOTICE

2019 JUN -6 A 9:54

OFFICE OF ADMINISTRATIVE LAW

REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State of the State of California

JUL 17 2019

1:39 P.M.

AGENCY WITH RULEMAKING AUTHORITY: Department of Resources Recycling and Recovery

AGENCY FILE NUMBER (If any):

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Reusable Grocery Bags	14	17988	June 15, 2018

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
[X] Notice re Proposed Regulatory Action [ ] Other	Kathleen Nitta	(916)341-6067	(916)319-7781

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	[ ] Approved as Submitted [ ] Approved as Modified [ ] Disapproved/ Withdrawn	2018, 24-Z	6/15/2018

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): ADMINISTRATIVE CERTIFICATION FOR REUSABLE GROCERY BAGS

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S):

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: 17988.1, 17988.2, 17988.3, 17988.4, 17988.5, 17988.6, 17988.7

AMEND:

TITLE(S): 14

REPEAL:

3. TYPE OF FILING

- [X] Regular Rulemaking (Gov. Code §11346)
- [ ] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- [ ] Emergency (Gov. Code, §11346.1(b))
- [ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- [ ] Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- [ ] Emergency Readopt (Gov. Code, §11346.1(h))
- [ ] File & Print
- [ ] Other (Specify)
- [ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- [ ] Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1): 1/11/19 - 1/28/19 and 2/28/19 - 3/15/19 per agency request

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- [ ] Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- [X] Effective on filing with Secretary of State
- [ ] §100 Changes Without Regulatory Effect
- [ ] Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- [X] Department of Finance (Form STD. 399) (SAM §6660)
- [ ] Fair Political Practices Commission
- [ ] State Fire Marshal
- [ ] Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
KATE NITTA	(916) 341-6067	(916) 319-7508	KATHLEEN.NITTA@CALRECYCLE.CA.GOV

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Elliot W. Block

DATE: 6/5/19

TYPED NAME AND TITLE OF SIGNATORY: Elliot Block, Chief Counsel

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 17 2019

Office of Administrative Law

Proposed Regulations

Administrative Certification for Reusable Grocery Bags

TITLE 14: NATURAL RESOURCES
DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CHAPTER 4 RESOURCE CONSERVATION PROGRAMS
ARTICLE 7. REUSABLE GROCERY BAGS

§ 17988.1. Scope and Purpose.

This Article establishes an administrative certification fee schedule and clarifies administrative procedures related to payments and submittal and resubmittal of proofs of certification to the department as set forth in sections 42281.5, 42282, and 42282.1 of the Public Resources Code. These regulations are designed to facilitate the process by which reusable grocery bag producers provide proof of certification to the department and ensure that the required administrative certification fee sufficiently covers the department's reasonable costs to implement its responsibilities under the law pursuant to Chapter 5.3 (commencing with section 42280), Part 3, Division 30 of the Public Resources Code.

Authority cited: Sections 40401 and 40502, Public Resources Code. Reference: Sections 42281.5, 42282, and 42282.1, Public Resources Code.

§ 17988.2. Definitions.

(a) The definitions set forth in this Section and in Chapter 5.3 (commencing with section 42280), Part 3, Division 30 of the Public Resources Code, shall govern the construction of this Article.

(b) "Aesthetic change" means a change in decoration that does not affect the material composition, size, or construction of a certified reusable grocery bag, pursuant to sections 42281 and 42281.5 of the Public Resources Code, and does not constitute a change that creates a new type of reusable grocery bag. An aesthetic change includes, but is not limited to, a decoration that uses the same inks, dyes, or pigments in any proportion, or any combination or selection from a suite of inks, dyes, or pigments in any proportion for the type of reusable grocery bag that was previously submitted in a proof of certification.

32 (c) "Appropriate washing equipment" means the washing equipment employed to
33 clean postconsumer recycled material by removing physical and/or chemical
34 contaminants so it is suitable for use in manufacturing a reusable grocery bag.
35 Appropriate washing equipment includes dry and wet washing technologies.
36 (d) "Certified Reusable Grocery Bags and Producers List" means the list of reusable
37 grocery bag producers from which the department has received the payment required
38 pursuant to this Article and section 42282.1 of the Public Resources Code, and a proof
39 of certification, as required pursuant to this Article and sections 42281, 42281.5, and
40 42282 of the Public Resources Code, for each type of reusable grocery bag that the
41 producer offers for sale or distributes in the state of California.
42 (e) "Decoration" means the coloration and/or treatments applied to a reusable grocery
43 bag using inks, dyes, pigments, decals, or other methods.
44 (f) "Fabric Weight" means the weight of the fabric used in the construction of a
45 reusable grocery bag reported in units of grams per square meter. Fabric weight may be
46 measured based on a single sample or based on an average of the weights of one sample
47 taken from each of the following locations: the handles, reusable grocery bag opening,
48 and body of the reusable grocery bag. Samples may include more than one layer of fabric,
49 based on the construction of the reusable grocery bag.
50 (g) "ISO/IEC 17025" means the International Organization for
51 Standardization/International Electrotechnical Commission general requirements for the
52 competence of testing and calibration laboratories.
53 (h) "Point of sale" means the place where items are purchased in a store, such as at
54 a checkout counter. "Point of sale" includes any location where a store fulfils an order to
55 its customers as part of an online transaction, a phone order, or by similar means.
56 (i) "Proof of certification" means a document (or multiple documents) submitted by a
57 reusable grocery bag producer under penalty of perjury to the department via the
58 Reusable Grocery Bag Reporting System. A proof of certification shall demonstrate that
59 a reusable grocery bag sold or distributed to a store in California, as defined by section
60 42280(g) of the Public Resources Code, is compliant with the provisions of this Article.
61 (j) "Reusable grocery bag" has the same meaning as in section 42280 of the Public
62 Resources Code, and includes, but is not limited to, a reusable grocery bag made with

63 plastic film, compostable plastic film, or with natural or synthetic fiber, including, but not
64 limited to, woven or non-woven nylon, polypropylene, polyethylene-terephthalate, or
65 Tyvek.
66 (k) "Reusable Grocery Bag Reporting System" means the department's online
67 database established to receive proofs of certification from reusable grocery bag
68 producers for reusable grocery bags.
69 (l) "Third-party certification entity" means an independent laboratory that is ISO/IEC
70 17025 accredited, and performs applicable testing and certifies that a reusable grocery
71 bag meets the requirements of section 42281 and 42281.5 of the Public Resources Code.
72 (m) "Type of reusable grocery bag" means a reusable grocery bag manufactured,
73 imported, sold, or distributed by a certified reusable grocery bag producer that has a
74 different material composition, decoration (that is not an aesthetic change), size, or
75 construction than another reusable grocery bag manufactured, imported, sold, or
76 distributed by the same certified reusable grocery bag producer.

77 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
78 42280, 42281, 42281.5, and 42282, Public Resources Code.

79 **§ 17988.3. Submittal and Resubmittal of a Proof of Certification.**
80 (a) A reusable grocery bag producer shall submit a proof of certification to the
81 Reusable Grocery Bag Reporting System for each type of reusable grocery bag that it
82 manufactures, imports, sells, or distributes and that is provided to a store in the state for
83 sale or distribution at the point of sale. The proof of certification shall have been completed
84 by a third-party certification entity within three months prior to the date it is submitted to
85 the department and it shall include an accreditation number confirming the third-party
86 certification entity is an accredited ISO/IEC 17025 laboratory.
87 (b) A proof of certification, completed by a third-party certification entity, shall be
88 printed in English and shall include documentation to verify that a reusable grocery bag
89 meets each requirement specific to the reusable grocery bag material type, including, but
90 not limited to:

91 (1) Compliance with the requirements of section 42281 of the Public Resources
92 Code, including identification of the test methods used, corresponding test
93 results for the reusable grocery bag, and the following, as applicable:
94 (A) Test results for all inks, dyes, pigments, decals, or other methods used
95 in the decoration of a reusable grocery bag pursuant to section
96 42281(a)(5) of the Public Resources Code. A proof of certification may
97 include test results for a suite of inks (e.g., cyan, magenta, yellow, and
98 key), dyes, pigments, decals, or other methods that may be used in
99 any variation or combination for the decoration of a type of reusable
100 grocery bag and would constitute an aesthetic change.
101 (B) Images of the complete front, back, and gusset of the reusable grocery
102 bag that clearly show the handles, style of bag, and the colors of inks,
103 dyes, pigments, decals, or other images printed on the bag. A reusable
104 grocery bag producer may submit images of aesthetic changes made
105 to a certified reusable grocery bag.
106 (C) Images of the reusable grocery bag or affixed tags that demonstrate
107 the labeling requirements specified in sections 42281(a)(4) and
108 42281(b)(1)(D) of the Public Resources Code. The text for these
109 labelling requirements shall be printed in English, legible, and may
110 include more than one phrase or sentence.
111 (D) Pursuant to Public Resources Code section 42281(b)(1), the
112 percentage of postconsumer recycled material and the numbers used
113 in the equation to calculate that percentage. The percentage of
114 postconsumer recycled material shall be determined for each type of
115 reusable grocery bag using the following equation:

116 $$Percent\ PCR = \frac{W_{PCR}}{W_{RGB}\ x\ N_{RGB}}$$

117 where:

118 W_{PCR} = the total weight in pounds of postconsumer recycled
119 material used in each type of reusable grocery bag

120 W_{RGB} = the weight in pounds of the specific type of reusable
121 grocery bag

122 N_{RGB} = the number of reusable grocery bags distributed in
123 California for each type of reusable grocery bag

124 (2) Compliance with the requirements of section 42281.5 of the Public Resources
125 Code, including, but not limited to:

126 (A) Invoices containing the supplier's name, location, contact
127 information, date(s), quantities, and type of postconsumer recycled
128 material (e.g. low density polyethylene) purchased during the
129 preceding 24 consecutive months.

130 (B) A table summarizing the names, locations, and total quantities
131 (pounds) of postconsumer recycled material purchased from each
132 supplier during the preceding 24 consecutive months. The table shall
133 include a description for each supplier's source (e.g. irrigation pipe,
134 hoop housing, bags), location, and contact information of the
135 postconsumer recycled material.

136 (C) Images and diagrams of the equipment and a description of the
137 process of how the postconsumer recycled material is cleaned to
138 remove physical and/or chemical contaminants using the appropriate
139 washing equipment.

140 (c) On a biennial basis, a reusable grocery bag producer shall resubmit a proof of
141 certification to the Reusable Grocery Bag Reporting System for each type of reusable
142 grocery bag that it manufactures, imports, sells, or distributes in the state that includes all
143 of the applicable information specified in subdivisions (a) and (b), and as follows:

144 (1) A proof of certification for a reusable grocery bag shall be completed by a third-
145 party certification entity within three months prior to the date the proof of
146 certification is submitted to the department.

147 (2) A proof of certification for a reusable grocery bag may be resubmitted if no
148 modifications, other than aesthetic changes, have been made to a previously

149 certified reusable grocery bag. Modifications include anything that may alter
150 compliance with requirements of section 42281 and section 42281.5 of the Public
151 Resources Code. Modifications that may require recertification include, but are not
152 limited to, changes in washing methods or equipment, changes in suppliers of inks,
153 dyes, pigments, decals or other methods printed on the bag, or changes in
154 suppliers of postconsumer recycled material.

155 (d) A reusable grocery bag producer shall label or identify any portions of its proof of
156 certification it believes are confidential or proprietary that it wants the department to
157 maintain as confidential pursuant to section 17988.7. Proofs of certification submitted to
158 the department shall not contain redactions. Any portion(s) of a proof of certification that
159 are not labelled or identified as confidential shall be deemed a public document.

160 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
161 42281, 42281.5, and 42282, Public Resources Code.

162 **§ 17988.4. Completeness Review.**

163 (a) The department shall review each proof of certification submitted or resubmitted to
164 the Reusable Grocery Bag Reporting System to determine if the proof of certification is
165 complete.

166 (1) For purposes of this review, "complete" means that all of the documentation
167 required by sections 42281 and 42281.5 of the Public Resources Code has
168 been submitted.

169 (2) Within 30 days of receipt, the department shall notify a reusable grocery bag
170 producer if the proof of certification is complete or incomplete.

171 (3) If the proof of certification is complete, the department shall add the name of
172 the reusable grocery bag producer and the name and type of bag to the
173 Certified Reusable Grocery Bags and Producers List.

174 (4) If a proof of certification is incomplete, the department shall notify the
175 reusable grocery bag producer and describe the deficiencies in writing.

176 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
177 42281, 42281.5, and 42282, Public Resources Code.

178 **§ 17988.5. Administrative Certification Fee Schedule.**

179 (a) The administrative certification fee schedule shall be implemented using Tables 1-
180 3 as follows:

181 (1) All reusable grocery bag producers who submit proof of certification shall
182 biennially pay a base fee, as follows:

183 (A) From July 2019 through June 2021, the base fee shall be
184 $12,000.

185 (B) From July 2021 through June 2023, the base fee shall be $6,000.

186 (C) Beginning July 2023, the base fee shall be $6,000.

187 (2) For a reusable grocery bag producer that manufactures, imports, sells, or
188 distributes reusable grocery bags made from plastic film, the administrative
189 certification fee shall be the sum of the base fee and a tiered quantity fee, as
190 shown in Tables 1-3. The tiered quantity fee shall be determined based on
191 either:

192 (A) The total quantity of postconsumer recycled material used (in
193 pounds) in the consecutive 24 months preceding the proof of
194 certification date as reported, under penalty of perjury, in the
195 proof of certification(s) to the department in compliance with
196 section 42281.5(b) of the Public Resources Code, or

197 (B) If a higher percentage of postconsumer recycled material than
198 statutorily required is utilized, the total number of reusable
199 grocery bags manufactured, imported, sold, or distributed in the
200 consecutive 24 months preceding the proof of certification date
201 as reported, under penalty of perjury, in the proof of
202 certification(s) to the department in compliance with section
203 42281 of the Public Resources Code and section 17988.3(b).

204

205 **Table 1 – July 2019 to June 2021 Biennial Fee**

206 **20 Percent Postconsumer Recycled Material (PCR)**

	PCR Quantity or Number of Bags Per Biennial Period		Tiered Quantity Fee	Base Fee	Total Fee
	PCR Quantity (lbs)	Number of Bags			
Non-plastic film	N/A	N/A	$0	$12,000	$12,000
Plastic film	1-199,999	1-19,999,999	$16,000	$12,000	$28,000
Plastic film	200,000-1,999,999	20,000,000-199,999,999	$23,000	$12,000	$35,000
Plastic film	2,000,000 +	200,000,000 +	$29,000	$12,000	$41,000

207 **Table 2 – July 2021 to June 2023 Biennial Fee**

208 **20 Percent Postconsumer Recycled Material (PCR) January 1, 2016 - December**
209 **31, 2019**

210 **40 Percent Postconsumer Recycled Material (PCR) on and after January 1, 2020**

	PCR Quantity or Number of Bags Per Biennial Period		Tiered Quantity Fee	Base Fee	Total Fee
	PCR Quantity (lbs)	Number of Bags			
Non-plastic film	N/A	N/A	$0	$6,000	$6,000
Plastic film	1-349,999	1-19,999,999	$4,000	$6,000	$10,000
Plastic film	350,000-3,499,999	20,000,000-199,999,999	$5,000	$6,000	$11,000
Plastic film	3,500,000 +	200,000,000 +	$7,000	$6,000	$13,000

211 **Table 3 – July 2023 and Ongoing**

212 **40 Percent Postconsumer Recycled Material (PCR)**

	PCR Quantity or Number of Bags Per Biennial Period		Tiered Quantity Fee	Base Fee	Total Fee
	PCR Quantity (lbs)	Number of Bags			
Non-plastic film	N/A	N/A	$0	$6,000	$6,000
Plastic film	1-399,999	1-19,999,999	$4,000	$6,000	$10,000
Plastic film	400,000-3,999,999	20,000,000-199,999,999	$5,000	$6,000	$11,000
Plastic film	4,000,000 +	200,000,000 +	$7,000	$6,000	$13,000

213 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Section
214 42282.1, Public Resources Code.

215 **§ 17988.6 Procedures for Submitting Payment to the Department.**

216 (a) All reusable grocery bag producers on the Certified Reusable Grocery Bags and
217 Producers List on July 1, 2019, shall pay the administrative certification fee by July
218 31, 2019, in order to remain on the list.

219 (b) A reusable grocery bag producer not included on the Certified Reusable Grocery Bags
220 and Producers List that submits a proof of certification after July 1, 2019, shall pay the
221 administrative certification fee in effect at that time.

222 (c) All reusable grocery bag producers on the Certified Reusable Grocery Bags and
223 Producers List shall pay the administrative certification fee on a biennial basis
224 thereafter.

225 (d) A person submitting proof of certification documentation shall use the Reusable
226 Grocery Bag Reporting System or other system designated by the department for
227 making payments or for providing other information required pursuant to this article.

228 (e) Reusable grocery bag producers shall submit payment to the department. All financial
229 transactions shall be reported and recorded in currency of the United States of
230 America ("dollars"). Where the actual transaction is made in foreign currency it shall
231 be converted to dollars for reporting and recording at the prevailing exchange rate at
232 the time of the payment.

233 (f) Administrative certification fee payments shall be deposited into the Reusable Grocery
234 Bag Fund by the department. Moneys in the fund shall be expended by the department
235 to implement Article 2 of Chapter 5.3 of Part 3, Division 30, of the Public Resources
236 Code, and may be used to make repayment to other funds that financed startup costs
237 of the department's activities pursuant to this chapter.

238 (g) Reusable grocery bag producers with delinquent accounts will be removed from the
239 department's Reusable Grocery Bag Reporting System and Certified Grocery Bags
240 and Producers List until fees are paid in full.

241 (h) Administrative certification fee payments are not refundable.

242 (i) Failure to comply with the requirements set forth in this article will result in immediate
243 removal of the reusable grocery bag producer from the department's Certified
244 Reusable Grocery Bags and Producers List, pursuant to subdivision (b) of section
245 42282 of the Public Resources Code.

246 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: 42280,
247 42281.5, 42282, and 42282.1, Public Resources Code.

248 **§17988.7. Confidential and Proprietary Information**
249 The department shall maintain the confidentiality of information submitted to the
250 department pursuant to the California Public Records Act (Chapter 3.5 (commencing with
251 section 6250) of Division 7 of Title 1 of the Government Code), section 40062 of the Public
252 Resources Code, and California Code of Regulations, Title 14, Division 7, Chapter 1,
253 Article 4 (commencing with section 17041).

254 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
255 42281.5 and 42282, Public Resources Code.