



Department of
Environmental
Conservation

Stakeholder Meeting to Discuss Amendments to 6 NYCRR Part 367 — Returnable Beverage Containers

September 28 & 29, 2022

Today's Goals

- Focus on challenging topics that are more difficult to address in statewide regulations
- Get stakeholder input on how to best update and revise the regulations

Brief Legislative & Regulatory History

- NYS Returnable Container Act - originally enacted in 1982
- Current 6 NYCRR Part 367 has been in effect since 1983
- Minor amendments to the Law, 1983-1997
- **2009** – significant revisions, including: expanded the definition of a beverage to include water; increased the handling fee; added deposit initiator registration requirements and the payment of 80% of unclaimed deposits to NYS Dept. Taxation & Finance; and added dealer requirements for reverse vending machines (RVMs).
- **2011** – amendments to RVM requirements for dealers and to allow for metal bottles with removable caps
- **2013** – significant revisions, focused on enforcement, including: added prohibition on tampering with RVMs; added requirement for redemption centers and dealers to keep records on persons redeeming more than 2500 containers at one time; requirement for monies collected through enforcement to go to the Environmental Protection Fund; and added criminal misdemeanor and felony enforcement provisions.



What We Cannot Change in Regulations

- Repeal the Law
- Add or Remove Types of Beverages Covered or Types of Beverage Containers Subject to a NYS Deposit
- Increase the Deposit Amount and Handling Fees
- What Happens to the Unclaimed Deposits
- Penalty Amounts

Seeking Input on These Issues

- **Sorting Requirements, Pick-Ups & Container Counting**
 - Counting and sorting of containers by redemption centers and dealers
 - Pick-ups of empty containers at redemption centers and dealers
- **Audits and Discrepancies in Container Counts**
 - Procedures for auditing redemption center and dealer container counts by deposit initiators and contracted agents
 - Procedures to address discrepancies between the redemption center's/dealer's count of tendered redeemable containers and the number of containers counted as received by the deposit initiator or pick up agent
- **Redemption centers and contracted agents: facility registration, operating requirements, and reporting requirements**

Questions?

MEETING PROCESS - Questions

- Attendees wishing to ask verbal questions or to comment may use the **'Raise Hand'** feature to be called upon and their audio unmuted. You may also use the **'Chat'** feature to type in a question or comment at any time during the presentation.
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Container Counting, Sorting Requirements & Pick-Ups

Redemption Center Counting & Sorting

- Counting and sorting of containers by redemption centers and dealers
 - Redemption centers'/dealers' container counts – Containers should be counted at the redemption center's/dealer's facility by the redemption center/dealer
 - Number of sorts: What is a reasonable number of sorts?

Container Sorting

➤ Current: A distributor may require containers to be sorted according to **brand**, and **within brand**, according to **amount of deposit** and, within amount of deposit, according to whether the container is intended to be **refilled**. Distributors may make agreements with dealers and redemption centers specifying alternate sorting arrangements. [§ 367.5(b)]

➤ Seeking input on the following:

A deposit initiator or distributor may require a dealer or redemption center to properly sort containers to be redeemed by the brands sold by the deposit initiator or distributor according to material type, glass by color, and according to whether the container is intended to be refilled.

There may not be more than four beverage container size sorts for each material type.

A deposit initiator or distributor may make agreements in writing with dealers or redemption centers specifying alternate sorting arrangements.

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- Seeking input on the following:
 - A deposit initiator or distributor may require a dealer or redemption center to properly sort containers to be redeemed by the brands sold by the deposit initiator or distributor according to material type, glass by color, and according to whether the container is intended to be refilled.
 - There may not be more than four beverage container size sorts for each material type.
 - A deposit initiator or distributor may make agreements in writing with dealers or redemption centers specifying alternate sorting arrangements.
- Other suggestions for container sorting requirements?

Pick Up of Empty Containers

- Pick-ups of empty containers at redemption centers & dealers
 - Current Language on Frequency [§ 367.5(c)(1),(3)]
 - Dealers: The distributor must pick up empty beverage containers from a dealer at least as often as such distributor delivers filled beverage containers to such dealer.
 - Redemption centers: Must be on a frequency schedule agreed to between the distributor and the redemption center. However, in no event may the frequency be less than once every 2 weeks, unless the redemption center agrees that the volume of containers to be accepted does not warrant biweekly collection.
 - Change frequency?
 - Number of containers picked up: minimum/maximum for certain time period?

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Audits & Discrepancies in Container Counts

Container Counts

- **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.”

- The redemption center/dealer must properly sort and count the containers at the redemption center’s/dealer’s facility before tendering them to deposit initiators.
 - The redemption center/dealer should know how many containers they are tendering for which they should be paid the deposits and handling fees.

Container Counts

- The counts should be provided, in writing, to the deposit initiator, or their agent, at the time of pick-up.
- Representative of redemption center/dealer and the deposit initiator/agent should sign off on the number of bags/boxes and containers counts in each for bags/boxes accepted by the deposit initiator/agent.
- The redemption center/dealer should be paid based on its count, unless the deposit initiator conducts a well-documented audit.

Deposit Initiator Payments from Refund Value Accounts

- Deposit initiators should take steps to confirm number of containers received from redemption centers/dealers before they pay out refund value amounts, which are held in trust for the State in their refund value accounts.
- It is illegal for a deposit initiator to pay the refund value for containers on which they know or should know that a NYS deposit was never paid or for containers they did not actually receive.
[See ECL § 27-1007(10); § 27-1012(1) & (2)]
- An audit or “check” can be performed to ensure the deposit initiator is not paying for containers they should not be paying for.
 - This helps to maintain the integrity of the redemption process.

Audits at Redemption Center or Dealer Location

- If possible, audits should be done at the redemption center's or dealer's place of business with container count being audited by deposit initiator.
 - ALL containers being counted; OR
 - A percentage (or certain #) of containers are counted on-site for redemption centers/dealers tendering more than a certain amount of containers; OR
 - Other arrangement, as agreed upon by redemption center/dealer and deposit initiator?
- Due to large volumes of containers, limited space and time issues, and safety issues, on-site audits may be impractical.
 - What conditions may make an audit at the redemption center's/dealer's place of business impractical and/or unsafe?
 - What sort of conditions are needed at a redemption center/dealer facility in order to perform an audit efficiently and safely?



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Audits at Deposit Initiator's Facility

- When an audit at the redemption center's/dealer's place of business is impractical, there needs to be a procedure for audits to occur at the deposit initiator's or pick-up agent's facility.
- Redemption center/dealer should be informed in writing and have the right to be present.
 - Could a redemption center/dealer be present virtually instead of in-person?
 - Can we use technology to help address some issues?
- Audit procedures should be provided to redemption center/dealer in advance.
- Audits should be carefully documented. This may include:
 - Recording the number of non-brand containers or short counts in detail
 - Pictures or video



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Discrepancies in the Number of Redeemable Containers Counted

- Procedures to address discrepancies between the redemption center's/dealer's count of tendered containers and the number of containers counted as received by the deposit initiator or pick up agent?
 - Results of audit and any changes in payment amounts should be provided in writing to the dealer or redemption center.
 - Counting and sorting issues should be discussed and proper sorting and counting procedures reviewed
 - Should this happen before any deductions to payments are made?
- How can we avoid discrepancies between the redemption center's/dealer's count and the number of containers counted as received by the deposit initiator?
- What should be done if a redemption center/dealer continues to tender short bags and/or bags with incorrect brands?



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Requirements for Redemption Centers & Contracted Agents

Redemption Center Requirements - Registration

➤ Facility registration

- Require some more information about the facility: size, estimated volume, customer parking
- No fee for redemption center registration
- Registration renewal, likely every 5 years

Redemption Center Reporting Requirements

➤ Current Reporting Requirements

Redemption centers and dealers must obtain information from anyone redeeming more than 2,500 containers (\$125) at one time.

- Person's Name and address; License Plate Number of Vehicle Used to Transport the Containers
- Information must be kept for 12 months & provided to DEC upon request

➤ New Proposed Reporting: Annual Reports

- For redemption centers providing pick-up services: Record location of where containers are picked up, the amounts and brands

Redemption Center Operating Requirements

- Redemption Centers are a type of solid waste management facility. Operational requirements for redemption centers similar to other solid waste management facilities, such as:
 - Covered or Enclosed Facility
 - Adequate Storage, Aisle Space
 - Restricting Access to Redeemed Containers
 - Litter, Dust, Vector and Odor Control
 - Access for Trucks
 - Compliance with Local Zoning or Other Codes

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Redemption Center Requirements

Seeking Input on:

- Facility registration requirements:
 - facility information, renewal every 5 years
- Reporting requirements: annual reports
- Operational requirements for redemption centers similar to other solid waste management facilities, such as:
 - Covered or Enclosed Facility;
 - Adequate Storage, Aisle Space; Access for Trucks
 - Litter, Dust, Vector and Odor Control;
 - Restricting Access to Redeemed Containers;
 - Compliance with Local Zoning or Other Codes

Contracted Agents, Facilities & Reporting

- Possible Contracted Agent Definition – a person acting for, or on behalf of, a registered deposit initiator to pick up, process, or administer payments of deposits and handling fees on empty beverage containers accepted from redemption centers and dealers for, or on behalf of, the deposit initiator.
- Facility Registration & Operating Requirements
 - Depending on activities conducted, may be regulated as Recycling Handling & Recovery Facilities under 6 NYCRR Part 361
- Reporting requirements
 - Annual reports
 - Amounts of containers coming in and going out; non-redeemable containers; locations where containers are picked up, the amounts and brands handled

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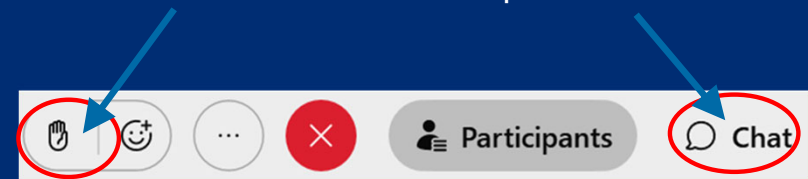
**Other Topics,
Ideas or Suggestions?**

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Comments and Suggested Language

- Comments, especially those that are lengthy and complex, may be submitted in writing.
- Stakeholders are encouraged to provide further comments and suggestions for the Part 367 regulations through **Friday, October 21, 2022**.
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Thank You for Participating!

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