

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- NYS Returnable Container Act Originally Enacted in 1982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



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.



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



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?)
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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



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
- Mail, fax or email:

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