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CH. 44 GUAM BEVERAGE CONTAINER RECYCLING ACT OF 2010

DIVISION 2

PART 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 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 Fee.
- § 44106. Deposit of Beverage Container Recycling Deposit Fees.
- § 44107. Deposit Beverage Distributors; Registration, Recordkeeping Requirements.
- § 44108. Beverage Container Recycling Deposit Fund.
- § 44109. Beverage Container Recycling Deposit Payout.

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- § 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.

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

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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-four (64) 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.

(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.

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(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 off the premises.

(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;
- (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;

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(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*.

(m) *Deposit Fee* means the amount added to the listed price of a product that the consumer must pay to the dealer or distributor as a deposit for each individual beverage container that has been identified by the Department as recyclable and requiring a deposit. An amount equivalent to at least eighty percent (80%) of the deposit fee *shall* be returned to the redeemer when the redeemer sells the container to a redemption center. No taxes *shall* be assessed or collected on deposit fees accepted by dealers for products approved in this Chapter 44 for recycling purposes.

(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.

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(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 a 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.

(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 at least eighty percent (80%) of 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 at least eighty percent (80%) of 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.

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(y) *Refund amount* means the amount of the deposit fee refunded to a redeemer, which *shall* be at least eighty percent (80%) of the total amount of deposit fee paid per 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*.

§ 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 Fee.

A deposit fee of not less than five cents (5¢) is hereby levied on each beverage container described in § 44103(d) and sold in Guam for off-premises consumption. Such fee *shall* be remitted to the Department by deposit beverage distributors, licensed in Guam, which distribute such beverage containers. The Board may adjust the deposit fee as provided in § 44106 of this Chapter 44 pursuant to the Administrative Adjudication Law.

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

§ 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

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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.

(c) The Board *shall* from time to time examine and may elect to increase either the deposit fee, as provided in § 44105 of this Act, or the percentage of the refund value returned to the redeemer, as provided in § 44109 of this Act, or both, pursuant to the Administrative Adjudication Law.

(d) Levy of the deposit fee imposed upon beverage containers *shall* begin six (6) months (180 calendar days) after the effective date of the voluntary agreement described in Title 10 GCA Chapter 44 § 44119, except as may otherwise be provided in this act.

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

(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.

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(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.

(c) (1) Eighty percent (80%) of the funds remitted into the Beverage Container Recycling Deposit Fund *shall* be used only for reimbursements to Redemption Centers of amounts refunded to redeemers.

(2) Twenty percent (20%) of the funds remitted into the Beverage Container Recycling Deposit Fund *shall* be used *only* for the following purposes:

(A) expenses related to administering the provisions of this Chapter 44;

(B) funding of administrative, audit, and compliance activities associated with collection and payment of the deposits of the Beverage Container Recycling Deposit Act;

(C) conducting of recycling education and demonstration projects; and

(D) promotion of recycling related activities.

§ 44109. Beverage Container Recycling Deposit Payout.

(a) For each empty beverage container approved for recycling deposits under § 44105, and brought to a redemption center, eighty percent (80%) *shall* be returned to the redeemer for each empty beverage container. Payouts to redeemers *shall* begin six (6) months (180 calendar days) after the effective date of the voluntary agreement described in § 44119 of this Chapter.

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(b) A person operating a redemption center may compact empty metal beverage containers with the approval of the recycling facility required to accept the containers.

§ 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 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.

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(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;

(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

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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 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.

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(b) The Department *shall* pay certified redemption centers refund values as described in § 44109 of this Chapter, based on collection reports submitted by the Redemption Centers. All redemption centers *shall* submit to the Department the following information on form 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

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

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 on September 1, 2011, every deposit beverage container sold in Guam *shall* clearly indicate the refund value of the container and the word “Guam” or the letters “GU.” The names or letters representing the names of other states or jurisdictions with comparable deposit legislation may also be included in the indication of refund value. The refund value on every deposit beverage container *shall* be clearly, prominently, and indelibly marked by printing, scratch embossing, raised letter embossing, and *shall* be affixed on the top or side of the container in letters *at least* one-eighth (1/8) inch in size.

(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” or “GU” on the container.

§ 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

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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.

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 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.

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(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.

§ 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.
