



DMS NOTICE
QC – 10 – 9

December 27, 2010

Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

**SUBJECT: Enforcement of Business and Professions Code Section 12024.2
relating to CRV containers**

The question of whether or not overcharges or charges on non California Redemption Value (CRV) containers can be charged as a violation of Business and Professions Code (BPC) Section 12024.2 (charging a higher price for a commodity than advertised, displayed, marked, posted or quoted) was presented to the Department's Legal Office for interpretation.

The following conclusion, based on research and analysis, was offered by the Department's Acting Chief Counsel:

QUESTION PRESENTED

Does the Division of Measurement Standards have legal authority to charge a violation of Business and Professions Code Section 12024.2 for beverage container overcharges of the Cal Recycling established California Redemption Value (CRV)?

SHORT ANSWER

No. The BPC provides only for the enforcement of the overcharge of a commodity of a posted price. Because CRV is not a commodity but rather a regulatory fee, it falls outside the enforcement authority provided in BPC Section 12042.2.

BACKGROUND / DISCUSSION

Cal Recycle is a department within the California Natural Resources Agency administering programs established pursuant to the California Beverage Container Recycling and Litter Reduction Act (Act). *Public Resources Code (PRC) Sections 14500 et seq.* It was the intent of the Legislature that Cal Recycle determine and implement the regulatory responsibilities of recycling matters. *PRC Sections 14501(h), 14510.5*

Beverage containers covered under the Act are subject to CRV, a regulatory fee collected for the purpose of assuring the return for recycling of a greater percentage of the beverage containers sold in this state. *PRC Section 14562.* On its website, Cal Recycle posts a 2007 guidance document stating, "beverage



retailers overcharging CRV or charging for non-CRV containers may be liable under BPC Section 12024.2. See the following Cal Recycle website <http://www.calrecycle.ca.gov/BevContainer/Retailers/CRVCompute.pdf>

BPC Section 12024.2 makes it “unlawful for any person, at the time of sale of a commodity, to charge an amount greater than the price, or to compute an amount greater than a true extension of a price per unit, that is advertised, posted, marked, displayed, or quoted for that commodity.”

“Commodity” means any horticultural, viticultural, or vegetable product of the soil, aquacultural, livestock and livestock products, and poultry and poultry products . “*Food and Agricultural Code Section 59504.*

Other definitions include “an article of trade or commerce especially an agricultural or mining product that can be processed and resold” *U.S.Legal.com*; and “any moveable or tangible thing that is produced or used as the subject of barter or sale . . . goods, wares, and merchandise” *Black’s Law*.

CONCLUSION / RECOMMENDATION

The Legislature defined CRV as a regulatory fee. Regulatory fees are enacted by governments to raise revenue and encourage certain behavior by the public. In this case, the Legislature clearly expressed its intent to encourage recycling through its adoption of the Act. As such, there is no way the CRV fee be confused with, or seen as a commodity and is supported by the common definitions of commodity provided above.

The statement found in Cal Recycle’s guidance document implying that overcharging of CRV may be enforceable under the BPC is not supported in statute or regulation. In fact, nowhere in the Act is reference made to the BPC or to the Department of Food and Agriculture’s enforcement authority under the BPC. That omission, along with the fact that BPC Section 12024.2 applies only to commodities – not regulatory fees – clearly prohibits the DMS from exercising its enforcement authority for violations for overcharges of CRV.

When complaints of CRV overcharge are received by Division personnel, weights and measures officials should refer them to Cal Recycle.

Sincerely,



Kristin J. Macey
Director

cc: Ed Williams, County Liaison Office