

10 GCA HEALTH AND SAFETY
CH. 44 GUAM BEVERAGE CONTAINER RECYCLING ACT OF 2010

DIVISION 2

GUAM ENVIRONMENTAL PROTECTION AGENCY

NOTE: Each chapter in this Part was a chapter in Title LXI of the Government Code, but were also entitled as “Acts.” The word “Act” has been unchanged from the original code provisions, except where changing that term to “Chapter” was necessary to avoid confusion.

2011 NOTE: Entire Chapter 44 added by P.L. 30-221:2 (Dec. 30, 2010).

- Chapter 44. Guam Beverage Container Recycling Act of 2010.
- Chapter 45. Guam Environmental Protection Agency Act.
- Chapter 46. Water Resources Conservation Act.
- Chapter 47. Water Pollution Control.
- Chapter 48. Toilet Facilities and Sewage Disposal.
- Chapter 49. Air Pollution Control.
- Chapter 50. Guam Pesticides Act.
- Chapter 51. Solid Waste Management and Litter Control.
- Chapter 52. Water and Waste Water Operator's Mandatory Certification Act.
- Chapter 53. Safe Drinking Water Act.
- Chapter 54. Environmental Pollution Control.
- Chapter 54A. Guam Oil Spill Responder Act.
- Chapter 54B. Choose to Reuse: *Munga Ma Ayek I Plastek* Act of 2018.

CHAPTER 44

GUAM BEVERAGE CONTAINER RECYCLING ACT OF 2010

SOURCE: Entire Chapter 44 added by P.L. 30-221:3 (Dec. 30, 2010), effective, 180 calendar days, following effective date of the voluntary agreement provided in § 44119 of this chapter, pursuant to P.L. 30-221:4.

- § 44101. Short Title.
- § 44102. Statement of Policy.
- § 44103. Definitions.
- § 44104. Goals for Waste Stream Reduction.
- § 44105. Deposit Beverage Container Fee.

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- § 44106. Deposit of Beverage Container Recycling Deposit Fees. [Repealed]
- § 44107. Deposit Beverage Distributors; Registration, Recordkeeping Requirements.
- § 44108. Beverage Container Recycling Deposit Fund.
- § 44109. Beverage Container Recycling Deposit Payout.
- § 44110. Audits.
- § 44111. Redemption Centers.
- § 44112. Acceptance of Containers.
- § 44113. Deposit Beverage Distributor to Collect and Remit Container Deposits.
- § 44114. Redemption Centers' Claims for Reimbursement and Reporting Requirements.
- § 44115. Deposit Beverage Container Requirements.
- § 44116. Responsibility of Dealers.
- § 44117. Reverse Vending Machine Requirements.
- § 44118. Rules to be Adopted.
- § 44119. Military Cooperation.

§ 44101. Short Title.

This Act shall be known as "The Guam Beverage Container Recycling Act of 2010."

§ 44102. Statement of Policy.

Communities throughout the world, including our island neighbors of Kiribati and Kosrae, in the mainland United States, Canada, Australia and much of Europe have found that recycling has been effective in reducing threats to our environment and in reducing the enormous volume of solid waste produced by our modern lifestyles.

Our island environment is precious, vulnerable, and irreplaceable. No individual, public entity, or private corporation has the right to pollute our air, water, or soil. The people of Guam have an ongoing responsibility to conserve, preserve, and enhance our natural resources and island beauty, and to guarantee their continued existence and enjoyment in the present and for future generations.

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Some of the waste filling our dump today and bound for our landfills tomorrow may represent a potential resource, but without proper management these wastes will continue to be hazards to our environment and to life itself. The reduction of solid waste at its source and the recycling of reusable waste materials will reduce the flow of waste to dumps and landfills and increase the supply of reusable materials for use by the public.

The United States Government, our Armed Forces, numerous businesses and many concerned citizens in Guam have already adopted environmentally friendly policies and habits to encourage the purchase, use and re-use of biodegradable, recyclable and recycled products. Many are presently recycling those products for which recycling avenues are available in Guam. It is therefore the policy of this agency of the Government of Guam to establish a mechanism that will provide incentives to aid the entire recycling process as it relates to those products for which additional uses may be found, either in Guam or by sending them off-island, and to set achievable goals for waste stream reduction in the coming years.

§ 44103. Definitions.

As used in this Chapter:

(a) Administrator means the Administrator of the Guam Environmental Protection Agency.

(b) Auditor means the Office of Public Accountability.

(c) Beverage means all beverages for human consumption. For purposes of this Chapter the term beverage shall not include items sold in a non-liquid, or frozen form or liquid intended for medicinal purposes only.

(d) Beverage container means the individual, separate, sealed glass, high density polyethylene, metal, plastic bottle, can, jar, or carton, with a total volume of less than or equal to sixty-eight (68) fluid ounces, used for containing, at the time of sale to the consumer, a beverage intended for use or consumption. Beverage containers may be for single use or for multiple uses

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(e) Board means the Board of Directors of the Guam Environmental Protection Agency.

(f) Commercial passenger vessel means any domestic or foreign-flagged marine vessel or air carrier used primarily for transporting persons to and from Guam and to and from other destinations. The term does not include:

(1) marine vessels authorized to carry fewer than twenty (20) passengers; or

(2) marine vessels for hire that do not provide overnight accommodations for at least twenty (20) passengers, and based on an average of two (2) persons per cabin.

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

(h) Dealer means every person who engages in the sale of deposit beverages in deposit beverage containers to a consumer for use or consumption.

(i) Department means the Guam Environmental Protection Agency.

(j) Deposit beverage means beer, ale, or other drink produced by fermenting malt; mixed spirits; mixed wine, tea and coffee drinks regardless of dairy-derived product content; soda, or noncarbonated water; and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term deposit beverage excludes the following:

(1) A liquid that is:

(A) a syrup;

(B) in a concentrated form; or

(C) typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

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(2) A liquid which is a drug, medical food or infant formula as defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

(3) A liquid which is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417);

(4) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(5) Products designed to be consumed in a frozen state;

(6) Instant drink powders;

(7) Seafood, meat, or vegetable broths, or soups, but not juices; and

(8) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.

(k) Deposit beverage container means the individual, separate, sealed glass, polyethylene terephthalate, high density polyethylene, or metal container less than or equal to sixty-eight (68) fluid ounces, used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in Guam.

(l) Deposit Beverage Distributor means a business, whether licensed in Guam or not, that engages in the sale or distribution of any and all deposit beverages, as defined in § 44103 (j), in a deposit beverage container, as defined in § 44103 (k), to a dealer in Guam, including any manufacturer who engages in such sales and imports and sells such products to either or both consumers and retailers located on either or both federal and private property. Deposit Beverage Distributor also means a Wholesaler.

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(m) Deposit Beverage Container Fee refers to the amount paid by every deposit beverage distributor to the Department for each individual beverage container manufactured in or imported into Guam that has been identified by the Department as recyclable and requiring a deposit. The deposit beverage container fee shall be based on the following formula: Redemption Rate (+) Handling Fee (+) the Department's administrative costs.

(n) Escheat means the deposit fee paid to a dealer or deposit beverage distributor that remains unclaimed and becomes department property.

(o) Import means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of Guam.

(p) Importer means any person who buys, brings, or accepts delivery of deposit beverage containers from outside of Guam for sale or use within Guam.

(q) List of Approved Containers means the list compiled by the Board of approved containers identified for recycling deposits. Containers may not be placed upon the list unless an economically viable process to recycle, reuse, convert to energy, or physically remove containers from Guam has been established or will be established concurrent with placement upon said list.

(r) Manufacturer means every person producing recyclable products, including those who package or fill recyclable products for sale to distributors or dealers.

(s) On-premises consumption means to consume deposit beverages by a consumer immediately and within the area under control of the establishment, including bars, restaurants, commercial passenger vessels, and airplanes.

(t) Person means an individual, corporation, company, association, partnership, federal agency, or agency of the government of Guam.

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(u) Recycling facility means all contiguous land and structures and other appurtenances, and improvements on the land used for the collection, separation, recovery, and sale or reuse of 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 post-consumer material whether manufactured locally or produced off-island.

(v) Redeemer means a person, other than a dealer or distributor, who demands the refund value in exchange for an empty deposit beverage container.

(w) Redemption center means an operation that accepts empty deposit beverage containers from redeemers and provides the refund value for empty deposit beverage containers intended to be recycled and ensures that the empty deposit beverage containers are properly recycled.

(x) Refillable beverage container means any deposit beverage container, which ordinarily would be returned to the manufacturer to be refilled and resold.

(y) Refund value refers to the amount of the deposit fee refunded to a redeemer in exchange for an empty deposit beverage container.

(z) Reverse vending machine means a mechanical device, which accepts one (1) or more types of empty deposit beverage containers, and issues coins or a redeemable credit slip with a value not less than the container's refund value.

(aa) Wholesaler means a Deposit Beverage Distributor.

(bb) Handling Fee refers to the premium payment the Department pays to a certified redemption center to offset the costs incurred by the latter in connection with the latter's processing of redeemed beverage containers.

(cc) Redemption rate refers to the percentage of deposit beverage containers redeemed over a reporting period. The percentage is calculated by dividing the number of deposit beverage containers redeemed by the number of deposit

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beverage containers sold, and then multiplying that number by one hundred.

SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). P.L. 32-100:1 (Nov. 28, 2013) amended subsections (m), (o), (p), (q), (r) & (s); and added subsections (o) and (bb). Subsections (o) and (bb) were codified by the Compiler as subsection (bb) and (cc) respectively, pursuant to authority granted by 1 GCA § 1606.

§ 44104. Goals for Waste Stream Reduction.

The goal of this Act is to reduce the amount of material in our waste stream by a minimum of five percent (5%) each year from the date of implementation of the recycling deposit fee, until a thirty-five percent (35%) reduction of material in our waste stream has been achieved through the practice of waste volume reduction at the source and through recycling.

§ 44105. Deposit Beverage Container Fee.

(a) Every deposit beverage distributor shall pay to the Department a deposit beverage container fee on each individual beverage container manufactured in or imported into Guam that has been identified by the Department on the list of approved containers. The fee shall be imposed only once on the same deposit beverage container. The fee shall begin at a rate of five cents (5¢) per deposit beverage container, unless and until the Department determines otherwise as in accordance with § 44105(d) of this Chapter 44.

(b) No taxes on deposit fees. No taxes shall be assessed or collected on deposit beverage container fees accepted by dealers for products approved in this Chapter 44 for recycling purposes.

(c) Types of containers upon which deposit beverage container fees shall be levied must be first approved by the Board for placement upon the List of Approved Containers identified for recycling deposits.

(d) In its administration and implementation of this Chapter 44, the Board shall, after the first year of implementation and every two years thereafter, examine and may elect to increase or decrease either or both the deposit beverage container fee and the refund value. While the Administrative Adjudication law shall not apply to

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any decision by the Board to decrease said amounts, the Administrative Adjudication law shall apply to any decision by the Board to increase said amounts, and any such increase shall be based upon the handling fee and the redemption rate calculated annually based on information submitted to the Department in accordance with § 44105(b) of this Chapter 44.

(e) Except as may otherwise be provided in this Act, levy of the deposit beverage container fee imposed upon beverage containers shall begin immediately after the effective date of the voluntary agreement described in § 44119 of this Chapter 44. Redeemers shall be able to redeem beverage containers at certified redemption centers beginning six (6) months after the date said levy first occurs.

SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). Amended by P.L. 32-100:2 (Nov. 28, 2013).

§ 44106. Deposit of Beverage Container Recycling Deposit Fees.

(a) Deposit Beverage Distributors of beverage containers that meet the conditions described in Subsection (b) of this § 44106 shall, on a monthly basis, remit an amount equal to the deposit fee described in § 44105 of this Chapter 44 multiplied by the number of containers that have been purchased on which the deposit is applied, and for which payment has been received by the wholesaler in the previous calendar month. Deposits shall be made in the manner and on the forms prescribed by the Department.

(b) Types of containers upon which deposit fees shall be levied must be first approved by the Board for placement upon a list of approved containers identified for recycling deposits. Containers may not be placed upon the list of approved containers identified for recycling unless a process to recycle, reuse, or physically remove containers from Guam has been established or will be established concurrent with placement upon said list.

SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). Subsection (c) and (d) repealed by P.L. 32-100:3 (Nov. 28, 2013).

§ 44107. Deposit Beverage Distributors; Registration, Recordkeeping Requirements.

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(a) Six (6) months (180 calendar days) after the effective date of the voluntary agreement described in Title 10 GCA Chapter 44 § 44119, Deposit Beverage Distributors operating in Guam shall register with the Department, using forms prescribed by the Department, and shall notify the Department of any change in address or other information previously submitted. Any person who desires to conduct business in Guam as a Deposit Beverage Distributor shall register with the Department no later than one (1) month prior to the commencement of their business.

(b) All Deposit Beverage Distributors shall maintain records reflecting the manufacture of their beverages in deposit beverage containers as well as the importation and exportation of deposit beverage containers. The records shall be made available, upon request, for inspection by the Department; provided that any proprietary information obtained by the Department shall be kept confidential and shall not be disclosed to any other person, except:

(1) as may be reasonably required in an administrative or judicial proceeding to enforce any provision of this Chapter or any rule adopted pursuant to this Chapter; or

(2) under an order issued by a court or administrative agency hearings officer.

§ 44108. Beverage Container Recycling Deposit Fund.

(a) There is within the government of Guam, and under the control of the Department, a Beverage Container Recycling Deposit Fund, which is hereby created, into which the proceeds from recycling deposit fees as provided in § 44105 of this Act are deposited, and in which all interest earned by the Beverage Container Recycling Deposit Fund shall accrue.

(b) The Beverage Container Recycling Deposit Fund shall be administered separate and apart from any other fund of the Government, and shall not be subject to any transfer authority of I Maga'lahi or appropriation by I Liheslatura, except as provided in this Chapter 44. Any unencumbered funds remaining in the beverage container recycling fund at the end of each fiscal year shall remain in that Fund and be expended only for the purposes described in this Section.

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(c) A portion of the deposit beverage container fee collected by the Department shall be used, among other things, for:

- (1) expenses related to implementing the provisions of this Chapter 44;
- (2) funding of administrative, audit, and compliance activities associated with collection and payment of the deposits of the Beverage Container Recycling Deposit Act;
- (3) conducting of recycling outreach education, capacity building and demonstration projects; and
- (4) promotion and marketing of recycling related activities.

SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). Amended by P.L. 32-100:4 (Nov. 28, 2013).

§ 44109. Beverage Container Recycling Deposit Payout.

[Repealed.]

SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). Repealed by P.L. 32-100:5 (Nov. 28, 2013).

§ 44110. Audits.

The Office of Public Accountability shall conduct a management and financial audit of the program beginning in Fiscal Year 2012, and for each fiscal year thereafter ending in an even number. The costs incurred by the Public Auditor for the audit shall be reimbursed by the Beverage Container Recycling Deposit Fund. The Public Auditor may contract the audit services of a third party to conduct the audit.

§ 44111. Redemption Centers.

(a) To facilitate the return of empty beverage containers, and subject to the approval of the Department and appropriate business licensing, any person may establish a Redemption Center at which consumers may return empty beverage containers and receive payment of the refund value of such beverage containers. Refunds may be based on number or weight of deposit beverage containers.

(b) An application for approval of a Redemption Center shall be filed with the Department. The application shall state the name

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and address of the person responsible for the establishment and operation of the Redemption Center, the kind of beverage containers that will be accepted at the Redemption Center, and the names of the distributor or distributors that will be handling and exporting their recyclables, if different from the name of the operator of the Redemption Center. The application shall contain such other information as the Administrator may reasonably require.

(c) The Department shall approve a Redemption Center if it finds that the Redemption Center will provide a convenient service to consumers for the return of empty beverage containers. The order of the Department approving a Redemption Center shall state the kind of empty beverage containers that the Redemption Center will accept pursuant to the application of that Redemption Center. The order may contain such other provisions to insure that the Redemption Center will provide a convenient service to the public as the Administrator may determine. Applicants shall be appropriately licensed to conduct business in Guam by the Department of Revenue and Taxation.

(d) The Department may review the approval of any Redemption Center at any time. After written notice to the person responsible for the establishment and operation of the Redemption Center, the Department may, after hearing, withdraw approval of a Redemption Center if the Department finds there has not been compliance with the Department's order approving the Redemption Center, or if the Redemption Center no longer provides a convenient service to the public.

(e) All approved Redemption Centers shall meet applicable health standards and shall be maintained in full compliance with applicable laws and with the orders and rules of the Department, including permitting requirements.

(f) Redemption Centers shall:

(1) accept deposit beverage containers for which a deposit has been paid pursuant to § 44105;

(2) pay to the redeemer the full refund value in cash for all deposit beverage containers;

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(3) remain open at least thirty (30) hours per week, of which at least five(5) hours shall be on Saturday or Sunday; and

(4) forward the documentation necessary to support claims for reimbursement as stated in § 44114 of this Chapter.

(g) The Department shall prepare printed material to be posted at dealer locations in conspicuous areas identifying the location of approved Redemption Centers and specifying what type of recyclable materials may be deposited at each Center.

(h) All Redemption Centers shall submit to the Department the following information on forms and on dates prescribed by the Department, which information shall include at a minimum:

(1) the number or weight of deposit beverage containers of each material type accepted at the redemption center for the reporting period; and

(2) the amount of refunds paid out by material type.

§ 44112. Acceptance of Containers.

A Redemption Center shall not refuse to accept from a consumer any empty beverage container described in § 44103 (d), or refuse to pay to the consumer the refund value of a beverage container as provided in § 44109, except for the following reasons:

(a) the deposit beverage container is broken, corroded, or dismembered;

(b) the deposit beverage container contains a free-flowing liquid;

(c) the deposit beverage container holds a significant amount of foreign material; or

(d) the deposit beverage container appears to have been previously processed and baled.

§ 44113. Deposit Beverage Distributor to Collect and Remit Container Deposits.

Deposit Beverage Distributors licensed in Guam that meet the conditions described in Subsections (a) through (c) below shall, on a

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monthly basis, remit an amount for deposits for such beverage containers as described pursuant to this Chapter equal to the amount of the deposit as described in § 44105 of this Chapter, in the manner and on the forms developed by the Department, payable to the Beverage Container Recycling Deposit Fund, and subject to the requirements of the Department.

(a) Condition 1: The Deposit Beverage Distributor licensed in Guam distributes beverages that may include any and all alcoholic and non-alcoholic beverages, juices, flavored drinks, milk, coffee, tea and water;

(b) Condition 2: Any of the beverages distributed are in containers that have been identified by the Guam Environmental Protection Agency as that which can be recycled pursuant to § 44112 of this Chapter; and

(c) Condition 3: The business is a distributor in Guam of any such beverage product for sale to customers by retailers located on both federal and private property to both military and local retailers.

§ 44114. Redemption Centers' Claims for Reimbursement and Reporting Requirements.

(a) Claims for reimbursements of refund amounts paid out by Redemption Centers shall be made by Redemption Centers in the manner, on the forms, and in the frequency specified by the Department.

(b) The Department shall pay certified redemption centers refund values and handling fees as determined by the Board in accordance with § 44105 of this Chapter 44, based on, among other factors, collection reports submitted by the Redemption Centers. All Redemption Centers shall submit to the Department the following information on forms prescribed by the Department, which information shall include at a minimum:

(1) the number or weight of deposit beverage containers of each material type accepted at the Redemption Center for the reporting period;

(2) the amount of refunds paid out by material type; and

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(3) the number or weight of deposit beverage containers of each material type to be transported to a permitted recycling facility.

SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). Subsection (b) amended by P.L. 32-100:6 (Nov. 28, 2013).

2011 NOTE: *See also* 11 GCA, § 76220, Recycling Redemption Center Endorsements.

§ 44115. Deposit Beverage Container Requirements.

(a) Except as provided in (b) and (c) of this § 44115, effective immediately after the date this Act takes effect, every deposit beverage container sold in Guam shall clearly indicate the Guam Redemption Value by the letters “GU RV.

(b) Subsection (a) of this § 44115 shall not apply to any type of refillable glass deposit beverage container that has a brand name permanently marked on it and that has the equivalent of a refund value of at least five (5) cents, which is paid upon receipt of the container by a dealer or deposit beverage distributor.

(c) Containers that do not meet the definition of a deposit beverage container, as specified in § 44103(k) of this Chapter, shall not indicate “Guam Redemption Value” (GU RV) on the container.

SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). Subsection (a) and (c) amended by P.L. 32-100:7 (Nov. 28, 2013).

§ 44116. Responsibility of Dealers.

Dealers who are not Redemption Centers shall post a clear and conspicuous sign at the primary public entrance of the dealer’s place of business that specifies the name, address, and hours of operation of the closest Recycling Redemption Center location(s).

Businesses that sell deposit beverages for on-premises consumption, such as hotels, bars, and restaurants, shall collect used deposit beverage containers from the patron and either use a certified Redemption Center for the collection of containers or become a Recycling Redemption Center.

§ 44117. Reverse Vending Machine Requirements.

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Reverse vending machines may be used by Recycling Redemption Centers to satisfy the requirements of this Chapter, provided that the reverse vending machine shall accept one (1) or more types of empty deposit beverage containers and shall pay out appropriate refunds as coins, or via a redeemable credit slip with a value not less than the refund value of the container or containers being redeemed. Reverse vending machines shall be routinely serviced to ensure proper operation and continuous acceptance of empty deposit beverage containers and payment of the refund value.

§ 44118. Rules to be Adopted.

(a) The Board shall convene an advisory committee to assist in the development of all rules needed to implement this Chapter. Members of the committee shall assess the impact on consumers, recyclers, the military, and the beverage industry. Members of the committee shall be appointed by the Administrator and shall serve at the Administrator's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules, and providing input to the Board.

(b) The Board may adopt rules pursuant to this Chapter, as may be necessary to carry out its provisions. Amendments to such rules may be considered and adopted from time to time to replace or supplement such rules as may be in existence, to include:

- (1) identifying items to be recycled in addition to beverage containers;
- (2) establishing or revising appropriate deposit beverage container fees, handling fees, and refund values;;
- (3) regulating Redemption Centers and the redemption process for recyclable items; and
- (4) establishing and revising appropriate forms and procedures to reimburse Redemption Centers applying for refund amounts.

(c) The Board shall consider the merging or transfer of the functions described in this Chapter with the functions of an autonomous entity created to manage all solid waste concerns within Guam.

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SOURCE: Added by P.L. 30-221:3 (Dec. 30, 2010). Subsection (b)(2)
amended by P.L. 32-100:8 (Nov. 28, 2013).

§ 44119. Military Cooperation.

The provisions of this Chapter relative to beverage container recycling deposit fees shall not be implemented, and deposits as defined in this Chapter, shall not be assessed or collected on beverage containers, until the Government of Guam and the U.S. Navy and U.S. Air Force commands in Guam shall have established a voluntary agreement in writing that provides for such deposit fees to be assessed and collected throughout Guam, including all locations both on and off federal property, in the manner described in such voluntary agreement. Assessment and collection of deposit fees on beverage containers shall continue only for the period of time that such voluntary agreement is in effect.
