

**Chapter 426: RESPONSIBILITIES UNDER THE RETURNABLE BEVERAGE CONTAINER LAW**

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**SUMMARY:** The purposes of this Chapter are to clarify responsibilities of Manufacturers, Dealers, Distributors, Initiators of Deposit, Contracted Agents, and Redemption Centers for the pickup and sorting of empty beverage containers and to establish a time for payment of deposits, refunds and handling charges under the Returnable Beverage Container Law.

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**1. Definitions**

As used in this Chapter and unless the context otherwise indicates, the following words and phrases have the following meanings:

- A. "Beverage" means Malt Liquor, Spirits, Wine, Wine Coolers, Hard Cider, Low-Alcohol Spirits, soda or noncarbonated water, and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption.

The term Beverage excludes the following:

- (1) A liquid which 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 or infant formula as defined by the Food, Drug and Cosmetic Act. (21 U.S.C. §§ 321(g) (1) and (z)) as amended through June 22, 2009;
- (3) A liquid which is designed to be consumed only as a nutritional supplement and not as a Beverage;
- (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 such 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;
- (8) Maine produced apple cider and blueberry juice;
- (9) Unflavored rice milk, unflavored soymilk, Milk and Dairy Derived Products.

- (10) Products sold in Paper or Cardboard Containers.
- B. “Commingling Agreement” means an agreement between two (2) or more Initiators of Deposit allowing some or all beverage containers for which they have initiated deposits to be commingled by Dealers and Redemption Centers.
- C. "Commissioner" means the Commissioner of the Department of Environmental Protection.
- D. "Contracted Agent" means a public or private company or individual who enters into an agreement with the Initiator of Deposit to pick up empty beverage containers from Redemption Centers and Dealers.
- E. “Dealer” means a business entity that sells, offers to sell or engages in the sale of Beverages in a beverage container to a consumer from a retail Food Establishment licensed by the Department of Agriculture, Conservation & Forestry as defined in 22 M.R.S. §2152 or an Eating Establishment licensed by the Department of Health & Human Services as defined 22 M.R.S. §2491, including but not limited to an operator of a vending machine containing Beverages in beverage containers.
- F. “Department” means the Maine Department of Environmental Protection.
- G. “Distributor” means a Person who engages in the sale or distribution of Beverages in beverage containers to a Dealer in this State, including a Manufacturer or manufacturer's agent who sells directly to a Dealer.
- H. “EAN” means an International Article Number, previously called a European Article Number, 13-digit barcode.
- I. "Fortified Wine" means any liquor containing more than 15.5% alcohol by volume that is produced by the fermentation of fruit or other agricultural Product containing sugar, and Wine to which Spirits have been added as long as the resulting liquor does not exceed 24% alcohol by volume.
- J. "Hard Cider" means liquor produced by fermentation of the juice of apples or pears, including, but not limited to, flavored, sparkling or carbonated cider, that contains not less than ½ of 1% alcohol by volume and not more than 8.5% alcohol by volume.
- K. "Initiator of Deposit" means either a Manufacturer or Distributor that is licensed by the Department to initiate deposits on beverage containers with labels properly registered under 38 M.R.S. §3105(3) and meeting the deposit requirements enumerated in 38 M.R.S. §3103.
- L. "Liquor" means Spirits, Wine, Malt Liquor, Hard Cider, or any substance containing liquor intended for human consumption that contains more than 1/2 of 1% of alcohol by volume.
- M. "Low-Alcohol Spirits Product" means a Product containing Spirits that has an alcohol content of 8% or less by volume.

- N. "Malt Liquor" means Liquor produced by the fermentation of malt, wholly or partially, or from any malt substitute, which contains 1/2 of 1% of alcohol or more by volume. Malt Liquor includes, but is not limited to, ale, beer, porter and stout. Malt Liquor includes Beverages made with Malt Liquor, but to which no Spirits are added.
- O. "Manufacturer" means a Person who: offers Beverages for sale in or into Maine under its brand or label or licenses other entities to offer Beverages for sale in or into Maine under its brand or label, or imports a Beverage into the United States that is manufactured by a Person without a presence in the United States; and an out-of-state wholesaler of Liquor that holds a certificate of approval in accordance with Maine law under Title 28-A.
- P. "Member Dealer" means any Dealer who has entered into an agreement with a licensed Redemption Center to manage the redemption of containers sold by that Dealer.
- Q. "Milk and Dairy-Derived Products" means whole milk, skim milk, cream, low-fat milk, or any combination and includes other Products of which the single largest ingredient is whole milk or milk fat or milk with varying percentages of milk fat.
- R. "Paper or Cardboard Container" means a container which is composed of at least 80 percent by volume of paper material.
- S. "Person" means an individual, partnership, corporation or other legal entity.
- T. "Product" means an item as determined by a separate label and/or Universal Product Code or International Article Number.
- U. "Redemption Center" means any place of business that accepts empty returnable beverage containers from either consumers or from Dealers, or both, and that is licensed by the Department as a Redemption Center.
- (1) Reverse Vending Machines (RVMs) are considered to be a Redemption Center if they are used as "stand alone" devices and not as a part of a licensed Redemption Center.
  - (2) If an RVM is used as a "stand alone" device and not as part of a licensed Redemption Center, it will be the responsibility of the lessee or device owner to license the location as a Redemption Center as required in 38 M.R.S. §3113.
- V. "Retailer" means a Dealer that sells, offers, or provides for retail sale, Beverages in beverage containers.
- W. "Reverse Vending Machine" or "RVM" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recognize the Universal Product Code on containers and accumulates information regarding containers redeemed, thereby enabling the RVM to accept containers from redeemers and to issue script for their refund value.

- X. "Shell" means the standard trade package made of fiberboard, wood or plastic designed for packaging, carrying or transporting glass or plastic beverage containers.
- Y. "Shipping Carton" means the standard trade package made of cardboard or other material designed for packaging, carrying or transporting all types of beverage containers, and includes plastic bags used for the return of such containers.
- Z. "Size" means the liquid content of a beverage container, such as 500 ml, 2 liter.
- AA. "Spirits" means any Liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of distilled Spirits of any kind. "Spirits" does not include Low-Alcohol Spirits Products or Fortified Wine.
- BB. "Type" means the composition or kind of material, such as glass, metal or plastic, and unique physical design or construction of a beverage container, such as a bottle, can, or flip top container.
- CC. "Universal Product Code" or "UPC" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers to identify a Product. Universal Product Code may also mean any accepted industry barcode which replaces the UPC including but not limited to Universal Product Code (UPC), EAN and other codes that may be used to identify a product.
- DD. "Wine" means any Liquor containing not more than 24% alcohol by volume that is produced by the fermentation of fruit or other agricultural Products containing sugar or Wine to which Spirits have been added not to exceed 24% by volume. Wine includes, but is not limited to, table wine, still wine, sparkling wine, champagne and Fortified Wine, provided that the alcohol content is not above 24% by volume. For purposes of this Chapter, Wine does not include Wine Coolers.
- EE. "Wine Cooler" means a Beverage of less than 8% alcohol content by volume consisting of Wine and:
- a) Plain, sparkling or carbonated water; and
  - b) Any one or more of the following:
    - (i) fruit juices;
    - (ii) fruit adjuncts;
    - (iii) artificial or natural flavors or flavorings;
    - (iv) preservatives;
    - (v) coloring; or
    - (vi) any other natural or artificial blending material.

## 2. Prohibitions

A Manufacturer, Distributor, seller, or Dealer may not offer a Beverage for sale to consumers in this State:

- A. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener, except that nothing in this Subsection prohibits the sale of a container, the only detachable part of which is a piece of adhesive-backed tape, a sanitary cover, or a screw-off bottle top;
- B. In a container composed of one or more plastics if the basic structure of the container, exclusive of the closure device, also includes aluminum or steel; or
- C. The container label does not meet the standards in Section 7 and the label is registered with the Department in accordance with Section 8 of this Chapter.

## 3. Licensing of Redemption Centers

- A. All Redemption Centers within the State of Maine shall be licensed with the Department prior to beginning operation. Applicants for approval of a Redemption Center shall file an application and a \$50.00 license fee with the Department annually. Redemption centers shall allow the Department to conduct a facility inspection and meet all applicable requirements prior to licensure.
- B. Applicants shall utilize forms provided by the Department and shall supply the information requested thereon.
- C. The Commissioner may approve an application for a Redemption Center if the Commissioner finds that the facility will provide a convenient service for the return of empty beverage containers, has agreements with local Retailers (Dealers), and meets all other licensing requirements enumerated in this Chapter and 38 M.R.S. §3109. In making this determination with respect to an existing Redemption Center, the Commissioner may consider its compliance with the requirements of this Chapter and the quality of the service provided.
- D. After a license has been issued to a Redemption Center, the owner shall apply to the Department for approval of any additional Dealers obtained after the then-current annual license has been issued. The Department's decision as to whether such Dealers may be Member Dealers must be made according to the criteria set forth in Subsection C above.
- E. All licenses are subject to suspension or non-renewal for good cause shown, including but not limited to unsafe practices, falsification of reports, or serious or continued violation of this Chapter.

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Note: Along with the right to file an appeal in accordance with the Maine Administrative Procedures Act, 38 M.R.S. § 344(2-A) provides for appeal of a Department licensing decision to the Board of Environmental Protection: "Any person aggrieved by a final license or permit decision of the Commissioner may appeal that decision to the board. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal."

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- F. The Commissioner may approve only one application for a Redemption Center license in a municipality with a population of 5,000 or less.
- G. Any operating Redemption Center destroyed as a result of a catastrophic event, such as a fire, flood or other natural disaster, may rebuild and obtain a license to operate a Redemption Center on the same property or open a Redemption Center in an already existing structure within the same municipality as the original Redemption Center. The replacement Redemption Center need not comply with 38 M.R.S. § 3113(3), as long as it is in operation within six (6) months of the catastrophic event.
- H. Agreements to serve Dealers must be in writing and must state the name and address of the Dealer to be served and the distance from the Dealer to the Redemption Center. The agreements must be signed by both parties. For purposes of compliance with Subsection 3(C) of this Chapter, only Dealers with a permanent presence in a “brick and mortar” retail Food Establishment (as defined in 22 M.R.S. §2152(7-A)) or Eating Establishment (as defined in 22 M.R.S. §2491(7)) will be considered for an approved agreement.

#### **4. Initiators of Deposit**

- A. All Initiators of Deposit distributing or selling Beverages in the State of Maine shall be licensed with the Department prior to beginning operation, and annually thereafter. Applicants for approval as an Initiator of Deposit shall utilize forms provided by the Department, and shall submit the completed form to the Department.
  - (1) Applications for approval of Initiators of Deposit of small breweries and small wineries that produce no more than 50,000 gallons of its Product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its Product must include an annual license fee of \$50.00.
  - (2) Applications for approval of Initiators of Deposit of small beverage Manufacturers whose total production of all Beverages from all combined manufacturing locations is less than 50,000 gallons annually must include an annual license fee of \$50.00.
  - (3) All other applications for approval of Initiators of Deposit must include an annual license fee of \$500.00.
- B. Initiators of Deposit shall annually provide the Department and licensed Redemption Centers that manage their beverage containers current lists of Beverages on which they initiate deposit. Initiators of Deposit shall also provide the Department with a current list of Beverages on which they initiate deposit upon request.
- C. Initiators of Deposit shall notify the Department and licensed Redemption Centers that manage their beverage containers at least monthly of the addition and discontinuance of any Products for which they initiate deposit.

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Note: An Initiator of Deposit is responsible for administration of the deposit transaction fund, reporting, and transfer of abandoned deposit amounts in accordance with *Unclaimed deposits*, 38 M.R.S. § 3108.

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**5. Contracted Agents**

- A. All Contracted Agents operating in Maine shall be licensed with the Department prior to beginning operation, and annually thereafter. Applicants for approval as Contracted Agents shall utilize forms provided by the Department, and shall submit the completed form to the Department. A \$500.00 annual license fee must accompany each application.
- B. A Contracted Agent is required to perform all of the pickup functions of the Initiator of Deposit with whom they contract unless expressly exempted in the contractual agreement between the initiator and the Contracted Agent.
- C. Contracted Agents shall annually provide to the Department current lists of Initiators of Deposit with whom they have contracts and beverage containers which they pick up.
- D. Contracted Agents shall notify the Department whenever Initiators of Deposit with whom they have contracts and/or beverages containers which they pick up are added or discontinued.

**6. Refund Value, and Responsibility for Initiation of Deposit and Label Registration**

- A. The refund value on Wine and Spirits may not be less than \$0.15. The refund value on all other Beverages may not be less than \$0.05.
- B. The Bureau of Alcoholic Beverages and Lottery Operations shall initiate the deposit on Spirits. The Manufacturer is responsible for meeting the labeling requirements in Section 7, and for registering the labels for these Beverages on behalf of the Bureau of Alcoholic Beverages and Lottery Operations in accordance with Section 8.
- C. The Manufacturer shall be the Initiator of Deposit on its brand of Beverages other than Spirits when the Beverages are:
  - (1) sold in refillable containers;
  - (2) sold in non-refillable containers, and the Manufacturer is the sole Distributor in Maine; or
  - (3) sold in non-refillable containers, and sold through non-geographically exclusive distributorships.

The Manufacturer is responsible for meeting the labeling requirements in Section 7 and registering the labels for these Beverages in accordance with Section 8.

- D. For Beverages, other than Spirits, sold in non-refillable containers through geographically-exclusive distributorships, the Distributor shall initiate the deposit. The Manufacturer is responsible for ensuring the labels for these Beverages meet the labeling requirements of Section 7 and are registered in accordance with Section 8.

Initiators of Deposit must be licensed with the Department pursuant to 38 M.R.S. § 3113 and in accordance with this Chapter prior to distribution of any Beverage requiring deposit within the State of Maine. Each Distributor shall provide each Manufacturer with all Product sales data necessary for the Manufacturer to comply with 38 M.R.S. § 1308 "*Unclaimed deposits*".

## 7. Labeling Requirements

- A. On printed labels, the refund value and the word "Maine" or the abbreviation "ME" must be clearly and conspicuously displayed on every beverage container using letters, numerals, and symbols not less than 1/8 inch high in clear and prominent typeface and a color contrasting with its background. The refund value may not be indicated on the bottom of the container.

For labels printed directly on the container, the refund value and the word "Maine" or the abbreviation "ME" must be printed using letters, numerals, and symbols not less than 1/8 inch high in clear and prominent typeface on a smooth and even surface, and in a color that contrasts with the background both when the container is full and when it is empty.

On metal beverage containers the refund value and the word "Maine" or the abbreviation "ME" must be embossed, incised, or printed clearly and conspicuously on the top of each beverage container using letters, numerals, and symbols not less than 1/8 inch high. On metal beverage containers sold with a sanitary cover that obscures the redemption value on the top of the container, the refund value and the word "Maine" or the abbreviation "ME" must also be printed clearly on the container label using letters, numerals, and symbols not less than 1/8 inch high.

- B. For Wine and Spirit Products with labeling that does not include the required refund value, the Initiator of Deposit shall ensure that a Department-approved sticker that clearly identifies the Initiator of Deposit and the deposit/refund value is affixed to the Product container. Prior to the sale of a Wine or Spirit container to which a separate sticker stating the refund value is to be affixed, the Initiator of Deposit shall submit a sample of the sticker to the Department for approval. Approval will be based on the readability, suitability, and durability of the sticker. The Initiator of Deposit on other Liquor Products, other than Products in metal beverage containers, may seek approval to affix an approved refund value sticker to their Product for a limited time to allow product sale in Maine until the Product label can be modified to include the Maine deposit/refund value.
- C. When the Distributor is the Initiator of Deposit, a Manufacturer shall provide its Distributor with evidence that its Product is labeled in accordance with Subsection A, or shall contract with a Product Distributor in Maine to label each Product in accordance with Subsection B. A Distributor acting as an Initiator of Deposit may request the Department review Manufacturer Product labels for compliance with this Section as part of its product label registration. If such a request is made, the Product may not be offered for sale in Maine until the Department completes label review and finds that the label meets the standards in this Section.
- D. With the exception of Wine products, all beverage containers sold in the State of Maine must bear a UPC or EAN that is unique to each combination of Beverage brand, container Type, Size and flavor. Malt liquors of the same Beverage brand may utilize one UPC for EAN for their seasonal products in the same container type and size.

## 8. Registration of Beverage Containers

Each beverage container and its label must be registered with the Department prior to the Beverage being offered for sale in Maine and annually thereafter. Applications for registration must be on forms or in an electronic format provided by the Department.



- A. Registrations must include:
- (1) the Product name;
  - (2) the category of Beverage, i.e., wine, wine cooler, spirits, beer, water, hard cider/hard juices, other;
  - (3) the container Size;
  - (4) the container Type,
  - (5) if glass, the color;
  - (6) the 12 digit UPC or 13-14 digit EAN, unless the product is a Wine product that is not labeled with a UPC or EAN;
  - (7) the name and contact information for the entity that will be responsible for picking up beverage containers from Redemption Centers and Dealers, and if the pick-up entity is a Contracted Agent, evidence of a current agreement with that Contracted Agent;
  - (8) if not submitted with a previous year's label registration, a copy or photograph of the beverage container label or a signed statement certifying that the beverage container being registered is marked with the deposit refund value in accordance with Section 7; and
  - (9) the appropriate fee in accordance with this Section.
- B. If a UPC or EAN on a beverage container is changed during the registration period, that Product will be considered to be discontinued and an application for registration of the Product label bearing the new UPC or EAN and the appropriate registration fee must be submitted to the Department prior to offering the Product for sale into Maine.
- C. **Fees**
- (1) Wine containers: \$1.00 annually per label.
  - (2) All other beverage containers: \$4.00 annually per label.

## **9. Operation of Redemption Centers**

- A. The Redemption Center shall store all empty beverage containers separated from food Products sold on the premises by a solid partition.
- B. The Redemption Center operator shall operate the Redemption Center in such a manner as not to cause a nuisance to the surrounding area, and shall:
- (1) Take all necessary precautions to eliminate and protect against insect and rodent infestation inside and surrounding the premises.

- (2) Store unsorted and sorted beverage containers separated from all food Products by a solid partition and in a building constructed properly to protect beverage containers from adverse environmental conditions (i.e. rain, snow, mud, etc.).
  - (3) Provide sanitary facilities to ensure adequate personal hygiene for employees and which comply with United States Department of Labor standards in 29 C.F.R. § 1910.141 as amended up to July 1, 2016. Sanitary facilities include toilet, hand wash sink, approved septic system, and hot and cold potable water under pressure. A Redemption Center is exempt from this requirement if the Redemption Center is operated by the owner and immediate family members only and has no other employees.
  - (4) Hold a valid retail food establishment license issued by the Maine Department of Agriculture, Conservation and Forestry, Division of Quality Assurance and Regulations if foods or Beverages are sold, and meet all applicable sanitation requirements.
  - (5) Maintain general surroundings free of litter, debris, and unused equipment.
  - (6) Employ routine housekeeping practices to maintain an environment that is clean and orderly to discourage, identify, and eliminate rodents, insects and birds.
  - (7) Prominently display a list of all Products discontinued within the past 120 days and the dates when they will no longer be accepted.
  - (8) Sort beverage containers by like product group, material and Size, and consistent with Commingling Agreements in Shells or boxes as provided by the Manufacturer, Distributor, or pick-up agent.
  - (9) Notify the Department of additional members obtained after the issuance of the center's license.
  - (10) Post a "warning" sign in accordance with Section 18 of this Chapter.
- C. Redemption centers shall be open for business (i.e., acceptance of empty beverage containers) a reasonable number of hours, given the volume of returns and area population considered. Redemption centers shall post their hours of operation in a conspicuous place.
- D. The location of proposed and existing Redemption Centers must be convenient to Member Dealers and their customers to be served.
- E. Redemption centers may charge a fee to Member Dealers.
- F. A Redemption Center may pick up beverage containers from non-members.
- G. A Redemption Center shall tender beverage containers to a Distributor or third party Contracted Agent by making reasonable accommodations that allow for the Distributor or third party Contracted Agent to have ease of access to those beverage containers being tendered or, in the event that storage is not convenient to the loading area, by assisting in the loading of the transportation vehicle by moving the properly sorted bags or boxes of containers to a predetermined loading area during pickup of said containers.

**10. Reverse Vending Machines**

- A. RVMs must identify, cancel, and destroy one-way deposit containers and reject refillable containers. RVMs must collect accounting information for deposit and scrap settlement.
- B. RVMs must meet the requirements of 01-001 C.M.R. ch. 306, (Regulations for Adoption of Type Evaluation of Weighing and Measuring Devices) and be designed to provide an accurate printed report containing all of the following:
  - (1) The number of containers placed in the RVM over an explicit predetermined time period.
  - (2) The Product name of each beverage container placed in the RVM.
  - (3) The kind, Size, and brand of each beverage container placed in the RVM.
- C. An RVM and any report that it provides are subject to inspection and audit by the Maine Department of Agriculture, Conservation and Forestry and the Department.
- D. Each Distributor of beverage containers which have been processed through an RVM shall have the opportunity to pick up their share of scrap material, as determined from information gathered from the RVM.
- E. In an RVM System, the RVM provider shall be required to accumulate and maintain data to allow for geographical allocation of scrap pick-up equal to a Distributor's share of containers.

**11. Acceptance of Beverage Containers from Dealers and Redemption Centers**

- A. A Dealer or Redemption Center shall tender to an Initiator of Deposit, Distributor, or Contracted Agent only empty, unbroken, and reasonably clean beverage containers with legible labels of the Type, Size, and brand sold by the Initiator of Deposit, Distributor, or Contracted Agent, unless the containers have been processed through an approved RVM which meets the requirements of this Chapter. For purposes of this Section, unbroken when used in reference to cans and plastic containers means not previously crushed prior to tendering back to an Initiator of Deposit, Distributor, or Contracted Agent.
- B. With the exception of Beverages specifically exempted in Definitions Section 1(B)(1) of this Chapter, a Dealer or Redemption Center shall sort beverage containers by Type, Size, and brand unless a mutually acceptable written agreement, as described in Section 14, is reached between the Dealer or Redemption Center and the Initiator of Deposit, Distributor, or Contracted Agent.

Empty containers, unless they have been processed through an approved RVM that meets the requirements of this Chapter, must be tendered to the Initiator of Deposit, Distributor, or Contracted Agent in Shells or Shipping Cartons provided by the Initiator of Deposit, Distributor, or their Contracted Agent, or other containers mutually agreed upon by the Initiator of Deposit, Distributor, or Contracted Agent, and the Dealer or Redemption Center.

- C. Containers may be sorted in any other manner that is consistent with Section 14 of this Chapter.

## **12. Pick-up from Redemption Centers**

- A. The Initiator of Deposit or their Contracted Agent is responsible for the pick-up of covered beverage containers from a Redemption Center, unless the Initiator of Deposit or their Contracted Agent and the Redemption Center have entered into a written agreement for other arrangements for recycling or disposal of beverage containers in accordance with Section 14 of this Chapter.

The Initiator of Deposit or Initiators of Deposit who are members of a Commingling Agreement, and Contracted Agents shall provide licensed Redemption Centers and the Department with up-to-date listings of the Types, Sizes, and brands for which they are responsible, and shall pick up empty, unbroken, and reasonably clean beverage containers of the particular Types, Size, and brand sold by the Initiators of Deposit from licensed Redemption Centers at a minimum every 15 calendar days. To the extent feasible, during each pick-up, the entities performing the pick-up shall remove all containers for which they are responsible and that are containerized and ready to be picked up.

- B. After collecting 10,000 beverage containers belonging to an Initiator of Deposit, Initiators of Deposit who are members of a Commingling Agreement, or the responsibility of a single Contracted Agent, a Redemption Center may request an additional pick up. When a Redemption Center makes a request for beverage container pick up, the Initiator of Deposit or Initiators of Deposit who are members of a Commingling Agreement and Contracted Agents shall fulfill the request no later than ten (10) calendar days starting the day after the request was made unless a longer time frame is mutually agreed upon in writing by the Redemption Center and the entity responsible for the pick-up.
- C. When there is a change in the Initiator of Deposit, or when an Initiator of Deposit changes its Contracted Agent or its participation in a Commingling Agreement, the Initiator of Deposit shall provide Redemption Centers and the Department with notice of any changes that affect container sorting requirements. If there is a change in Initiator of Deposit, the original and new Initiators of Deposit shall determine the date on which the new Initiator of Deposit will be responsible for pick up at the Redemption Centers, and shall notify the Redemption Centers and the Department of the affected brands, the new Initiator of Deposit, whether the brand will be handled as part of a Commingling Agreement, the designated pick up agent, and the effective date of this change. Initiators of Deposit may manage the required notifications through their new Contracted Agents. In no case shall the effective date occur more than 35 calendar days from the date the new Initiator of Deposit takes over sales for the brand.

**13. Time for Payment by Initiators of Deposit, Distributors, or Contracted Agent to Dealers and Redemption Centers**

- A. The Initiator of Deposit, Distributor, or Contracted Agent shall pay the Dealer or Redemption Center all applicable refunds, deposits, and handling charges no later than ten (10) business days after acceptance.
- B. If payment is made by mail, payment will be deemed to take place upon mailing. If payment is made by electronic fund transfer, payment will be deemed to take place upon initiation of the electronic transfer.

**14. Private Contracts and Business Transactions**

This Chapter shall not be interpreted to prohibit any other arrangements for sorting, delivery, acceptance of payment, or other matter related to beverage containers when the arrangement is consistent with 38 M.R.S. § 3101 *et seq.* and is mutually agreed upon in writing between the Distributor and the Dealer or Redemption Center, or an RVM provider and the Distributor and/or Dealer or Redemption Center. The Department shall not be responsible for enforcing the terms of any such alternative private arrangements.

**15. Refusing Payment When a Specific Beverage Product is Discontinued**

Distributors, Contracted Agents, Dealers, and Redemption Centers shall not refuse to pay the refund value of the returned beverage container as established by 38 M.R.S. § 3103, as amended, or in the case of an inappropriately labeled container which bears a deposit value for a Beverage which is exempt from the bottle bill, except that Distributors, Dealers, and Redemption Centers may refuse to pay such refund value in the following situations:

- A. When an Initiator of Deposit, Distributor, or Contracted Agent has given notice, in writing, to Dealers to whom the Initiator of Deposit or Distributor sold similar beverage containers and the licensed Redemption Centers serving those Dealers that the particular Types, Size, and brand offered for refund has been discontinued, and at least 4 months have elapsed since the mailing of such notice.
- B. A Dealer or Redemption Center may refuse to pay the refund value of Beverages discontinued by an Initiator of Deposit, Distributor, or Contracted Agent in accordance with Subsection A above, no sooner than 3 months after the Distributor has mailed the notice required by Subsection A. A Dealer or Redemption Center may not refuse to pay the refund value of discontinued beverages unless such Dealer or Redemption Center has conspicuously posted for at least 30 days a notice advising consumers of the final date of acceptance.
- C. A Contracted Agent may refuse to pay the refund value when the Contracted Agent has not received payment from the Initiator of Deposit in accordance with the terms of their contract, and the Contracted Agent has given notice, in writing to the licensed Redemption Centers that the Contracted Agent will cease accepting beverage containers that are the responsibility of that Manufacturer as of the next day subsequent to the delivery date of such notice. A Dealer or Redemption Center may notify their Member Dealers and refuse to pay the refund value of Beverages for which a contacted agent has provided written notice in

accordance with this paragraph.

#### **16. Exempt Facilities**

Apple cider and blueberry juice that is produced in the State of Maine is exempt from the required refund and deposit. Local producers bottling apple cider and blueberry juice in containers that do not bear a deposit/refund statement shall receive empty containers from consumers who voluntarily return them without deposit. The opportunity for consumers to return empty containers shall be conspicuously posted at the producer's place of business and should encourage the return of containers to the processor for recycling.

#### **17. Plastic Bag Specifications**

Plastic bags used to tender beverage containers by Redemption Centers to Distributors or third party agents must be of uniform dimensions that are 36 inches in width by 60 inches long with a minimum thickness of 1.2 mils (millionths of an inch) and with flat bottoms.

#### **18. Signs Conspicuously Posted**

- A. Each area of a Redemption Center where consumers tender returnable containers must have a "Warning Sign" conspicuously posted with the required wording specified by 38 M.R.S. §3106(10). Warning signs must be constructed of durable materials and printed in horizontal block form. Each letter of the warning sign must be in bold and measuring a minimum of 1 inch in height.
- B. Member Dealers that do not provide the refund value to consumers for returned containers shall conspicuously post the name and address of the Redemption Center which serves the Dealer for purposes of redeeming returnable beverage containers of the Types, Size, and brand sold by the Dealer.

#### **9. Audits**

- A. Initiators, Distributors, and third party Contracted Agents may conduct audits to determine accuracy of container counts for bags tendered as full bags by Dealers and Redemption Centers.
- B. The audits must follow accepted Weights & Measures laws and procedures. Audits must follow the procedure in the U.S. Commerce National Institute of Standards and Technology (NIST) handbook 133, Checking the Net Contents of Packaged Goods (2015), Chapter 1, Section 1.3.1. Audit Tests. If after the audit there is suspicion that the lot tested is not in compliance, a full "Category A" sampling plan, following test procedures found in NIST Handbook 133, Chapter 4, test procedures for packages labeled by count, must be conducted before an enforcement action can be taken. Due to excessive variation for individual containers caused by residual liquids and foreign material, the weight method of checking packages labeled by count is not acceptable and a physical count must be used.
- C. An enforcement action may only be taken on bags for which an accurate, consistent, and verifiable full bag count has been established. Weights & Measures standards package

quantity declarations of count require an accurate physical count. Industry may negotiate and reach agreements with parties involved in these transactions that establish a number agreed to by all parties that is acceptable as a full bag count. These counts will only be deemed verified when sorting criteria does not introduce large uncertainties into the process, such as commingling of different sized containers into the same bags. Bag sorts that allow variations in count may not be audited or checked for purposes of taking action on the final count for payment by the initiator, Distributor, or third party Contracted Agent.

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STATUTORY AUTHORITY: 38 M.R.S. §§ 3101 through 3117

EFFECTIVE DATE: May 8, 2017