

# IOWA DEPARTMENT OF NATURAL RESOURCES

Petition by the Iowa Grocery Industry

Association for the adoption, repeal and

PETITION FOR RULEMAKING

Amendment of rules relating to convenient

service and standardize uniform applicability

of Iowa Code Chapter 455C

The Iowa Grocery Industry Association (IGIA) present this petition for rule making pursuant to 567-5.1 and Iowa Code Chapter 17A the Iowa Administrative Procedures Act. Due to disparity in administration and enforcement of the Beverage Containers Control law, this petition requests adoption of rules to standardize the definition of "convenient service" and ensure uniform applicability of Iowa Code Chapter 455C for "any person who engages in the sale of beverages in beverage containers to a consumer." The changes requested in this petition are based upon data related to travel habits for consumers for employment and services along with changes that adhere to a strict interpretation of Iowa Code Chapter 455C. The petition requests the adoption of a convenience standard based upon mileage, removes the consent requirement from the approved redemption center application criteria, ensures that consumers receive their full "refund value" from all dealers and redemption centers, and further clarifies who is considered a dealer under Iowa Code Section 455C.1.

## BRIEF STATEMENT OF APPLICABLE LAW

1. Iowa Code Chapter 455C implements Iowa's Beverage Containers Control law which is many times referred to as "the bottle bill". The law in its basic form requires dealers to charge a 5 cent deposit to a consumer who purchases certain beverages and then mandates that the retailer accept all empty beverage containers of the type that was sold to consumers.

2. Iowa Code section 455C.1 defines a dealer as "any person who engages in the sale of beverages in beverage containers to a consumer."

3. Iowa Code section 455C.2 sets a refund value of "not less than five cents" for beverages sold for "consumption off premises" which the consumer may return to the dealer or a redemption center where they shall "return the amount of the refund value".

4. Dealers who accept containers may refuse to accept any type of container not sold by the dealer pursuant to Iowa Code section 455C.3, containers without the refund value pursuant to Iowa Code section 455C.4(1) and damaged containers pursuant to 455C.14.

5. The Iowa Department of Natural Resources (*hereinafter* Department) is charged with carrying out Chapter 455C and is provided rule making authority through the Environmental Protection Commission (*hereinafter* Commission) in Iowa Code section 455C.9.

6. The main role of the Department is the authorization of approved redemption centers under Iowa Code section 455.6 and for dealers to refuse to accept containers pursuant to section 455.4.

7. In order for the Department to issue an order for an approved redemption center, the Department must determine if the redemption center "will provide a convenient service to consumers" according to Iowa Code section 455C.6.

8. Pursuant to Iowa Code Chapter 17A and section 455C.9 the Commission and the Department have adopted rules for administration of the Beverage Containers Control law at Iowa Administrative Code (*hereinafter* IAC) 567 chapter 107.

9. IAC 567.107.4 (1) requires written consent from the approved redemption center.

10. Unapproved redemption centers according to 455C.7 are not required to receive authorization from the Department, but the rules in IAC 567-107.4(2) require the unapproved redemption center to provide certain information prior to operation.

## DESCRIPTION OF AMENDMENTS TO ADMINISTRATIVE RULES SOUGHT BY PETITIONERS

Petitioners hereby request that the Commission and the Department make the following amendments to IAC 567-107 title Beverage Container Deposits:

1. Set a convenience standard of 15 miles from any redemption center or dealer agent. Specifically amend sub-rule 567-107.4(1) paragraph "c" by adding, For purposes of this chapter, "convenient service" means any redemption center or dealer agent within a 15 mile one-way drive of a dealer, so it reads as follows:

C. A redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer's customers. The department order that approves the redemption center shall name the dealers to be served by the redemption center. For purposes of this chapter, "convenient service" means any redemption center or dealer agent within a 15 mile one-way drive of a dealer.

2. Remove the written consent requirement from the sub-rule for approved redemption centers at 567-107.4. Specifically, make the following amendments:

a. Amend sub-rule 567-107.4(1) paragraph (b)(3) by striking the words "Indication that the redemption center will accept all" and replace with "Description of so it reads as follows:

(3) Description of ~~Indication that the redemption center will accept all~~ kinds, sizes, and brand names of beverage containers sold by the dealers served by the redemption center;

b. Amend sub-rule 567-107.4(1) paragraph (b)(4) by striking the words "and the written consent of those dealers to be served by the redemption center" so it reads as follows:

(4) Names and addresses of the dealers to be served by the redemption center ~~and the written consent of those dealers to be served by the redemption center;~~

3. Create a defined term in sub-rule 567-107.2 of "refund value" to mirror the Iowa Code subsection 455C.2 to ensure consumers receive their entire full refund value in all redemption centers. The new definition should read as follows:

"Refund Value" means not less than five cents paid by the consumer on each beverage container sold in this state by a dealer for consumption off the premises returned to the consumer upon return of the container to the dealer or person operating an approved or unapproved redemption center.

4. Insert the words "for consumption off the premises including all retail locations" in sub-rule 567-107.2 so the definition should read as follows:

*"Dealer"* means any person who engages in the sale of beverages in beverage containers to a consumer for consumption off the premises including all retail locations.

## PETITIONERS' ARGUMENTS IN FAVOR OF THE ACTIONS URGED IN THIS PETITION

### **1. Convenient Service**

The current Beverage Containers Control law in Iowa Code Chapter 455C provides the ability for dealers to not redeem containers at their businesses through an approved redemption center that "will provide a convenient service to consumers," which is language found in both Iowa Code Section 455C.6 and in the administrative rules at 567-107.4(1)(c). There is no other statute, rule or guidance from the Department that sets a standard.

The Department has established (without statute, rule or guidance) that the standard is a 10 minute drive between the dealer and an approved redemption center. This timing is determined through a web search engine tool. Through correspondence with the Department it has been stated that their internal convenience standard has "evolved" from a single mile to their current 20 minute round trip standard. All without an agency rulemaking.

In addition to the 20 minute roundtrip standard being applied without statutory or rule authorization, the Department's website currently identifies redemption centers that have been approved for over 20 miles.

The results of this standard are situations where current redemption centers are denied being approved for a dealer and do not receive the additional material to assist their operations. Our members work with local redemption centers who want

the additional material and handling fees, but the Department's standard denies this additional revenue.

The Petitioners believe a 15 mile one-way drive will provide a much more consistent application of the law and more accurately reflects the changing driving patterns of consumers. This distance creates a bright line for dealers and the Department to operate under.

A recent report from the Iowa Department of Transportation (Iowa DOT) shows that while continues to have a lower average commute time than the national average, the percentages of commuters traveling further is increasing.' This report shows an increase in commuters traveling over 30 minutes and a six percent decrease in commuters traveling less than 15 minutes.<sup>2</sup> The Iowa DOT has also stated that in many rural counties almost 50% of commuter trips are longer than 25 minutes.<sup>3</sup> This growth is also reflected in the US Census travel time to work which in 2017 was an average of 19.4 minutes in the state of Iowa.<sup>4</sup> This amount of time at 55 miles per hour equals 17.78 miles traveled.

Longer drive times to work are also reflected in the time consumers' travel to purchase groceries, which has grown especially in rural areas. This is unfortunately due in part to the decline in grocery stores in rural Iowa with the state losing more than half of its grocery stores from 1976 to 2000.<sup>5</sup> With these current numbers, access patterns in rural areas are shown to be over 20 minutes one-way to purchase groceries, which would include beverage containers that could be redeemed.<sup>6</sup> It would seem reasonable to make the correlation between distance traveled to purchase the product and a similar distance being utilized to determine convenience for redemption.

## **2. Consent from Redemption Center**

The current rules require written consent from the redemption center to be approved for a dealer.' This requirement is not found within Iowa Code Chapter 455C and has unintended consequences. Our members are supportive of redemption centers and want to see more material move to redemption centers in order to improve their revenue streams. The consent requirement within the rules in some cases allows redemption centers to demand a monthly or annual payment for their continued consent. We believe redemption centers are in the business of redeeming cans and

bottles, so if one is in operation within the convenient distance standard then they are best suited for the collection of these materials.

### 3. Refund Value

Iowa Code Section 455C.2 outlines the refund value to be "not less than five cents" but through correspondence with the Department in 2019 they initially seemed to believe there may be a

<sup>1</sup> Iowa Department of Transportation. *Iowa in Motion — Planning Ahead 2040. State Transportation Plan*. Adopted by the Iowa Transportation Commission, May 8, 2012. Page 24.

<sup>2</sup>

*Id.*

<sup>3</sup> Iowa Department of Transportation. *Iowa Commuter Transportation Study*. December 2014. Page 17.

<sup>4</sup> United States Census Bureau. 19.4 2017 US Census mean travel time to work

<sup>5</sup> Stone KE, Artz GM. *Trends for Iowa Retail Businesses*. Iowa Retail Trade Data by Industry, FY76-FY2000. Ames, IA: Iowa State University, University Extension; 2001.

<sup>6</sup> Bitto, Ella Annette, et al. *Grocery Store Access Patterns in Rural Food Deserts*. Journal for the Study of Food and Society. Vol., No. 2, Winter 2003. Page 41.

<sup>7</sup> Iowa Administrative Code 567-107.4(1)(b)(4).

"technicality" wherein unapproved redemption centers may pay less than the full five cent refund value. Our members did not agree with this interpretation and failed to believe that consumers think their five cent deposit should return less than five cents upon redemption. The Department has since agreed with our understanding that it is clear that the "refund value of not less than five cents" in Iowa Code Section 455C.2 is required of all redemption centers, which includes unapproved redemption centers who are required to pay the "refund value" in Iowa Code Section 455C.7.

We have further clarified this understanding with a definition for "refund value" that the full five cent deposit is to be returned at a redemption rather than a portion being treated as a tax or administrative fee.

### 4. Uniformity of Dealers

The definition of "dealer" in 455C.1 seems clear that "any person who engages in the sale of beverages in beverage containers to a consumer" should be allowing for the redemption of covered beverage containers at their store unless they have an approved redemption. Through some initial research around the state we have

determined that is not the case. The law should be uniformly applied and enforced against all "dealers". The addition to the definition of dealer should clarify all retail locations as complying with the bottle redemption law.

The grocery industry is facing intense pressure in the current retail environment. Compliance with the current redemption law can be difficult and costly due to a variety of factors. So whether competing with out of state pricing or with other in-state dealers who do not comply with the law, our members are put at a distinct disadvantage. Our members include many Iowa based companies like Hy-Vee, Fareway, Various Independent Grocery Stores, Kum & Go and Casey's who employ thousands of people across the state, as well as out of state companies like Walmart and Kwik Star who also work hard to maintain compliance. Hopefully, this clarification will point out the inequity and direct the Department's uniform application of the law.

## INTERESTED PARTIES TO THIS PETITION

Petitioners believe that the following parties all have an interest in seeing the DNR and the EPC clarify their rules to ensure uniform applicability of the bottle redemption law:

The 1,400 chain and independent supermarkets, chain and independent convenience stores, suppliers, wholesalers, brokers, manufacturers and distributors members of the Iowa Grocery Industry Association who employ over 100,000 Iowans paying over \$1.5 billion in wages annually. See <http://www.iowagrocers.com/>.

## INQUIRIES

Please address all correspondence regarding this petition to Brad Epperly and Dustin Miller of Nyemaster Goode. P.C., 700 Walnut St, Ste 1600, Des Moines, Iowa 50309. Phone 515-2833100. Email [bcepperly@nyemaster.com](mailto:bcepperly@nyemaster.com).

## MEETING REQUESTED

Petitioners hereby request a joint meeting between the Director of DNR, her legal staff, and IGIA to discuss the agency's response to this petition.

SIGNATURES OF PETITIONERS

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