

PROPOSED REGULATORY TEXT

Proposed Regulations

Administrative Certification for Reusable Grocery Bags

February 2019

**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 42280, 42281, 42281.5, 42282, 42282.1, 42283, 42283.5, 42283.6, 42283.7, 42284, 42285, 42287, 42288, 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 to a reusable grocery bag~~ that does not affect the material composition, ~~color formulation, size, or construction or the results of the chemical or physical tests~~ 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,

PROPOSED REGULATORY TEXT

32 but is not limited to, a decoration color formulation that uses the same inks, or dyes, or
33 pigments in any proportion, or any combination or selection from a suite of inks, dyes, or
34 pigments in any proportion for the type of reusable grocery bag that was previously
35 submitted in a proof of certification.

36 (c) “Appropriate washing equipment” means the washing equipment employed to
37 clean postconsumer recycled material by removing physical and/or chemical
38 contaminants so it is suitable for use in manufacturing a reusable grocery bag.
39 Appropriate washing equipment includes, but is not limited to, dry and wet washing
40 technologies.

41 (d) ~~(e)~~ “Certified Reusable Grocery Bags and Producers List” means the list of
42 reusable grocery bag producers from which the department has received the payment,
43 required by section 42282.1 of the Public Resources Code, and a proof of certification for
44 each type of reusable grocery bag that a the producer offers for sale or distributes in the
45 state of California, as required by sections 42281, 42281.5, and 42282 of the Public
46 Resources Code.

47 ~~(e)~~ “Color formulation” means the inks and dyes, in any proportion, that meet the
48 requirements of section 42281 of the Public Resources Code and are used to
49 manufacture a single type of reusable grocery bag.

50 (e) “Decoration” means the coloration and/or treatments applied to a reusable grocery
51 bag using inks, dyes, pigments, decals, or other methods.

52 (f) “Fabric Weight” means the weight of the fabric used in the construction of a
53 reusable grocery bag reported in units of grams per square meter. Fabric weight may be
54 measured based on a single sample or based on an average of the weights of one sample
55 taken from each of the following locations: the handles, reusable grocery bag opening,
56 and body of the reusable grocery bag. Samples may include more than one layer of fabric,
57 based on the construction of the reusable grocery bag.

58 (g) ~~(f)~~ ~~(e)~~ “ISO/IEC 17025” means the International Organization for
59 Standardization/International Electrotechnical Commission “General requirements for the
60 competence of testing and calibration laboratories.”

61 (h) ~~(g)~~ “Point of sale” means the place where items are purchased in from a store,
62 such as at a checkout counter or via an online payment transaction. “Point of sale”

PROPOSED REGULATORY TEXT

63 includes any location where a store fulfils an order to its customers as part of an online
64 transaction, a phone order, or by similar means.

65 (i) ~~(h)~~ ~~(e)~~ "Proof of certification" means a document (or multiple documents) submitted
66 by a reusable grocery bag producer under penalty of perjury to the department via the
67 Reusable Grocery Bag Reporting System. A proof of certification shall demonstrate that
68 a reusable grocery bag sold or distributed to a store in California, as defined by section
69 42280(g) of the Public Resources Code, is compliant with the provisions of this Article.

70 (j) ~~(i)~~ ~~(f)~~ "Reusable grocery bag" has the same meaning as in section 42280 of the
71 Public Resources Code, and includes, but is not limited to, a reusable grocery bag made
72 with plastic film, compostable plastic film, or with natural or synthetic fiber, including, but
73 not limited to, woven or non-woven nylon, polypropylene, polyethylene-terephthalate, or
74 Tyvek.

75 (k) ~~(j)~~ ~~(g)~~ "Reusable Grocery Bag Reporting System" means the department's online
76 database established to receive proofs of certification from reusable grocery bag
77 producers for reusable grocery bags.

78 (l) ~~(k)~~ ~~(h)~~ "Third-party certification entity" means an independent laboratory that is
79 ISO/IEC 17025 accredited, and performs applicable testing and certifies that a reusable
80 grocery bag meets the requirements of section 42281 and 42281.5 of the Public
81 Resources Code.

82 (m) ~~(l)~~ ~~(i)~~ "Type of reusable grocery bag" means a reusable grocery bag manufactured,
83 imported, sold, or distributed by a certified reusable grocery bag producer that has ~~is~~ a
84 different material composition, decoration, color formulation, ~~or~~ size, or construction ~~or has~~
85 ~~different results for chemical or physical tests~~ than another reusable grocery bag
86 manufactured, imported, sold, or distributed by the same certified reusable grocery bag
87 producer.

88 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
89 42280, 42281, 42281.5, 42282, 42282.1, 42283, 42283.5, 42283.6, 42283.7, 42284,
90 42285, 42287, 42288, Public Resources Code.

PROPOSED REGULATORY TEXT

91 § 17988.3. Submittal and Resubmittal of a Proof of Certification.

92 (a) A reusable grocery bag producer shall submit a proof of certification to the
93 Reusable Grocery Bag Reporting System for each type of reusable grocery bag that it
94 manufactures, imports, sells, or distributes in the state and provides to a store for sale or
95 distribution at the point of sale. The proof of certification shall have been ~~be~~ completed
96 by a third-party certification entity within three months prior to ~~of~~ the date it is submitted
97 to the department and it shall include an accreditation number confirming the third-party
98 certification entity is an accredited ISO/IEC 17025 laboratory.

99 (b) A ~~The~~ proof of certification, ~~shall include documentation in English from~~ completed
100 by a third-party certification entity, shall be printed in English and shall include sufficient
101 documentation to verify that a reusable grocery bag meets each requirement specific to
102 the reusable grocery bag material type, including, but not limited to:

103 (1) Compliance with the requirements of section 42281 ~~and 42281.5~~ of the Public
104 Resources Code, including identification of the test methods used, or a
105 description of the procedures used to confirm compliance corresponding test
106 results for the reusable grocery bag, and the following, as applicable:

107 (A) Test results for ~~each ink and dye in the color formulation~~ all inks,
108 dyes, pigments, decals, or other methods used in the decoration of
109 a reusable grocery bag pursuant to section 42281(a)(5) of the Public
110 Resources Code. A proof of certification may include test results for
111 a suite of inks (e.g., cyan, magenta, yellow, and key), dyes,
112 pigments, decals, or other methods that may be used in any variation
113 or combination for the decoration of a type of reusable grocery bag
114 and would constitute an aesthetic change.

115 (B) Images of the complete front, back, and gusset of the reusable
116 grocery bag that clearly show the handles, style of bag, and the
117 colors of inks, ~~and dyes~~, pigments, decals, or other images printed
118 on the bag. A reusable grocery bag producer may submit images of
119 aesthetic changes made to a certified reusable grocery bag.

120 (C) ~~(2) Images depicting applicable~~ of the reusable grocery bag or affixed
121 tags that demonstrate the labeling requirements ~~pursuant to~~

PROPOSED REGULATORY TEXT

122 specified in sections 42281(a)(4) and 42281(b)(1)(D) of the Public
123 Resources Code. The text for these labelling requirements shall be
124 printed in English, legible, and may include more than one phrase or
125 sentence.

126 (D) Pursuant to Public Resources Code 42281(b)(1), the percentage of
127 postconsumer recycled material and the numbers used in the
128 equation to calculate that percentage. The percentage of
129 postconsumer recycled material shall be determined for each type of
130 reusable grocery bag using the following equation:

$$131 \quad \text{Percent PCR} = \frac{W_{PCR}}{W_{RGB} \times N_{RGB}}$$

132 where:

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

135 W_{RGB} = the weight in pounds of the specific type of reusable
136 grocery bag

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

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

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

145 (B) A table summarizing the names, locations, and total quantities
146 (pounds) of postconsumer recycled material purchased from each
147 supplier during the preceding 24 consecutive months. The table shall
148 include a description for each supplier's source (e.g. irrigation pipe,

PROPOSED REGULATORY TEXT

149 hoop housing, bags), location, and contact information of the
150 postconsumer recycled material.

151 (C) Images and diagrams of the equipment and a description of the
152 process of how the postconsumer recycled material is cleaned to
153 remove physical and/or chemical contaminants using the appropriate
154 washing equipment.

155 ~~(3) An accreditation certificate or accreditation number confirming the third party~~
156 ~~certification entity is an accredited ISO/IEC 17025 laboratory.~~

157 ~~(4) All documents shall be submitted to the department under penalty of perjury.~~

158 (c) On a biennial basis, A a reusable grocery bag producer shall biennially resubmit a
159 proof of certification to the Reusable Grocery Bag Reporting System at the time it pays
160 the administrative certification fee for each type of reusable grocery bag that it
161 manufactures, imports, sells, or distributes in the state that includes all of the applicable
162 information specified in 17988.3(a), and 17988.3(b), and provides to a store for sale or
163 distribution, and as follows:

164 (1) A proof of certification for a reusable grocery bag that is made from plastic film
165 shall be completed by a third-party certification entity within three months of the
166 date the proof of certification is submitted to the department.

167 (2) A proof of certification for a reusable grocery bag that is not made from plastic
168 film may be resubmitted, if no modifications have been made to a previously
169 certified reusable grocery bag with the exception of aesthetic change(s).
170 Modifications include anything that may alter compliance with requirements of
171 section 42281 and section 42281.5 of the Public Resources Code. Modifications
172 that may require recertification include, but are not limited to, changes in washing
173 methods or equipment, changes in suppliers of inks, dyes, pigments, decals or
174 other methods printed on the bag, or changes in suppliers of postconsumer
175 recycled material.

PROPOSED REGULATORY TEXT

176 ~~(d) The department shall review each proof of certification submitted or resubmitted~~
177 ~~to the Reusable Grocery Bag Reporting system, to determine if the proof of certification~~
178 ~~is complete.~~

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

182 ~~(2) If the proof of certification is deemed complete, the department shall add~~
183 ~~the name of the reusable grocery bag producer to the Certified Reusable~~
184 ~~Grocery Bags and Producers List.~~

185 ~~(3) If a proof of certification is deemed incomplete, the department shall~~
186 ~~notify the submitting reusable grocery bag producer.~~

187 ~~(d)~~ (e) A reusable grocery bag producer shall label or identify any portions of its proof
188 of certification it believes are confidential or proprietary that it wants the department to
189 maintain as confidential pursuant to section 17988.76. Proofs of certification submitted to
190 the department shall not contain redactions. Any portion(s) of a proof of certification that
191 are not labelled or identified as confidential shall be deemed a public document.

192 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
193 42280, 42281, 42281.5, 42282, and 42283, Public Resources Code.

194 **§ 17988.4. Completeness Review.**

195 (a) The department shall review each proof of certification submitted or resubmitted to
196 the Reusable Grocery Bag Reporting System, to determine if the proof of certification is
197 complete.

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

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

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

PROPOSED REGULATORY TEXT

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

208 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
209 42280, 42281, 42281.5, 42282, and 42283, Public Resources Code.

210 **§ 17988.45. Administrative Certification Fee Schedule.**

211 ~~(a) A reusable grocery bag producer shall pay the administrative certification fee, at~~
212 ~~the time it submits its initial proof(s) of certification to the Reusable Grocery Bag Reporting~~
213 ~~System. A reusable grocery bag producer then shall then biennially pay the administrative~~
214 ~~certification fee, when it resubmits a proof of certification to the Reusable Grocery Bag~~
215 ~~Reporting System.~~

216 ~~(b) The administrative certification fee schedule shall be established by the~~
217 ~~department and shall be sufficient to cover its reasonable costs to implement Article 2 of~~
218 ~~Chapter 5.3 of Part 3, Division 30 of the Public Resources Code.~~

219 ~~(a) (c) The administrative certification fee schedule shall be determined in the~~
220 ~~following manner implemented using Tables 1-3 as follows:~~

221 ~~(1) For the July 2019 administrative certification fee, the department shall~~
222 ~~determine its startup costs and operating costs through Fiscal Year 2020-21~~
223 ~~to implement the requirements set forth in Article 2 of Chapter 5.3 of Part 3,~~
224 ~~Division 30 of the Public Resources Code. The department will divide its~~
225 ~~startup costs equally among the total number of reusable grocery bag~~
226 ~~producers published on the Certified Reusable Grocery Bags and Producers~~
227 ~~List. For future biennial time periods, the department shall determine in~~
228 ~~advance its operating costs to implement the department's statutory~~
229 ~~responsibilities for the subsequent two fiscal years.~~

230 ~~(2) The administrative certification fee shall be rounded to the nearest dollar and~~
231 ~~calculated as follows:~~

$$232 \text{ certification fee} = \frac{\text{CalRecycle 2-year operating cost}}{\text{number of certified producers}}$$

233 ~~(3) Before July 1, 2019, the department shall give public notice of the initial~~
234 ~~administrative certification fee for approval at a public meeting. After approval~~

PROPOSED REGULATORY TEXT

235 ~~of the initial administrative certification fee, at or following the public meeting,~~
236 ~~and no later than July 1, 2019, the department shall publish the administrative~~
237 ~~certification fee amount on its public website. All reusable grocery bag~~
238 ~~producers on the Certified Reusable Grocery Bags and Producers List at the~~
239 ~~time the administrative certification fee is published shall pay the initial~~
240 ~~administrative certification fee within 30 days from July 1, 2019.~~

241 ~~(4) A reusable grocery bag producer not included on the Certified Reusable~~
242 ~~Grocery Bags and Producers List that submits a proof of certification after the~~
243 ~~initial fee is posted in 2019, and prior to the establishment of the next~~
244 ~~certification fee in 2021, shall pay the initial administrative certification fee in~~
245 ~~effect at that time.~~

246 ~~(5) No later than July 1, 2021 and on a biennial basis thereafter, the department,~~
247 ~~after giving public notice and consideration at a public meeting, shall publish~~
248 ~~on its public website the administrative certification fee amount for the~~
249 ~~following biennial period. All reusable grocery bag producers on the Certified~~
250 ~~Reusable Grocery Bags and Producers List shall pay the administrative~~
251 ~~certification fee within 30 days of July 1.~~

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

- 254 (A) From July 2019 through June 2021, the base fee shall be
255 \$12,000.
256 (B) From July 2021 through June 2023, the base fee shall be \$6,000.
257 (C) Beginning July 2023 the base fee shall be \$6,000.

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

- 263 (A) The total quantity of postconsumer recycled material PCR
264 purchased, used (in pounds) in the consecutive 24 months
265 preceding the proof of certification date as reported, under

PROPOSED REGULATORY TEXT

266 penalty of perjury, in the proof of certification(s) to the department
 267 in compliance with section 42281.5(b) of the Public Resources
 268 Code= (or)

269 (B) If a higher percentage of postconsumer recycled material PCR
 270 than statutorily required is utilized, the total number of reusable
 271 grocery bags manufactured, imported, sold, or distributed in the
 272 consecutive 24 months preceding the proof of certification date
 273 as reported, under penalty of perjury, in the proof of
 274 certification(s) to the department in compliance with section
 275 42281 of the Public Resources Code and section 17988.3(b).

Table 1 – July 2019 to June 2021 Biennial Fee

20 Percent Postconsumer Recycled Material (PCR)

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

Table 2 – July 2021 to June 2023 Biennial Fee

20 Percent Postconsumer Recycled Material (PCR) July 30, 2019 - January 1, 2020

40 Percent Postconsumer Recycled Material (PCR) On and After January 1, 2020

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

281

282

PROPOSED REGULATORY TEXT

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Table 3 – July 2023 and Ongoing

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40 Percent Postconsumer Recycled Material (PCR)

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

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

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42280, 42281.5, 42282, and 42282.1, Public Resources Code.

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§ 17988.56 Procedures for Submitting Payment to the Department.

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(a) All reusable grocery bag producers on the Certified Reusable Grocery Bags and

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Producers List on July 1, 2019, shall pay the administrative certification fee by July

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31, 2019 in order to remain on the list.

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(b) A reusable grocery bag producer not included on the Certified Reusable Grocery Bags

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and Producers List that submits a proof of certification after July 1, 2019, shall pay the

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administrative certification fee in effect at that time.

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(c) All reusable grocery bag producers on the Certified Reusable Grocery Bags and

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Producers List shall pay the administrative certification fee on a biennial basis

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thereafter.

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(d) A person submitting proof of certification documentation shall use the reusable

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grocery bag reporting system or other system designated by the department for

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making payments, or providing other information required pursuant to this article.

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~~Payment shall be remitted via the Reusable Grocery Bag Reporting System~~

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~~accessible on the department's website.~~

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(e) (a) Reusable grocery bag producers shall submit payment to the department. All

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financial transactions shall be reported and recorded in currency of the United States

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of America ("dollars"). Where the actual transaction is made in foreign currency it shall

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be converted to dollars for reporting and recording at the prevailing exchange rate at

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the time of the payment.

PROPOSED REGULATORY TEXT

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

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

315 ~~(d) Delinquent payments shall accrue interest from the date the payment was due.~~

316 ~~(h)~~ ~~(e)~~ Administrative certification fee payments are not refundable.

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

321 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: 42280,
322 42281.5, 42282, and 42282.1, Public Resources Code.

323 **§17988.76. Confidential and Proprietary Information**

324 The department shall maintain the confidentiality of information submitted to the
325 department as required by the California Public Records Act (Chapter 3.5 (commencing
326 with section 6250) of Division 7 of Title 1 of the Government Code), section 40062 of the
327 Public Resources Code, and Title 14, California Code of Regulations, Division 7, Chapter
328 1, Article 4 (commencing with section 17041).

329 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Sections
330 42280, 42281.5, 42282, and 42282.1, Public Resources Code.