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**THE BUREAU'S REPLY TO COMMENTS IN RESPONSE TO ITS
RECOMMENDATION TO DE-LIST ALL 50 ML SPIRITS PRODUCTS**

Five commenters responded in opposition to the Bureau's recommendation that the Commission de-list all 50 ml sized spirits products. None of these commenters, however, disputes that the Legislature has tasked the Commission with ensuring that growth in revenue from the wholesale spirits business is "achieved in a socially responsible manner." 28-A M.R.S. § 90(1). Furthermore, none of the comments disputes the underlying bases of the Bureau's conclusion that the 50 ml container is inordinately contributing to illegal drinking and driving: 1) the small, single-serving design of 50 ml bottle allows drivers to more easily evade open container prohibitions; 2) spirits in 50 ml containers are purchased predominantly from convenience stores where consumers typically purchase products that they consume in their vehicles; and 3) the widespread and increasing number of 50 ml spirits containers along Maine roadsides is evidence that these spirits are being consumed in moving vehicles. As more fully explained in the Bureau's responses to each commenter below, the few financial concerns that the commenters raise do not outweigh the road safety risks posed by the 50 ml containers.

Rangeley IGA. The owner states that he started carrying 50 ml products in 2016 and anticipates an increase in sales in 2017. Although he urges the Bureau not to de-list 50 ml products, he does not dispute the evidence that shows consumers are using these products while driving.

The Retail Association of Maine. The Association's primary claim is that elimination of 50 ml sized spirits products will not address drinking and driving because "those individuals that choose to drink and drive, will now choose a larger bottle of spirits to consume." The Association, however, fails to acknowledge that the small, single-serving design of 50 ml sized spirits bottle uniquely facilitates drinking and driving. The Bureau concurs with the Association's assessment that consumers will not stop purchasing spirits, but will instead transition to a larger size container—one that will not facilitate drinking and driving to the same extent as the 50 ml container. As the Bureau explained in its proposal, this natural transition will substantially mitigate any revenue loss to the State.

Maine Grocers and Food Producers Association. MGFPA first argues that de-listing 50 ml products is inconsistent with the marketing strategy of the Bureau in recent years to de-list "slow moving" products. The Bureau acknowledges that historically its recommendations to de-list have been limited largely to products that are "slow moving." However, the Bureau has never before faced a situation where it has become apparent that a listed product is posing an unnecessary risk to public safety. Here, there is strong evidence that the 50 ml container is facilitating drinking and driving and the Bureau feels compelled to recommend de-listing in

order for the Commission to satisfy its responsibility of “ensuring that growth in revenue from the business is achieved in a socially responsible manner.” 28-A M.R.S. § 90(1).

MGFPA further argues that “on the principle of exportability” de-listing 50 ml products will move this business activity to New Hampshire. This claim, however, ignores the fact that the proposed de-listing does not ban a type of spirits—it simply de-lists a type of container. No consumer will be forced to cross the border in order to purchase his or her favorite spirits. The typical consumer in Maine will simply transition to a larger bottle. To the extent that some consumers refuse to transition and insist on drinking spirits from 50 ml containers, the number of those consumers is likely to be small and their motives for doing so may not be socially responsible. The fact that the vast majority of 50 ml spirits are purchased at convenience stores also suggests that these products are more aligned with impulse purchases, and their unavailability in Maine will likely not cause consumers to make cross-border excursions to purchase them.

Finally, the MGFPA also attaches a map of New Hampshire and Maine with multiple dots representing “grocery stores, supermarkets, and convenience stores.” What this map is attempting to show is unclear because there is no indication of how many of these dots represent actual agency liquor stores.

The Distilled Spirits Council and the Wine and Spirits Wholesalers of America. Without elaborating, these two industry organizations jointly state that they oppose the Bureau’s recommendation to de-list 50 ml spirits products simply “as a matter of principle.” They do, however, suggest that the de-listing of 50 ml products be delayed from January 12, 2018, to July 1, 2018, so as to “efficiently manage inventory and ensure that there would be a very limited number of 50 milliliter products on shelves on December 31, 2018.” These organizations provide no reason why such a delay would be necessary, and the Bureau remains confident that the same efficiency in managing inventory can be attained in 6 months by de-listing these products by January 12, 2018.

Sazerac. Sazerac’s primary contention is that the Bureau’s recommendation does not conform to “the statutory requirements that apply to the administration of the spirits business.” In making this argument, Sazerac focuses on the phrase “carry out a continuous study” as it appears in 28-A M.R.S. § 83-C(4) and construes this phrase to mean that the Bureau must conduct an in-depth study that yields “relevant empirical data” before it can recommend that the Commission de-list a product. Sazerac’s reliance on this statute is badly misplaced. Maine law imposes no such requirement on the Bureau or the Commission. The applicable provision reads as follows:

The bureau shall establish policies and rules and propose legislation concerning the administration of the spirits business laws under this Title. The bureau shall:

...

4. **Investigate and recommend changes.** Carry out a continuous study and investigation of the sale of spirits throughout the State and the operation of state activities regarding the sale of spirits and *recommend to the commissioner¹ any changes in the laws or rules and methods of operation* that are in the best interest of the State.

28-A M.R.S. § 83-C(4) (emphasis added).

¹ “‘Commissioner’ means the Commissioner of Administrative and Financial Services.” 28-A M.R.S. § 2(9-A).

As is obvious when produced in its entirety, this provision applies to the Bureau's responsibilities when recommending to the Commissioner of Administrative and Financial Services that major legal or operational changes should be made to the spirits business. It has no relevance to instances when the Bureau recommends that the Commission de-list a product, and it in no way prevents the Commission from de-listing a product in the absence of an in-depth study that generates empirical data that proves the product must be de-listed. A decision to de-list a product is simply a business decision that the Commission can make with or without a recommendation from the Bureau. The only requirement pertaining to this process is that the Commission must provide the vendor of the product "reasonable written notice" before issuing an order to stop purchases. 28-A M.R.S. § 81(4). The only issue in this instance is whether listing or de-listing spirits in 50 ml containers best ensures that the growth of revenue from the spirits business is "achieved in a socially responsible manner." *See* 28-A M.R.S. § 90(1).

Sazerac then attempts to undermine the Bureau's position that there is an apparent correlation between the increased sales of 50 ml spirits and the recent rise in OUI convictions by citing and attaching (Attachment 3) a report that found that "liquor law violations and OUIs have been decreasing among Maine residents over the past several years." But this report actually demonstrates and reinforces the Bureau's point because it explicitly states: "This report includes data available through December 2014." Indeed, as previously shown by the Bureau, from 2007 through 2014 the number of OUI convictions decreased every year. December 2014 was exactly the point when this downward trend abruptly stopped. OUI convictions then rose in 2015 and 2016—coinciding with the explosion in the sales of 50 ml spirits.

Sazerac also "estimates" that Maine will experience an "economic loss" of \$280 million dollars over the next 13 years, but provides no explanation of what comprises this "loss" and no data upon which this estimation is made. Similarly it provides a "chart outlining the projected sale of 50 ml bottles, the percentage of growth and the estimated profit to the state" (Attachment 8), but provides no indication as to the bases of these projections. Sazerac appears to arbitrarily assign an annual growth rate of 45% for 2018 and highly optimistic annual growth rates thereafter that decrease by only 5% each year.

Finally, Sazerac fears that its Maine operations will be significantly impacted. The Bureau, however, believes that it can relieve some of Sazerac's fears. As the Retail Association of Maine recognized, the Bureau has engaged in an "aggressive marketing campaign" that "has increased retail sales and has been a benefit to both the State and retailers." The Bureau has indeed worked diligently these past years with both suppliers and agents both to address operational concerns and to promote marketing of products that benefit agency stores and allow Maine stores to compete with the New Hampshire market. The Bureau is committed to this ongoing effort, which has consistently resulted in positive outcomes. Should the Commission de-list all 50 ml sized spirits, the Bureau will focus efforts on transitioning the wholesale purchase of 50 ml spirits to product sizes that have historically best served consumer demand in a socially responsible manner. We are confident that this continuous effort will sustain positive results for all State suppliers and all agency store licensees well into the future.

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/s/ Gregory R. Mineo
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