Returnable Container Act
Stakeholder Meetings to Amend the
6 NYCRR Part 367 Regulations

Presented to:
Redemption Centers
Beverage Industry
Dealers - Food, Retail, Pharmacy, Convenience Stores, Beverage Centers
Third-Party Pick-Up Agents
Environmental Groups/Municipalities

Presented by:
Division of Materials Management
NYS Department of Environmental Conservation
Today’s Goals

• Present DEC ideas
• Get stakeholder input on how to best update and revise the regulations
• Input will result in proposed amendments to Part 367
• Discuss possibilities for Legislative changes to the Law
Brief Legislative and Regulatory History

• NYS Returnable Container Act Originally Enacted in 1982
• Current 6 NYCRR Part 367 has been in effect since 1983
• Four minor amendments to the Law, 1983-1997
• In 2000, DEC drafted changes to Part 367
• Laws of 2009, Chapter 59 – significant revisions
• Laws of 2011, Chapter 459 and Chapter 381
• Significant changes to the Law in 2009 require us to update regulations
Recent Legislative Changes/Proposals

• Last Session Two Changes Passed:
  - Allowing the use of metal bottles
  - Reduced the number of RVMs for chain stores at least 40,000 square feet

• Also proposed, but not passed:
  – Refillable containers - deposit initiators to retain the unclaimed deposits
  – Refusal of Altered/Unredeemable Containers
  – Strengthen Civil and Criminal Penalties

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Tentative Rulemaking Schedule

- Proposed/Filed with DOS, early Summer 2012
- Public Hearings, early Fall 2012
- Effective Winter/Spring 2013
Keep in Mind for New Regulations

• Any new regulations could possibly be in effect over 10 years
• Will apply Statewide
What We Cannot Change in Regulations

- Repeal the Law
- Beverages subject to deposit
- Deposit Amount and Handling Fees
- What Happens to the Unclaimed Deposits
- Type and Amounts of Penalties
Frequent Complaints

• Stores refusing to redeem or limiting redemption

• Problems with pick-ups at redemption centers/dealers
  – Not timely
  – schedule changes & delays
  – large amounts of containers left behind

• Improper counts and payments

• Bags and boxes not being provided
Possible Changes
Definitions

- Clarify Definition of “Dealer”
- Clarify “Deposit Initiator”
- Third-Party Pickup Agent/Agent of Deposit Initiator
- Mobile Redemption Centers
- Brand
- “Water to which a sugar has been added”
- Clarify “Redeemer”
Reduce Fraudulent Activities

• Refusal of Crushed/Altered/“Unredeemable” Containers
• Prevent Multiple Redemption
• Prevent RVM Tampering
• Strengthen Penalty Language
• Containers without NY Deposit
  – Prevent filled coming into the state
  – Prevent empties from being redeemed
  – Containers without NY deposit = containers on which a deposit was never paid
General Requirements

• All invoices or receipts must show that a deposit has been charged on sales of deposit beverages in New York.

• Facilities and records of entities regulated by Part 367 will be subject to inspection by DEC, Ag & Markets and Tax & Finance.
General Requirements

• No one shall alter the NY deposit information by adding a deposit or by removing any portion of the label.

• No one shall indicate a deposit on a beverage container that is not a “beverage.”

• Limit the amount of deposit to be paid to no more than the indicated deposit.

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Redemption Centers

• More oversight
• Currently only minimal requirements in the regulations
• Last year Department developed a Notification Form to better implement the process
• Registration Process, Requirements & Expiration
• Regulations/Procedures on Revoking DEC Registration
Operational Requirements for Redemption Centers

- Adequate storage and aisle space
- Covered or enclosed facility
- Control Access to Redeemed Containers so not redeemed again

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General Requirements

• Containers may be refused if not reasonably clean.
• Containers may be refused if not tendered in a clear bag.
Operational Requirements for Redemption Centers

- Must provide a convenient service and hours to the public
- Accessible to Trucks
- Confinement of Solid Waste
- Other non-returnable glass, metal, plastic recyclable bottles & cans must not be processed at the same facility or site as a redemption center
- Dust, Vector and Odor Control
- Copy of Registration made available
Redemption Centers

• Record keeping requirements
  – Name and address of persons who redeem more than a certain amount
    • 480 proposed in past; 1000 or 2500 may be more appropriate now.
    • Where containers came from, license plate number, number of dismembered containers (redemption centers near NY border?)
  – Names and addresses of dealers and distributors from whom containers are redeemed and amounts redeemed
  – provide to the Department upon request
Mobile Redemption Centers

- Need definition and clarification
- Must comply with local laws for each municipality where business is being done
  - Traffic and Parking
  - Zoning
  - Ordinances
  - Business requirements
Mobile Redemption

• Record location where containers are picked up, amount (and brand ?)
• Redemption center not entitled to pickup of containers collected outside of deposit initiators primary marketing area, must deliver or make arrangements
Dealers

• Record keeping requirements
  – Name and address of persons who redeem more than a certain amount
    • 480 proposed in past; 1000 or 2500 may be more appropriate now.
    • Where containers came from, license plate number, number of dismembered containers (dealers near NY border?)

  – provide to the Department upon request
Dealers

• Must control access/ secure redeemed containers

• Dealers in New York City or very small dealers – further limit number of containers accepted per day?

• Give dealers the right to use RVMs if they want to use them?
Dealers with RVMs

• Must have an attendee available or “on-call” for monitoring redemption, maintenance and redeemer assistance.
• Dealers obligated to prevent fraud through RVMs.
• Once containers have been accepted and RVM voucher issued, must cash the voucher
  — can not limit to 240/$12 per person per day.
  — can program RVM to stop at 240.
• Must control access/ secure redeemed containers and scrap material.
Deposit Initiators

• Must have a system in place for retrieval of empty containers before sold in NY
• Must inform DEC, Third-Party Agents of products, UPCs, container weights
• Retain unclaimed deposits for refillables – need a system in place in NY for handling refillables
• MAY have separate labels for deposit and non-deposit containers
• UPC on containers with NY deposit must not be the same as UPC on containers without NY deposit
Deposit Initiators

• Current Record Keeping
  – Deposits Initiated, deposits redeemed, handling fees, unclaimed deposits

• Add:
  – products initiated on and UPCs
  – label upon request
RVM Scrap

- Clarify who owns RVM scrap material.
- Scrap reconciliation required at the request of deposit initiator.
- Deposit initiators right to pickup their share of scrap material.
Agents of Deposit Initiators

• Definition
• Clarify responsibilities
• Registration with DEC?
• Record-keeping
  – provide lists of deposit initiators with whom agents have contracts & beverage containers they pick up
• Notify DEC when deposit initiators or beverage containers are added or discontinued
Deposit Initiators and Agents

- Clarify bags and boxes requirements
  - Provided in timely fashion
  - Mechanism for relief if not timely provided?
  - Can require the bags provided by a certain deposit initiator are those that are returned to that initiator
  - Deposits on bags and boxes may be allowed as long as they are reasonable and recorded on all paperwork
  - Accurate Paperwork / signing for bags & boxes
  - Quality of bags and boxes: must be of a sufficient quality to hold empty containers without breaking
Deposit Initiators and Agents

• Sorting Requirements
  — Currently by brand, within brand by deposit, and if refillable, or as agreed
  — Change to material type & brand to deposit initiator?
  — 3 sort maximum?

• Notification to redemption centers/dealers of changes in sorting/packaging requirements
  — Must have sufficient time to implement changes

• Notification of discontinued products and time periods for redeeming

• Commingling agreements; reduced handling fee if commingled?
Deposit Initiators and Agents

• Pick-Ups
  – Establish a schedule
  – Notification of changes in pick-up schedules
  – All Containers must be removed at pick-up
  – Currently law / regulations do not require minimum amount of empty containers for pick-up & payment of full deposit & handling fee
    • Should a minimum be established? (48 containers of brand?)
  – Change frequency for redemption center pick-up to no less than 1 week - for high volume redemption centers/dealers
  – 100 bag minimum for pick-up at redemption centers?
Counting Issues

- On-site/Off-site
- Redemption centers/dealers MAY agree to base payments on off-site verification by deposit initiator. If not:
  - Percentage (or certain #) counted on-site for redemption centers tendering more than _____ containers; OR
  - Redemption center provide a certified written, signed statement as to the number of container and must be paid that amount
- Audits
  - Discrepancies may result in violations; more than 2% discrepancy deposit initiator can reduce amount owed by that percentage
- OR another method approved by DEC

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Counting Issues

• Counting procedures agreed upon in writing; no unilateral changes

• Accuracy of container counting machines
  – Inspection of machines
Payment

• Must indicate pick-up date and number of containers redeemed on statement
  – Breakdown of containers provided to redemption center upon request?
• Must note any discrepancies
• Language on direct deposit payments?
Distributors Who are Not Deposit Initiators

• How Does this Work and How Should It Work?
• Clarify their responsibilities?
Donations/Giveaways

• Define
• Clarify
  – must initiate a deposit
  – Must be properly marked for use in NY
  – Deposits in the refund value account
Vending Machines

• Conspicuous notice on vending machines
  – Specify size; provide sample wording?
Comments

• Encouraged to submit comments, concerns and especially proposed language

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