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DEPARTMENT OF HEALTH

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Amendment and Compilation of Chapter 11-282
Hawaii Administrative Rules

APR 5 2007

SUMMARY

1. §11-282-46 is amended.
2. Chapter 282 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 282

DEPOSIT BEVERAGE CONTAINER RECYCLING

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-282-01 Purpose. The purpose of this chapter is to implement the deposit beverage container program, chapter 342G, part VIII, HRS, and to establish minimum standards for the collection of empty beverage containers, to foster systems of redemption which facilitate recycling of empty beverage containers, and to minimize costs without inconveniencing consumers. [Eff 7/01/05; comp APR 21 2007]
] (Auth: HRS §342G-109) (Imp: HRS §342G-109)

§11-282-02 Applicability. These rules are applicable to all persons defined in this chapter who are subject to regulation under the deposit beverage container program, §11-282-03 including, but not limited to, beverage manufacturers, distributors, recycling facilities, redemption centers, dealers and other businesses that sell deposit beverages in deposit beverage containers, unless specifically stated otherwise. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §342G-109) (Imp: HRS §342G-109)

§11-282-03 Definitions. The following definitions shall apply whenever the terms are used in this chapter:

"Applicant" means the person who has the authority to legally bind a redemption center to a contract.

"Certification" means an official document issued by the department of health that identifies a redemption

center as being certified by the department.

"Certified" means a redemption center that has met the minimum requirements established by the department as defined in section 11-282-42.

"Consumer" means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit.

"Director" means the director of health.

"Facility" means all contiguous land including buffer zones and structures, other appurtenances, and improvements on the land used for the handling of solid waste.

"High-density population area" means all United States Postal Service Zip Code areas on Oahu, which contain three or more dealers of five thousand or more square feet of interior space; or a resident population of 17,500 or greater.

"Manufactured" means the completely filled bottles, cans, or other deposit beverage containers, which are inventoried for sale or distribution.

"Manufacturer" means any person who bottles, cans, or otherwise fills deposit beverage containers for sale to distributors, dealers or consumers.

"Material" means the physical substance used to manufacture a deposit beverage container including, but not limited to, plastic, aluminum, metal, or glass.

"Mixed spirits" means a deposit beverage containing distilled spirits and added natural or artificial blending material such as fruit juices, flavors, flavorings, colorings, or preservatives, and which contain less than fifteen per cent of alcohol by volume.

"Mixed wine" means a deposit beverage containing wine and more than fifteen per cent added natural or artificial blending material such as fruit juices, flavors, flavorings, or adjuncts, water (plain, carbonated, or sparkling), colorings, or preservatives, and which contain less than seven per cent of alcohol by volume.

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Recycling facility" means all contiguous land and structures and other appurtenances, and improvements on the land used for collection, separation, recovery, and sale or

reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of the manufacturing process aimed at producing a marketable product made of post consumer material.

"Refund value" means the amount of the deposit established under chapter 342G, part VIII, HRS.

"Rural area" means a non-high density population area.

"Segregated" means divided by material type and that such divided load consists of 100% Hawaii refund value material.

"Segregated rate" means a payment rate set by the department for loads of segregated deposit beverage containers assessed by weight. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §342G-109) (Imp: HRS §342G-109)

§11-282-04 General requirements. (a) Inspection. For purposes of enforcing the provisions of this chapter, and chapter 342G, Hawaii Revised Statutes, a person who manufactures, distributes, sells, stores, handles, transports, redeems, recycles, and disposes deposit beverage containers, shall, upon request of any duly authorized representative of the director, furnish information relating to such deposit beverage containers and facilities, and permit such representative at reasonable times to have access to, and to copy all relevant records relating to such containers.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Enforcement. If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a certification or permit issued pursuant to this chapter, the director may do one or more of the following:

- (1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;
- (2) Issue an order assessing an administrative penalty for any past or current violation;
- (3) Require compliance within a specified time; and

- (4) Commence a civil action in circuit court in which the violation occurred or where the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief.

(c) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued under this chapter, and shall state with reasonable specificity the nature of the violation.

(d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91, HRS. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §342G-72)
(Imp: HRS §342G-72)

SUBCHAPTER 2

DEPOSIT BEVERAGE DISTRIBUTORS

§11-282-21 Deposit beverage container requirements.

(a) Every deposit beverage container sold or offered for sale in the State shall have the Hawaii refund value clearly indicated in accordance with section 342G-112, HRS. The refund value should not be placed on the removable portion of the container. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §342G-105) (Imp: HRS §342G-105)

SUBCHAPTER 3

DEALERS

§11-282-31 Exemptions. Dealers are exempt from having to operate as a redemption center for empty deposit beverage containers if they:

- (1) Are located in a high-density population area and within two miles of a certified redemption center that is operated independently from a dealer;
- (2) Are located in a rural area; or
- (3) Can demonstrate physical hardship including, but not limited to, the following:
 - (A) Would pose a threat to public safety; or
 - (B) Square footage needed to accommodate a redemption center would exceed one percent (1%) of the dealer's retail space; or
- (4) Can demonstrate financial hardship including, but not limited to, the following:
 - (A) Provide documentation to show that the cost to operate a redemption center will jeopardize the dealer's ability to conduct business; or
 - (B) Would threaten the dealer's ability to lease or occupy its place of business. [Eff 7/01/05; comp APR 21 2007 (Auth: HRS §342G-113) (Imp: HRS §342G-113)]

SUBCHAPTER 4

REDEMPTION CENTERS

§11-282-41 Uncertified redemption activities. (a) Uncertified redemption activities shall not be eligible to collect the refund value or handling fee from the department. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §§342G-113) (Imp: HRS §342G-113)

§11-282-42 Requirements for certified redemption centers. (a) The department may impose conditions for the operation of certified redemption centers under chapter 342G HRS.

(b) Redemption centers shall have solid waste permits

under chapter 342H, HRS.

(c) Certification shall be effective for a period of not more than five years following date of approval by the department.

(d) Applicants shall re-certify the redemption center before expiration of the current certification or the center shall not be eligible for the container refund value or handling fee. [Eff 7/01/05; comp APR 21 2007]
(Auth: HRS §§342G-114) (Imp: HRS §342G-114)

§11-282-43 Request for certification. (a) Requests for certification shall be prepared on application forms provided by the department and shall include, but not limited to, the following information:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative.
- (2) Annual tax clearance issued by the Hawaii State Department of Taxation and the Internal Revenue Service.
- (3) A *CERTIFICATE OF GOOD STANDING* issued by the Department of Commerce and Consumer Affairs Business Registration Division, unless the applicant is a sole proprietor.
- (4) A description of the redemption centers including site plans and scope of services.
- (5) Redemption centers that issue vouchers for redemption values shall describe how the voucher may be redeemed for cash or other value.

(b) Applications for certification shall be submitted to the department for each redemption center site.

(c) Within thirty days of receiving a complete application, the director shall notify the owner or the duly authorized representative in writing on the status of the certification including:

- (1) Approval; or
- (2) Denial and the reasons for the denial.

(d) The basis for denial of certification will be limited to:

- (1) Applicants have outstanding balances owed to the State;

- (2) Applicants have outstanding fines, penalties, violations or audit findings within any office of the department;
- (3) Applicant history discloses revocation of a recycling center permit or certification within the last two years;
- (4) Applicant certification history demonstrates a pattern of operation in conflict with the requirements of chapter 342G, HRS; or
- (5) Principal officers of applying company have a criminal conviction of a crime of deceit.

(e) The department shall evaluate the applicant's response to the department's request for more information and shall notify the applicant in writing of the department's final approval or intent to deny the application. No application for a certification shall be denied unless the applicant has had an opportunity for a hearing by the department in accordance with chapter 91, HRS.

(f) The department may, on the department's own motion or the application of any person, modify, suspend or revoke a certification if, after affording the applicant a hearing in accordance with chapter 91, HRS, the department determines that any condition of the certification has been violated or any provision of chapter 342G, HRS, has been violated.

(g) Applicants shall submit new applications to the department if:

- (1) The location of a redemption center changes;
- (2) The operator of a redemption center changes;
or
- (3) Changes occur in operations of a redemption center.

(h) New applications shall be approved by the department before the redemption center changes its operations or the applicant shall not be eligible for refund value or handling fees.

(i) Applicants shall notify the department thirty days prior to voluntary termination of certified redemption center activities.

(j) Certificates are neither transferable nor assignable to another person, company, or redemption center.

(k) The certificate shall be kept on file at the redemption center site.

(l) The certificate is property of the department and shall be returned to the department upon decertification, revocation, invalidation, expiration of certification, or voluntary termination.

(m) The certificate issued to the applicant of a reverse vending machine shall be kept on file at the main business office of the applicant.

[Eff 7/01/05; comp **APR 21 2007**] (Auth: HRS §§342G-113, 342G-114, 342G-121) (Imp: HRS §§342G-113, 342G-114, 342G-121)

§11-282-44 Posting of certification. (a) A certification sign will be provided to redemption centers by the department and shall be prominently displayed where customers approaching the center can view it.

(b) A certification sign shall not be displayed at a redemption center that is not certified by the department.

(c) The certification sign is property of the department and shall be returned to the department upon decertification, revocation, invalidation, expiration of certification, or voluntary termination.

(d) The certification sign of a reverse vending machine may be kept on file at the redemption center site or on file at the main business office of the applicant.

[Eff 7/01/05; comp **APR 21 2007**] (Auth: HRS §§342G-114) (Imp: HRS §342G-114)

§11-282-45 Load inspection requirements. (a) Redemption center staff shall visually inspect each load of containers for which value is claimed to determine whether each load is eligible for refund value. A load of materials shall be ineligible for any refund value if it meets any criterion stated in chapter 342G-116, HRS. [Eff 7/01/05; comp **APR 21 2007**] (Auth: HRS §§342G-114) (Imp: HRS §342G-114)

§11-282-46 Redemption by weight. Redemption centers are allowed to redeem deposit beverage containers and pay refund value based on the weight of these containers presented for redemption, as follows:

- (1) Empty beverage containers shall be weighed, recorded, and reported in tons, pounds, and

fractions thereof. All weighing in this State shall be done on a scale or other device approved, tested and sealed in accordance with department of agriculture weights and measurements and applicable regulations.

- (2) To be redeemed by weight, containers must be segregated by material.
- (3) Refund values for each container material shall be posted and paid according to the container per pound conversion rates issued by the department in section 11-282-61.
- (4) Redemption centers must inspect loads as required under section 11-282-45.
- (5) If requested by a consumer, for loads of two hundred containers or less, redemption centers must compute redemption value by container count rather than by weight.

[Eff 7/01/05; am and comp APR 21 2007]
 (Auth: HRS §342G-109, 342G-117) (Imp: HRS §342G-109, 342G-117)

§11-282-47 Obtain payment. The department shall pay certified redemption centers handling fees and refund values based on reports submitted by the redemption centers to the department. [Eff 7/01/05; comp APR 21 2007]
 (Auth: HRS §342G-117) (Imp: HRS §342G-117)

SUBCHAPTER 5

RECYCLING FACILITIES

§11-282-51 Load inspection requirements. Recycling facilities may reject loads of deposit beverage containers from redemption centers if the loads meet criteria stated in chapter 342G-116, HRS. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §§342G-114, 342G-116) (Imp: HRS §§342G-114, 342G-116)

§11-282-52 Reporting. (a) Recycling facilities receiving deposit beverage container material from redemption centers shall maintain records involving empty

beverage containers.

(b) Recycling facilities shall provide documentation as to the fate of deposit beverage container material collected from redemption centers.

(c) Documentation shall include information on the end user and shall verify weight and commodity. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §§342G-119, 342G-120) (Imp: HRS §§342G-119, 342G-120)

SUBCHAPTER 6

DEPARTMENT OF HEALTH REQUIREMENTS

§11-282-61 Segregated rate. (a) The method used to determine the segregated rate is to calculate the average number of empty deposit beverage containers per pound by material type. This shall include sampling procedures that consider, at a minimum, the following factors:

- (1) Weight by separately aggregated size categories of containers (same size) in their original manufactured and unfilled state.
- (2) Weight by variously mixed aggregated size of containers (different sizes) in their original manufactured and unfilled state.
- (3) The segregated rates for each material type should incorporate a factor for typical contamination levels so refund value and handling fees paid by weight are based on container weights only and not contaminants.

(b) The department shall re-evaluate the segregated rate as needed.

(c) The department shall publish a segregated rate for each deposit beverage container material type. These rates must be used by redemption centers redeeming containers by weight under section 11-282-46. [Eff 7/01/05; comp APR 21 2007] (Auth: HRS §§342G-109, 342G-117) (Imp: HRS §342G-117)

§11-282-62 Redemption centers established by the department. (a) If there is no redemption center within two miles of a dealer due to the criteria described in section 11-282-31, then the respective county shall determine the need for a redemption center in that area.

If a redemption center is deemed necessary, then the county, with the assistance of the State, may establish the redemption center with funding from the deposit beverage container deposit special fund.

(b) The department may negotiate, and pay, higher handling fees for redemption centers established pursuant to this section." [Eff 7/01/05; comp APR 21 2007]
(Auth: HRS §342G-113) (Imp: HRS §342G-113)

Amendments to and Compilation of Chapter 282, title 11, Hawaii Administrative Rules, on the Summary page dated **APR - 5 2007**, were adopted on **APR - 5 2007**, following a public hearing held on March 8, 2007 after public notice was given in the Honolulu Star-Bulletin, Maui News, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today newspapers on February 6 through 8, 2007.

The amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.



CHIYOME FUKINO, M.D.
Director
Department of Health

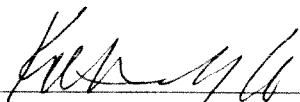


LINDA LINGLE
Governor
State of Hawaii

Dated: APR 11 2007

Filed

APPROVED AS TO FORM:



KATHLEEN HO
Deputy Attorney General