

MDEP Concept Draft Language for Returnable Beverage Container Rule

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 pick-up agent, as defined in 38 M.R.S. §3102(16-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.~~

A. "Drink" means a liquid ready for consumption. Drink does not include a concentrate, an additive, or a liquid that is usually heated prior to consumption, including soups, broths, or infant formula.

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. "Hub and Spoke System" means a collection system in which redeemed beverage containers from multiple smaller locations are brought to one or more larger, centralized locations for processing or consolidation.

~~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 1/2 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. has the same meaning as in [Title 28-A, section 2, subsection 16.](#)
- M. "Low-Alcohol Spirits Product" means a Product containing Spirits that has an alcohol content of 8% or less by volume. has the same meaning as in [Title 28-A, section 2, subsection 16-A.](#)
- 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. has the same meaning as in Title 28-A, section 2, subsection 18.
- ~~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.
- H. "Municipality" means a city, town, village or plantation with a population of more than 50 people, as defined in the most recent Maine Municipal Directory by the Maine Municipal Association.
- ~~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.~~

- K. "Obligated dealer" means a dealer that is obligated to provide redemption services, either directly or through a written agreement with a licensed redemption center, in accordance with 38 M.R.S. § 3106(1).
- L. "Operational Efficiency" means the ratio of revenue to costs for a total system
- 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 receptacle ~~Carton~~" means the ~~standard trade~~ package used ~~made of~~ ~~cardboard or other material designed for packing~~ ~~aging~~, carrying or transporting redeemed ~~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. “Sort” means a set of beverage containers that are commingled when redeemed.

~~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. In a beverage container, if the container label does not meet the standards in Section 7 8 and the label is registered with the Department in accordance with Section 8 9 of this chapter.
- D. In a beverage container, if a registered initiator of deposit has not initiated a deposit on the unit. Dealers can assume the deposit has been initiated if informed of that fact by the distributor, the initiator of deposit, the commingling group, or the commingling cooperative.

Note: Appropriate refund value is governed by M.R.S. §3103. Low-alcohol spirits products must have a refund value of at least \$0.05.

3. Obligated dealer responsibility

Obligated dealers must

- A. Provide for the redemption of beverage containers by
 - (1) Redeeming containers in accordance with applicable sections of 38 M.R.S. §3106 and 06-096 ch. 426(10), which includes use of a bag drop or account based bulk processing facility, and submitting to an annual inspection by the Department, or
 - (2) Signing an agreement with a licensed redemption center and conspicuously posting the name and address of the Redemption Center which serves the obligated dealer for purposes of redeeming returnable beverage containers.
- B. Report annually to the Department, on a form provided by the Department, stating how it is providing for the redemption of beverage containers; providing a copy of a signed agreement with a redemption center, if applicable; and listing the distributors from which it buys beverages in beverage containers.

3. 4. 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.~~

- C. All Applicants for a redemption center shall utilize forms provided by the Department and shall supply the information requested thereon.
- (1) Applicants with a current redemption center license that are applying to continue operations at the same location must apply for a renewal.
 - (2) Applicants looking to open a new redemption center in a place where a redemption center is not currently operating must apply for a new redemption center.
 - (3) Applicants looking to change the ownership of an existing redemption center must apply for a license transfer.
- D. The Commissioner may approve an application for a new Redemption Center or a license transfer if the Commissioner finds that the facility:
- (1) Will provide a convenient service for the return of empty beverage containers, ~~has agreements with local Retailers (Dealers),~~
 - (2) Has sufficient, covered, secure storage to manage the anticipated volume of beverage containers based on the beverage container pickup requirements outlined in section 12;
 - (3) Will be open for business for the acceptance of empty beverage containers from the public and for servicing pick-up agents a minimum of three days per week, in which one of these days falls on a Saturday or Sunday, and shall be open a minimum of 20 hours per week;
 - (4) Has adequate area out of a public way to accommodate pickups by tractor trailers that allows for normal traffic flow and safe access for customers returning beverage containers;
 - (5) Meets the requirements under 38 M.R.S §3113(3); is proposed for a municipality with a population of less than 5,000 which has no licensed redemption center; or meets the requirements under 38 M.R.S §3113(4). The Department, in evaluating compelling public need, can consider, but is not limited to considering:
 - (a) Recognition of need from the municipality government in which it is located;
 - (b) Support from adjacent municipalities for additional redemption centers;
 - (c) Transient or seasonal population of the area;

- (d) Whether the municipality is considered a primary, secondary, small, or specialized Maine service center as identified by the Department of Agriculture, Conservation, and Forestry's Municipal Planning Assistance Program;
 - (e) Whether the redemption center will provide a redemption option, including but not limited to, manual sorting, reverse vending machines, a bag-drop program or an account-based bulk processing program that is not currently provided by existing redemption centers; and
 - (f) The commingling cooperative's plan to meet the convenience standard in section 17B; and
- (6) Meets all other licensing requirements enumerated in this chapter and 38 M.R.S. §3109.
- E. In making a this determination with respect to a renewal application, ~~an existing Redemption Center~~, the Commissioner may consider its past and current compliance with the requirements of this chapter, ~~and~~ the quality of the service provided, and past determinations of compelling need.
- ~~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. Denials. The Department shall provide written notice when an applicant is denied a license. This notice must provide the reason or reasons for the denial or non-renewal of the license.
- F. 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.~~ unsafe or unsanitary practices; falsification of reports; failure to operate in accordance with the conditions of the license; repeatedly preparing shipping receptacles for pickup with fewer than the required number of beverage containers; and other serious or continued violations of this Chapter. Except in cases where there is an immediate threat to human health or the environment, prior to suspension or non-renewal the Department shall:
 - (1) Send notice of failure to comply with the rules and regulations outlined in 38 M.R.S. §§3101-3119 or this Chapter; and
 - (2) Allow a licensee to submit a corrective action plan. A corrective action plan must be submitted within 30 days of the initial notice of failure to comply.

- (a) The Department may approve the corrective action plan as submitted, approve the plan with required changes, or reject the plan.
- (b) The Department may require the licensee to demonstrate implementation of an approved corrective action plan.
- (c) If the licensee fails to submit a corrective action plan, if the Department rejects a corrective action plan, or if the Department determines that a licensee has failed to implement an approved corrective action plan, the Department shall suspend the license and deny any subsequent renewal application.

Note: Along with the right to file an appeal in accordance with the *Maine Administrative Procedure 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.”

- ~~G. The Commissioner may approve only one application for a Redemption Center license in a municipality with a population of 5,000 or less.~~
- H. 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.
- I. ~~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.~~

5. 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. The Bureau of Alcoholic Beverages and Lottery Operations will 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.

B. The manufacturer will 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.~~

~~E. For beverages, other than spirits, sold in non-refillable containers through geographically-exclusive distributorships, the distributor will 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.~~

F. Another entity may initiate deposit if it proves, to Department satisfaction, that it is able to initiate deposit for all beverage containers of the product on which it plans to initiate deposit that are sold in or into the State.

G. Initiators of Deposit shall annually provide the Department, the commingling group of which it is a member, and the Commingling Cooperative 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. 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.

- H. When there is a change to the initiator of deposit of a beverage, or when an initiator of deposit changes its contracted agent or its participation in a commingling agreement, the initiator of deposit will provide obligated dealers that redeem beverage containers, redemption centers and the Department with notice of any changes that affect container sorting or pickup requirements. If there is a change in the initiator of deposit, the original and new initiators of deposit will determine the date on which the new initiator of deposit will be responsible for pick up. In no case will the effective date occur more than 35 calendar days from the date the new initiator of deposit takes over sales for the brand.
- I. For all beverage containers for which it is the initiator of deposit, an initiator of deposit is responsible for :
- (1) Initiating the deposit;
 - (2) Pick-up of its beverage containers or its share of commingled beverage containers that have been prepared by obligated dealers and redemption centers in accordance with Section 12;
 - (3) Facilitating the recycling or refill of those containers;
 - (4) Paying the obligated dealers and redemption centers handling fees for the handling of such beverage containers; and
 - (5) Reimbursing obligated dealers and redemption centers for the deposits paid out on such beverage containers.
- J. Initiators of Deposit must annually report to the Department on forms prescribed by the Department the number of beverage containers sold in the State delineated, at a minimum, by redemption value and beverage container material type and size. Data on beverages sold must be provided in full detail upon request, and must be figured as follows:
- (1) If an initiator of deposit is reporting Maine-specific sales data, it must report, for each distribution network, the distributor and the total number of units distributed into Maine.
 - (2) If an IOD does not have Maine-specific sales data, it must:
 - (a) Separately estimate the number of beverage containers sold into Maine for each distribution network that may sell, offer for sale, or distribute for sale in or into the State, assuming equal per capita sales in each state included in the distribution area; and
 - (b) Report, for each distribution network, the distributor, the distribution area, and the total number of units distributed through that network.

- (3) If an initiator of deposit has Maine specific sales data for some sales distribution pathways it must report Maine specific sales for those distribution pathways for which it has state specific sales data in accordance with paragraph (a) and estimate the number of beverage containers sold through other pathways in accordance with paragraph (b). If required by the commingling cooperative, it must pay a reporting fee to the commingling cooperative equal to 1% of its total annual program payments to account for the uncertainty associated with its data.
- K. The obligations of the IOD may be fulfilled by the IOD directly, through the commingling group in which it is a member, or a third party. The IOD is the entity which is ultimately responsible for these obligations.

~~**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.~~

6. ~~5.~~ Contracted Pick-up Agents

- A. All pick-up agents ~~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 Pick-up Agents shall ~~annually~~ quarterly 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 beverage 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.~~

7. Distributor Requirements

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*".

7.8. Labeling Requirements

A. ~~On printed labels, the refund value and the word "Maine" or the abbreviation "ME"~~
The labeling required by M.R.S. 3105(1) 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 1- 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 ~~Liqueur~~ 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 remains attached to the beverage container after opening and is unique to each combination of Beverage brand, beverage container material Type, Size and flavor. Malt liquors of the same Beverage brand may utilize one UPC for EAN for their seasonal products in the same beverage container material type and size.

§ 9. Registration of Beverage Containers

Each beverage container and its label must be registered with the commingling cooperative or, in the absence of an approved plan, 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 commingling cooperative or 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 material Type,
 - (5) if glass, the color;
 - (6) the complete 12 digit UPC or 13-14 digit EAN, unless the product is a Wine product that is not labeled with a UPC or EAN; and
 - (7) ~~the commingling group in which the product is included. 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; and~~
 - (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 38 M.R.S. §3103 and Section 8 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 for label registrations with the Department are as follows:
- (1) Wine containers: \$1.00 annually per label.
 - (2) All other beverage containers: \$4.00 annually per label.

9 10. Operation of Obligated Dealers and 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 obligated dealer or Redemption Center operator will redeem beverage containers ~~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, and 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)~~ B. Obligated dealers and redemption centers will 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 January 1, 2025. Sanitary facilities include toilet, hand wash sink, approved septic system, and hot and cold potable water under pressure. An obligated dealer or redemption center is exempt from this requirement if operated by the owner and immediate family members only.
- ~~C. Prominently display a list of all Products discontinued within the past 120 days and the dates when they will no longer be accepted.~~
- ~~(8)~~ D. Obligated dealers and redemption centers will sort beverage containers in the method described in an approved commingling cooperative plan, or, in the absence of an approved commingling cooperative plan, in a manner that is consistent with approved commingling group plans or be subject to 38 M.R.S. 3106(6). Sorts should maximize market value to the extent possible given statutory restrictions and allow for segregation of refillable beverage

containers. Alternative sorting arrangements are permissible in the case of a mutually acceptable written agreement between the obligated dealer or redemption center and the initiator of deposit, commingling group, cooperative, or contracted agent. 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.~~

- A. E. Obligated dealers and redemption centers will conspicuously post a "warning" sign in accordance with Section 18 of this chapter each area where consumers tender returnable containers with 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. A redemption center or obligated dealer may not refuse to accept from any consumer or dealer any empty, unbroken and reasonably clean beverage container of the type, size and brand sold in the State as long as the label for the beverage container is registered in accordance with Section 9 and may not refuse to pay in cash the refund value of the returned beverage container. Redemption centers and obligated dealers must:
- (1) Inspect each container to ensure it is a registered container unless the Cooperative has allowed otherwise in the cooperative plan; and
 - (2) If using reverse vending machines, conspicuously post a sign directing consumers where to bring any valid beverage containers rejected by the RVM.
- C. Redemption centers will accept empty beverage containers during the hours proposed on its approved application a reasonable number of hours, given the volume of returns and area population considered. Redemption centers shall and will post their hours of operation in a conspicuous place that can be seen from outside the redemption center.

Note: Hours during which redeeming obligated dealers must redeem containers are addressed in 38 M.R.S. §3106(4).

- ~~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 obligated dealers for which they have agreements in accordance with 38 M.R.S. §3106(1); this fee may not exceed \$5,000 annually. ~~Member Dealers.~~
- F. A Redemption Center may pick up beverage containers from any dealer. ~~non-members.~~
- G. A drop-off location for a bag drop or account based bulk processing program must be:
 - (1) In the municipality where the redemption center operating the program is licensed;
or
 - (2) At the location of the obligated dealer according to the requirements under M.R.S. 3106(1).
- H. An obligated dealer or Redemption Center shall tender beverage containers to an initiator of deposit, commingling group, commingling cooperative, or pick-up agent ~~at 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 and packaged beverage containers to a predetermined loading area during pick up of said containers.
- I. An obligated dealer or redemption center shall tender to an initiator of deposit, commingling group, commingling cooperative, or pick-up agent only empty, unbroken, and reasonably clean beverage containers with legible labels, unless the containers have been processed through an approved reverse vending machine 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 or pick-up agent.
- J. Empty containers, unless they have been processed through an approved reverse vending machine that meets the requirements of this chapter, must be tendered to the initiator of deposit, commingling group, commingling cooperative, or pick-up agent in shipping receptacles provided or paid for by the initiator of deposit, commingling group, cooperative, or pick-up agent, as described in an approved commingling cooperative plan or in an approved commingling agreement in the absence of an approved commingling cooperative plan, or as mutually agreed upon by the initiator of deposit, commingling group, commingling cooperative, or pickup agent and the obligated dealer or redemption center.
 - (1) Obligated dealers or redemption centers buying or otherwise providing their own shipping receptacles must use the same shipping receptacles specified by the commingling group, commingling cooperative, or pick-up agent.

- (2) Obligated dealers and redemption centers may not alter shipping receptacles.
 - (3) Obligated dealers and redemption centers will be provided shipping receptacles of equivalent total volume to replace those being picked up. Obligated dealers and redemption centers must receive new shipping receptacles at the time of pickup or within one day of pickup.
 - (4) Obligated dealers and redemption centers may request additional shipping receptacles. This request must be based on increased volume over time or a pending event that will result in a temporary increase in volume.
- K. An obligated dealer will label each shipping receptacle in a manner that identifies the redemption location.

Note: Labeling requirements for redemption centers are addressed in 38 M.R.S. §3109(5-B).

10. 11. Reverse Vending Machines

- A. RVMs must identify, cancel, and destroy a nonrefillable containers ~~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 material type ~~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 initiator of deposit, commingling group, commingling cooperative, or pick-up agent ~~Distributor~~ of beverage containers which have been processed through an RVM shall have the opportunity to pick up its ~~their~~ share of scrap material, as determined from information gathered from the RVM.

- D. 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.~~
- E. Upon request by an initiator of deposit, commingling group, or the commingling cooperative, the Department shall determine whether a beverage container has been processed by a reverse vending machine in a manner that has reduced its recycling value below current market value for a nonrefillable beverage container or has prevented the reuse of a refillable beverage container.
- (1) The department will evaluate the relative price of materials that are processed in a manner that is inconsistent with the sorts requested by the cooperative or, in the absence of a cooperative plan, by the commingling groups on a quarterly basis. In making this determination, the Department may consider but is not limited to considering:
 - (a) Whether buyers are willing to pay the same price for the processed material as for material otherwise processed through the program;
 - (b) If so, the number and availability of buyers willing to purchase the material at that price; and
 - (c) Any savings in the cost of transportation that arise from the processing method.
 - (2) Parties may request that the Department utilize a third-party vendor to make this determination, it shall allocate the payment of the 3rd-party vendor costs to the parties involved as follows:
 - (a) 100% of the costs to the operator of the reverse vending machine when the 3rd-party vendor finds the value of the beverage container is less than 90% of current market value;
 - (b) 50% of the costs to the operator of the reverse vending machine and 50% of the costs to the pick-up agent when the 3rd-party vendor finds the value of the beverage container is at least 90% of current market value; and
 - (c) 100% of the costs to the pick-up agent when the 3rd party vendor finds the value of the beverage container is at least current market value.

~~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.~~

~~C. 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. Pickup 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 On behalf of their initiators of deposit, the Commingling Cooperative or, in the absence of an approved Commingling Cooperative Plan, commingling groups will arrange for pickup of empty, unbroken, and reasonably clean beverage containers of the particular Types, Size, and brand sold by the Initiators of Deposit from obligated dealers that redeem containers and licensed Redemption Centers at a minimum every 15 calendar days. Obligated dealers and redemption centers that are consistently handling 5 million units a year will be picked up on a regular schedule, which may be adjusted seasonally. This schedule should be provided to the obligated dealer or redemption center in writing.

- A. If a pickup is missed, it is a violation in accordance with 38 M.R.S. §3111(3) and must be reported to the department.
- B. 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.
- C. If unable to remove all containers for which it is responsible, an entity performing pick up will preferentially pick up the containers that have higher deposit values for a given volume as a result of deposit amounts or container size, unless there is a need to pick up beverage containers for which the initiator of deposit has provided notice of discontinuation in accordance with Section 14(A).
- D. After collecting 10,000 beverage containers ~~that are belonging to an Initiator of Deposit, Initiators of Deposit who are members of a Commingling Agreement,~~ the responsibility of a single ~~Contracted entity,~~ a Redemption Center may request an additional pick up, which must be fulfilled. ~~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 pickup. This additional pick up does not count towards the pick ups required under Section 12A.
- E. Obligated dealers and redemption centers they must provide availability for pickup during at least 3 weekdays.
- F. Entities picking up containers must schedule pickups with 48-hours' notice.
- 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.~~
- G. The entity picking up beverage containers shall provide the redemption center an itemized receipt of units picked up, by sort, before leaving the facility. The receipt shall include unit totals and monetary value.

- H. Entities picking up beverage containers must annually report to the Department, on forms prescribed by the Department, the number of beverage containers redeemed by sort and redemption value.

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

- ~~A. F.~~ The cooperative, or the commingling group in the absence of an approved cooperative plan, The Initiator of Deposit, Distributor, or Contracted Agent shall pay the obligated Dealer or Redemption Center all applicable deposit values, handling fees, and refunds associated with shipping receptacle purchases or deposits refunds, deposits, and handling charges no later than ten (10) business days after acceptance.
- C. 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. 13 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. 14. Refusing Payment When a Specific Beverage Product is Discontinued~~

~~Distributors, Contracted Agents, IODs, obligated Dealers, and Redemption Centers shall not refuse to pay the refund value of the returned a 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. The initiator of deposit may refuse to pay the refund value and handling cost of beverage containers in accordance with 38 M.R.S 3106(6).
- B. When an An Initiator of Deposit may refuse to pay the refund value of a beverage container when it, Distributor, or Contracted Agent has given notice, in writing, to obligated Dealers to whom the Initiator of Deposit or Distributor sold similar beverage containers and the licensed Redemption Centers serving those Dealers

that the particular ~~product Types, Size, and brand~~ offered for refund has been discontinued, and at least 4 12 months have elapsed since the mailing of such notice.

B. ~~An obligated Dealer or Redemption Center may refuse to pay a consumer the refund value of Beverages discontinued by an Initiator of Deposit, Distributor, or Contracted Agent in accordance with Subsection A above, no sooner than 11 3 months after the Distributor has IOD 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~~

~~I. 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.~~

- ~~J. 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.~~

19. 15. 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. In order for a commingling group, pick-up agent, or the cooperative to adjust payment to an obligated dealer or redemption center as a result of incorrect beverage container counts found during an offsite audit, the audit must be performed in accordance with the procedure proposed in the commingling agreement or cooperative plan and in the presence of a Department approved neutral third party funded by the commingling group, pick-up agent, or the cooperative. Department staff or a representative of a redemption center must be informed and may attend. Any adjustment to payment should be for the total difference in containers counted throughout the course of the audit.
- D. Actual bag counts for each sort counted during audits performed should be reported to the Department.
- E. Any Department enforcement action may only be taken on shipping receptacles bags for which an accurate, and 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.~~

16. Commingling Groups

- A. All commingling groups will submit agreements to the Department for approval. The Department will approve agreements that are consistent with 38 M.R.S. §§3101-3119 for a period of no more than 5 years. Any changes to rule or statute require resubmittal of agreements within 3 months of the effective date of the change, unless the Department determines that the change does not require resubmittal and informs the commingling groups of this determination in writing. Commingling groups must inform the Department of changes to the participating initiators of deposit within 30 days and submit any other desired changes to an agreement to the Department for approval prior to implementing those changes. Agreements must allow for a full understanding of commingling group operations and include the following:
- (1) Contact information;
 - (2) A description of how initiators of deposit can join the commingling group, including timeline and requirements to join, which must allow new initiators of deposit to join under the same terms and conditions of the original agreement;
 - (3) A description of how, and under what circumstances, members can be removed from the commingling group. The method of removal must require repeated violation of commingling group bylaws and progressive enforcement of bylaws by the group;
 - (4) A list of the initiators of deposit participating in the commingling group;
 - (5) A list of costs realized by members and a description of how costs will be allocated among the members, including any procedures for verifying information used to allocate costs;
 - (6) A description of how the group will manage beverage containers for its members, including size and material type sorts, pick up arrangements for use in the absence of an approved commingling cooperative plan, and shipping receptacles to be used by these facilities.
 - (7) The method by which member initiators of deposit will select the commingling group's representation on the cooperative board;
 - (8) An acknowledgement that, upon approval of a commingling cooperative plan, the commingling cooperative plan will supersede the commingling group plan, as long as it is operational and that, if the commingling cooperative plan loses Department approval or ceases to function, the commingling group will resume its responsibilities within 15 days; and

- (9) For qualified commingling agreements, documentation demonstrating the commingling group meets a criterion to be a qualified commingling group in accordance with 38 M.R.S. §3107(1-A).

B. In addition to the agreement requirements outlined in section 16(A), special commingling groups are subject to the following:

- (1) Administration of the agreement. Costs must be audited by a third party annually and must be limited to the actual costs of
- (a) third party auditing of commingling groups accounts, which must report the extent to which costs adhere to the limitations of this subsection and the extent to which services received are paid at geographically relevant, market rates;
 - (b) overhead costs;
 - (c) onboarding initiators of deposit;
 - (d) helping participating initiators of deposit fulfill reporting requirements;
 - (e) auditing of reporting by initiators of deposit;
 - (f) management of accounts payable;
 - (g) communication with obligated dealers, redemption centers, the cooperative, pick-up agents, and the Department;
 - (h) fees due to the Department and the commingling cooperative; and
 - (i) organization and realization of pick-up agent responsibilities, including the division and disposition of material.
- (2) Division of costs among members. The commingling group must charge each initiator of deposit for:
- (a) the handling fee of the initiator of deposit's redeemed containers;
 - (b) the deposit on its beverage containers sold into Maine; and
 - (c) the share of administrative and pick up charges associated with the initiator of deposit's share of the total beverage containers managed. The share of beverage containers belonging to each initiator of deposit can be based on sales data and/or return data. Fees should account for any extra cost associated with managing an initiator of deposit's beverage containers that results from container design and composition.

17. Commingling Cooperative

Commingling groups shall collectively establish a cooperative to provide for the management of all beverage containers under a single commingling program in accordance with 38 M.R.S. § 3107(3-B).

A. Members of the Commingling Cooperative Board must be allocated to commingling groups as follows:

- (1) Each commingling group first receives one board member representing the commingling group.
- (2) The commingling group with the most sales of each beverage type, as defined by like products in 38 M.R.S. § 3107(3) (A – B), receives an additional board member that must be an initiator of deposit selling that beverage type.
- (3) If additional seats remain or there are an even number of seats, the board members representing the commingling groups, as identified in (1) and (2) above, may select additional board members who can represent the most common beverage container material types in order to obtain 9 members.

B. The Cooperative must submit a cooperative plan, which will detail how the Cooperative will provide for the management of all beverage containers subject to the requirements of Chapter 33. In addition to the requirements listed in 38 M.R.S. § 3107(3-B)(B), the cooperative plan must include, at a minimum:

(1) The governing board.

- (a) The cooperative plan must outline how the cooperative will compensate the members of the board.
- (b) The cooperative plan must outline how the members of the board that represent commingling groups, as outlined in Section 17(A)(1) and 17(A)(2), will select additional members in accordance with 17(A)(3).

(2) Roles within the cooperative. The cooperative plan must outline methods of cooperative decision-making, which must include:

- (a) clear distinctions around when decisions will be made based on a vote of IODs and when decisions will be made based on a vote by the board;
- (b) whether decisions can be made in a manner other than through a vote by the board or by IODs, and if so, how and under what circumstances;

- (c) the method by which IODs will be assigned voting rights, including any weighting of those rights;
 - (d) the manner in which IODs or board members will vote to update portions of the plan; and
 - (e) the manner in which IODs or board members will vote to contract out services.
- (3) Composition of the advisory board. The cooperative plan must outline how the Cooperative will recruit, select, and compensate the members of the advisory board to meet the membership representation requirements listed in 38 M.R.S § 3107 3-B (A). The Department representative does not need to be compensated beyond that required by 38 M.R.S. §3107(G);
- (4) Role of the advisory board. The plan will outline the role of the advisory board, including,
 - (a) How the advisory board will remain apprised of cooperative activities;
 - (b) What activities or information, if any, will not be shared with the advisory board, including, for any information that will not be shared, reasoning as to why sharing such information would adversely affect cooperative functioning; and
 - (c) The manner in which the advisory board can bring an issue, including a change to cooperative bylaws or the cooperative plan or a decision to contract out services, to a vote of IODs or the board
- (5) Convenience Standard. The cooperative plan must outline how it will evaluate attainment of the convenience standard outlined in section 17(D) and if the convenience standard is not being met how it will assure the standard is attained.
- (6) A process for reviewing the plan every two years, which must include
 - (a) Public comment.
 - (b) Input from the advisory committee, including suggested changes, any one of which is binding if agreed to by two thirds of advisory committee members.
 - (c) Submitting an updated plan to the Department at least once every 5 years.
- (7) A timeline for implementation of the program plan, if approved, designed to ensure implementation of the plan on or before July 15, 2025, and full commingling of beverage containers before December 31st, 2025.

- (8) A description of how the cooperative will support the development of infrastructure throughout the State for the collection and sanitization of refillable beverage containers and for the return of those refillable beverage containers to initiators of deposit of refillable beverage containers for refilling and sale. That infrastructure development may involve redemption centers, centralized washing and sanitization facilities, and other methods; and must include:
- (a) A needs assessment identifying the location of current and probable beverage filling locations in the state, optimal locations for sanitation facilities, and budgets for sanitation and filling locations to support a situation where 5% and 10% of beverage containers are refillable.
 - (b) A study of existing refill systems in other jurisdictions, including descriptions of methods for refilling beverages, collecting and sanitizing beverage containers, return rates, and rates of market penetration.
 - (c) A description of how funds will be expended in accordance with 38 M.R.S. §3108-A(2)(B)(4-A).
 - (d) A description of how facilities funded in accordance with 38 M.R.S. §3108-A(2)(B)(4-A) will be made available for use by all initiators of deposit that agree to comply with the terms of use for a given facility.
- (9) A description of how the cooperative will operate the program in a manner designed to achieve the overall statewide redemption rates described in 38 M.R.S. §3107(3-B)(B)(16), including a set of actions that will be taken if these redemption rates are not being met. If one of these redemption rates is missed by five or more percentage points, this set of actions must include:
- (a) An increase in the deposit amount; or
 - (b) A combination of education and increased redemption center convenience.
- (10) The cooperative plan shall outline standards to provide for fair apportionment of costs among the commingling groups in the program, which may be based on:
- (a) The combined beverage container sales by the initiators of deposit that are members of each commingling group, with sales measured in accordance with section 20(J);
 - (b) Beverage container characteristics that may increase costs or lower the value of commingled materials;
 - (c) The unit or brand counts generated by RVMs or account-based bulk processing programs, as long as the RVM or account-based bulk processing

programs are subject to periodic 3rd-party audits on a schedule approved by the Department and with the costs of those audits paid for by the Cooperative;

- (d) Statistically significant audits of all redeemed containers; and
- (e) The statewide rate of redemption.
- (11) A method for dealing with obligated dealers and redemption centers that request a pickup, in accordance with Section 12(D) and do not provide a pick-up agent with a full truck of containers.
- (12) A method of sharing among pick-up agents, commingling groups, and the Department information on the number of containers by material type picked up at each obligated dealer that redeems containers and each redemption location during the previous calendar year.
- (13) If requesting that the Department keep parts of the commingling cooperative plan confidential, a redacted copy with rationale for why each section is considered confidential.
- (14) A description of how the cooperative will service redemption centers and obligated dealers, including information on shipping receptacles to be used by these facilities.
- (15) A description of any fees proposed by the Commingling Cooperative and under which conditions these fees may be applied. No fee may be large enough to constitute a barrier to inclusion in the program.

C. Convenience Standard. The cooperative must meet a convenience standard in which:

- (1) Every municipality with a population of greater than 2,000 must have at least one redemption location, which must consist of either a manual sorting redemption center, RVM, bag drop programs, or account-based bulk processing programs. If this piece of the standard is not met, consideration can be made for redemption centers in neighboring towns;
- (2) Every municipality with a population of greater than 5,000 must have at least two redemption locations, which must consist of at least one manual sorting redemption center;
- (3) Every municipality with a population greater than 20,000 must have at least three redemption locations, which must include at least one manual sorting redemption center;

- (4) Every municipality with a population of greater than 30,000 must have at least five (5) redemption locations, which must consist of at least one manual sorting redemption center; and
- (5) Every municipality that is considered a primary, secondary, small, or specialized Maine Service Center as identified by the Department of Agriculture, Conservation, and Forestry's Municipal Planning Assistance Program must have a mix of redemption options that consist of either a manual sorting redemption center, RVM, bag drop programs, or account-based bulk processing programs.

18. Cost and Carbon Efficient Technology Fund

- A. The department shall undertake efforts to understand and quantify the operational efficiency and impact on greenhouse gas emissions from trucking of various technologies meeting the qualifications described in 3114-A(2)(A) and under various throughput scenarios, including for individual redemption centers, account-based bulk processing programs, bag-drop programs and hub and spoke models, including models that place high throughput technologies at locations that already sort, bale, and otherwise process recyclable materials. These efforts shall allow for and encourage stakeholder input.
- B. After consultation with the cooperative and its advisory group, the department shall establish an application process that:
 - a. Identifies priorities for grant funding, in the event funding is insufficient to cover the cost of all qualified grant proposals;
 - b. Allows for various levels of review for grants of different cost tiers and for those that are more and less proven in terms of their ability to improve operational efficiency and reduce greenhouse gas emissions from trucking;
 - c. Allows for all program participants to apply for funding;
 - d. Allows for cooperative, commingling group, initiator of deposit, and advisory group input on applications;
 - e. Is efficient at funding proposals that are proven to improve operational efficiency and reduce the greenhouse gas emissions from trucking; and
 - f. Does not fund proposals that are not proven to improve operational efficiency and reduce the greenhouse gas emissions from trucking, unless they are pilot programs designed to provide information on the effect of an application of technology where the operational efficiency and emissions impact is less well understood.