

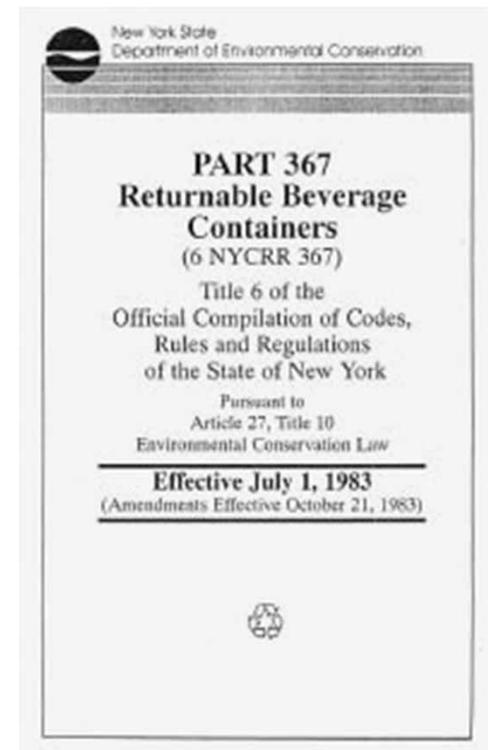


NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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# Stakeholder Meeting to Discuss Amendments to the 6 NYCRR Part 367 Regulations

October 24, 2014



# Today's Goals

- Focus on topics which are a challenge to address in statewide regulations
- Get stakeholder input on how to best update and revise the regulations



# What We Cannot Change in Regulations

- Repeal the Law
- Beverages Subject to Deposit
- Deposit Amount and Handling Fees
- What Happens to the Unclaimed Deposits
- Types and Amounts of Penalties



# Sorting Requirements, Pick-Ups & Container Counting



# Pick-Ups From Redemption Centers

- Use of equipment during pick-ups
- Minimum quantity of containers necessary before a pick-up at redemption centers
- Tracking system for bags and boxes used by deposit initiators



# On-Site/Off-Site Counting

- **ECL §27-1007(8)(b)** states: “A deposit initiator or distributor shall not require empty containers to be counted at a location other than the redemption center or dealer’s place of business. The dealer or redemption center shall have the right to be present at the count.”
- DEC is aware that this is often read to mean the law forbids deposit initiators from counting at their facility and that they must pay whatever the redemption centers claims is being tendered.
- However, this provision does not prohibit deposit initiators from conducting audits of the redemption center counts.



# Audits

- It is illegal for a deposit initiator to pay for containers that do not have the NYS deposit or for containers they did not actually receive. [*See* ECL § 27-1007(10); § 27-1012(1) & (2)]
- Steps need to be taken by the deposit initiator to confirm what is received before they pay out refund value amounts that are held in trust for the State in their refund value accounts.



# On-Site Counting/Audits

- First, the redemption center/dealer must properly sort and count the containers before tendering them to deposit initiators.
- The counts should be provided, in writing, to the deposit initiator, or their agent, at the time of pick-up.
  - This is so the redemption center knows how many containers they are tendering and should be paid for.
- The redemption center/dealer should be paid based on its count, unless the deposit initiator conducts a well-documented audit.



# Audits

- An audit or “check” can be done of the counts to ensure the deposit initiator is not paying for containers that they should not.
- Audits help to maintain the integrity of the redemption process.



# On-Site Audits

- If possible, audits should be done at the redemption center's or dealer's place of business
  - Container count audited on-site by deposit initiator with ALL containers being counted;
  - OR
  - A percentage (or certain #) of containers are counted on-site for redemption centers/dealers tendering more than 5000(?) containers;
  - OR
  - Other arrangement, as agreed upon by redemption center/dealer and deposit initiator
  
- Any audit procedures should be provided in advance.



# Audits

- Due to large volumes of containers and limited space and time issues, on-site audits may be impractical.
- When an on-site audit is impractical there needs to be a procedure for audits to occur at the deposit initiator's place of business.



# Audits

- When an audit occurs at the deposit initiator's location, the redemption center or dealer should be informed in writing and have the right to be present.
- Any audit procedures should be provided in advance



# Audits

- Audits need to be carefully documented. This may include:
  - Recording the number of non-brand containers or short counts in detail
  - Pictures or video may be taken
  - Results of audit and any changes in payment amounts are provided in writing to the dealer or redemption center
  - Recommend that before **any** deductions to payments are made, the problems are first discussed and proper sorting and counting procedures are reviewed



# Stakeholder Ideas for Audits

- There seems to be some audit practices being used that should be considered for regulations.
- What seems to be working well?



# Deposit Initiator

- Definition in the law says it can be:
  - Bottler;
  - Distributor;
  - Dealer; or
  - Agent acting on behalf of a registered deposit initiator



# Deposit Initiator

- While the definition seems to allow for some options as to who may be the deposit initiator, in practicality the options are limited.
- Definition needs to be clarified.
- The deposit initiation and redemption processes tend to work best when the deposit initiator is the entity at the top of the distribution chain.

Generally, this is:

- The bottler, manufacturer, or brand owner
- First distributor in NY, if there are designated territories



# Deposit Initiator

- A bottler or manufacturer that makes **any** sales to a person that is not a distributor with an exclusive distributorship must be the deposit initiator (i.e., direct sales to dealers, retailers, stores or consumers).
- For **private label beverages**, the owner or licensee of the brand name or trademark should be the deposit initiator on private label beverage containers.
  - Private label beverages - beverages purchased from a bottler in beverage containers bearing the brand name or trademark for sale at retail directly by the owner or licensee of such brand name or trademark; or through retail dealers affiliated with such owner/licensee by a cooperative or franchise agreement.



# Deposit Initiator

## Proposal for amended regulations

- For beverage containers manufactured in the U.S., the deposit on each filled container must be initiated by the **bottler**, except for in certain circumstances:
  - The bottler does not sell or distribute beverage containers to any person/entity in NY;
  - The first distributor to sell in NY has a geographically exclusive distributorship for the sale of such beverage; **and**
  - The bottler and the distributor have a written agreement detailing the specific geographic areas in NY of such exclusive distributorship.



# Deposit Initiator

- Once a deposit is initiated on a filled container, it must be charged on each sale of the filled container.
- Require in amended regulations that the deposit must be separately charged and indicated on all sales invoices and receipts.



# Deposit Initiator

- Clarification that a deposit initiator should charge deposits on beverage containers that are sold to an out-of-state entity that intends to distribute the beverage for use and consumption in New York.
- “Beverage container” is defined as the individual, separate, sealed glass, metal aluminum, steel or plastic bottle, can or jar used for containing less than 1 gallon at the time of sale or offer for sale of a beverage **intended for use or consumption in NY.**



# Deposit Initiator

- Deposit initiators need to ask out-of-state companies (such as to retailer distribution centers, office supply and food services distributors) if they will be selling/delivering the beverage to NY locations for sale or distribution.
- Deposits should be collected and placed into the refund value account, so they are available when the containers are redeemed in NY.



# Redemption Centers

- Registration Process
- Procedures for Revoking a Registration
- Operational Requirements
- Record Keeping and Reporting Requirements



# Redemption Center Registration

- Registration process will involve an application similar to form currently being used
- NO FEE will be charged for a redemption center registration
- Registration will need to be renewed, likely every 5 years



# Redemption Center Registration

- Registration Denial and Revocation
  - Due process: Redemption center must be notified and may request a hearing
  
- Reasons for denial or revocation of a registration will include:
  - Noncompliance with law, regulations, or orders of the Commissioner;
  - Submitting materially false or inaccurate statements to DEC on registration form, or in records submitted to DEC



# Operational Requirements for Redemption Centers

All receipt, handling, processing, and storage of beverage containers must be conducted in a manner that prevents adverse impacts, does not become a nuisance or a sanitary or environmental problem, and does not adversely affect the marketability of such materials.



# Operational Requirements for Redemption Centers

Redemption Centers are a type of solid waste management facility. Expect operational requirements similar to other solid waste management facilities such as:

- Covered or Enclosed Facility
- Adequate Storage and Aisle Space
- Restricting Access
- Dust, Vector and Odor Control
- Access for Trucks
- Compliance with Laws, Zoning or Other Codes



# Mobile Redemption Centers

- There is a difference between a mobile redemption center and a redemption center that provides pick-up services from dealers and on-site accounts
- Define mobile redemption center to clarify this difference
- Currently, mobile registration numbers are only issued based on the context in the law (ECL § 27-1007(3)):
  - Operated by a redemption center
  - Have a written agreement with a dealer that is less than 10,000 square feet in size
  - Operates within ¼ mile of that dealer
  - Operates to cover at least 4 consecutive hours between 8 a.m. and 8 p.m.



# Mobile Redemption Centers

## Mobile redemption center:

A redemption center, movable by means of a motor vehicle, that accepts containers from and pays the refund value to redeemers for empty beverage containers tendered for redemption at one or more locations, as registered by the department, other than the redemption center's registered fixed location.



# Mobile Redemption Centers

Proposed requirements for mobile redemption centers, include:

- Redemption activities may only be conducted if the owner of the property on which such activity occurs, approves in writing;
- Must provide the department with the locations at which the mobile redemption center picks up containers;
- Empty beverage containers picked up and redeemed by a mobile redemption center must not be tendered to a deposit initiator or distributor that does not sell filled beverage containers in the geographical marketing area where such containers were picked up;



# Mobile Redemption Centers

- The fixed location of a redemption center must be in the same county as any mobile redemption activity that occurs pursuant to a written agreement with a dealer to accept containers on behalf of such dealer;
- Containers picked up from redeemers outside of the county in which the redemption center is physically located, must be recorded by type of container and amount; and
- Mobile redemption centers must operate in accordance with all other state and local laws and acquire all necessary municipal approvals.



# Mobile Redemption Centers

- New York City Local Law No. 57 (eff. December 2013), “Acceptance of Recyclable Containers in Bulk Using Motor Vehicles”:
  - Makes it unlawful for an any person using a motor vehicle to accept, receive or otherwise collect recyclable containers in bulk (50 or more) from more than 1 person on any street.
  - No person shall, while using a motor vehicle accept, receive or transfer from one motor vehicle to another, or otherwise collect recyclable containers in bulk from more than 2 persons on private property without registering with NYC Dept. of Sanitation.
  - Vehicles used to collect containers in violation of this law may be impounded.

*See N.Y. City Admin. Code §§16-470 to 16-477.*



# Current Record Keeping for All Redemption Centers

2013 Law added requirement for the redemption centers and dealers to obtain information from anyone that redeems more than 2,500 (\$125) at one time.

- Person's Name and address
- License Plate Number of Vehicle Used to Transport the Containers
- Form is Available on DEC Website
- This information must be kept for 12 months and provided to DEC upon request



# Record Keeping for Mobile Redemption & Redemption Centers Providing Pick-Up Services

- Record location of where containers are picked up, the amounts and brands
- Records must be maintained for a certain period and be available for inspection and provided to DEC upon request



# Third-Party Operators/Contracted Agents

- Define in Regulations – possibly “any person who enters into an agreement with a deposit initiator to pick-up empty beverage containers from redemption centers and dealers on their behalf”
- Record Keeping Requirements - recording amounts of containers coming in and going out; non-redeemable containers
- Reporting Requirements – submitting an Annual Report
- Operational Requirements: may be regulated as Recyclables Handling and Recovery Facilities under Part 360 regulations



# Record Keeping for Third-Party Operators/Contracted Agents

- Record location of where containers are picked up, the amounts and brands
- Records must be maintained for a certain period and available for inspection by DEC



# REVERSE VENDING MACHINES



# REVERSE VENDING MACHINES

- Scrap reconciliation for material processed through RVMs and what is picked-up
  - How to handle discrepancies?
- Requirements for monitoring use and controlling access to RVMs to prevent fraudulent activities
- Requirements for securing redeemed containers or scrap that has been processed through RVMs



# Thank You!

## Contact Information:

Cristin M. Clarke

Senior Attorney

NYS DEC

Office of General Counsel

625 Broadway

Albany, NY 12233-1500

Email: [Cristin.Clarke@dec.ny.gov](mailto:Cristin.Clarke@dec.ny.gov)

Phone: (518) 402-9507

Jennifer Kruman

Environmental Program Specialist

NYS DEC

Division of Materials Management

625 Broadway

Albany, NY 12233-7253

Email: [Jennifer.Kruman@dec.ny.gov](mailto:Jennifer.Kruman@dec.ny.gov)

Phone: (518) 402-8706

**General Bottle Bill Email: [nybottle@dec.ny.gov](mailto:nybottle@dec.ny.gov)**



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