

OPEGA Recommendation for Project Direction

Beverage Container Redemption Program

Background

The Maine Beverage Container Redemption Program (redemption program) was first voted onto the Government Oversight Committee's (GOC) "On Deck List" in March of 2009. On March 24, 2017, the GOC voted to move the review of the redemption program to OPEGA's Work Plan. OPEGA began preliminary research in May of 2017. During the preliminary research phase of this project, OPEGA completed the following tasks:

- reviewed redemption program issues discussed by the GOC at meetings in 2009, 2013 and 2017;
- sought input from GOC members and members and staff of the Environmental and Natural Resources Committee on concerns or questions regarding the redemption program;
- interviewed the current and former directors of the redemption program located in the Department of Environmental Protection (DEP) and the Department of Agriculture, Conservation and Forestry (DACF);
- interviewed representatives from Maine Revenue Services (MRS) and the Bureau of Alcoholic Beverages and Lottery Operations (BABLO) regarding their roles in the redemption program;
- interviewed a sample of redemption program participants on-site at their facilities including representatives of five redemption centers, two pickup agents, five initiators of deposit (mix of manufacturers and distributors), and one retailer;
- observed redemption processing in five redemption centers;
- interviewed Assistant Attorneys General (AAG) representing MRS and DEP for guidance on interpretation of parts of statute relating to commingling;
- reviewed statutes, legislative history, and rules related to the redemption program and its operations;
- reviewed departmental guidance documents related to the redemption program;
- reviewed reports regarding redemption programs in other states; and
- obtained redemption program data from redemption program participants and MRS.

Summary of Preliminary Research

Program Description

Relevant statutes and rules

The redemption program (also known as the Bottle Bill) was enacted by referendum in November 1976 and was implemented in January 1978. The redemption program was originally contained in

32 M.R.S. § 1861-1869, which included the purpose, intent, definitions, refund rate, responsibilities, application, rules, prohibitions, and penalties under law.

In 2015, legislation was enacted that transferred the administration of the redemption program from DACF to DEP.¹ This resulted in shifting the relevant statute to 38 M.R.S. § 3101-3118.

Program intent

The statutory intent of the program has not changed since its enactment in 1976. According to 38 M.R.S. § 3101, the Legislature found that beverage containers were a major source of non-degradable litter and solid waste in the State and the collection and disposal of this litter and solid waste was a financial burden for Maine citizens. Statute describes the intent of the redemption program as to:

- create incentives for manufacturers, distributors, dealers and consumers of beverage containers to reuse or recycle beverage containers;
- remove the blight on the landscape caused by the disposal of these containers on the highways and lands of the State; and
- reduce increasing costs of litter collection and municipal solid waste disposal.

Program scope

Maine's redemption program applies to bottles, cans, jars or other containers made of glass, metal or plastic that have been sealed by the manufacturer at the time of sale and contain 4 liters or less of a beverage, defined as:

- beer, ale or other drink produced by fermenting malt;
- spirits;
- wine;
- hard cider;
- wine coolers;
- soda;
- non-carbonated water; and
- nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for human consumption.

However, through statute and rules, the following beverages and container-types are specifically excluded:

- unflavored rice milk, unflavored soymilk, milk and dairy-derived products;
- certain containers composed of a combination of aluminum and plastic/paper filled with nonalcoholic beverages;
- beverages sold on airline flights;
- Maine produced apple cider and blueberry juice;
- syrups, concentrates, additives, extracts, sauces, and condiments;
- infant formula and drugs;
- nutritional supplements;

¹ P.L. 2015, ch. 166 "An Act to Promote Recycling Program Integration and Efficiencies"

- products frozen at sale or intended for consumption in a frozen state;
- broths and soups; and
- products in paper or cardboard containers.

Deposit and handling fees

The program’s intent is achieved through creation of a financial incentive for consumers to return beverage containers to a redemption center. Statute establishes a container deposit that is paid upon purchase and refunded when the container is redeemed. The deposit and refund is set at not less than 15¢ for wine and spirit containers greater than 50 milliliters and not less than 5¢ for all other containers covered by the program.

The program also creates a financial incentive for redemption centers to return containers to the manufacturer or distributor that brought the containers to market in Maine. Statute requires that initiators of deposit, which are typically the manufacturers or distributors, pay a redemption center for the cost of handling beverage containers. The handling fees set in statute are:

- (i) 4¢ per container as standard;
- (ii) 3.5¢ for containers subject to a qualified commingling agreement; or
- (iii) 3¢ for containers for a brewer that produces no more than 50,000 gallons of product or a water bottler that sells no more than 250,000 containers of up to one gallon annually.

The lifecycle of the deposit broadly follows the lifecycle of the container. In the simplest scenario, the retailer pays the deposit to the manufacturer upon purchase of product; the consumer pays the retailer upon purchase of the container; a redemption center pays the consumer the refund upon return of a container; and finally the manufacturer pays the redemption center for redeemed containers. In situations where distributors and/or pick up agents are also in the container delivery and return cycle, the deposit transfer includes them as well.

The manufacturer continues to hold the deposit for a container sold to a consumer that is not redeemed. These funds must be turned over to the State unless:

- the containers are part of a commingling group; or
- the containers are from a brewery that produces no more than 50,000 gallons of product or a water bottler that sells no more than 250,000 containers of up to one gallon per calendar year.

Attachment A depicts the flow of containers, deposits and handling fees among the various program participants.

Program Participants

Initiators of Deposit

There are currently 264 initiators of deposit (IoD) registered with DEP. IoDs are manufacturers or exclusive distributors who begin the deposit cycle by collecting deposits on containers they sell. IoDs also pay for the refund of the deposits to the redeeming consumers. Program rules specify that BABLO shall be the IoD for spirits sold in the State.

IoDs are generally responsible for marking beverage containers with the refund value prior to selling them to a distributor or retailer. Product labels must also be registered with DEP and registrations are renewed annually. Statute puts responsibility for registering labels on the IoD, but program rules specify that the manufacturer is responsible for label registration in cases where the IoD is a distributor or BABLO.

IoDs are also responsible for picking up redeemed containers for the beverages they sell that are empty, unbroken, and reasonably clean. Statute allows for initiators of deposit to fulfill this obligation indirectly through a contracted agent or “pickup agent.”

Finally, some IoDs must report their sales and redemptions and remit their unredeemed deposits to MRS by the 20th of each month. This requirement does not apply to containers that are covered by commingling agreements or to IoDs that are breweries producing no more than 50,000 gallons of product or water bottlers that sell no more than 250,000 containers of up to one gallon per calendar year.

DEP has the ability to pull products from sale in the State in the event that IoDs are noncompliant with their obligations under the redemption program.

Retailers

Numerous retailers also play a role in the redemption program, selling eligible beverage containers and charging the deposit to consumers. Statute requires retailers to redeem empty, unbroken, and reasonably clean beverage containers of the kind, size, and brand they sell unless they are party to an agreement with a local redemption center approved by the DEP.

Redemption Centers

Redemption centers are businesses that deal in the acceptance of empty returnable beverage containers from either consumers, dealers (retailers), or both. Redemption centers pay out the redemption value of containers to consumers who return containers, sort the containers according to standards agreed upon with industry or per commingling agreements, make the sorted containers available for pickup, and receive back the redemption value of the containers plus a handling fee from the IoDs or their pickup agents.

There are currently 460 redemption centers licensed by DEP. The licensing process requires an inspection and \$50 fee. Licenses must be renewed annually.

Redemption centers process containers and refund deposits in several different ways. Some redemption centers manually count and sort containers into bags and cartons specific to each IoD, pickup agent and/or commingling group. Others use reverse vending machines (RVMs) which read product barcodes to electronically charge IoDs and produce a credit slip for consumers to cash in. Each RVM is for a specific type of material which is crushed by the machine. Still others use a hybrid system of manual sort and RVMs. Finally, one of the State’s large grocery chains contracts its redemption efforts to Clynk, a vendor that acts as a hybrid of a redemption center and pickup agent. Consumers create a Clynk account and leave bags of containers at designated drop-off locations. The bags are transported to the Clynk processing facility where every container barcode is scanned and containers sorted by material type and baled. Consumers’ accounts are credited within 48 hours for valid redemptions and IoDs are electronically billed for each valid container redeemed.

Pickup Agents

IoDs may contract with a third party pickup agent to collect their redeemed containers. The cost of a pickup agent service is variable and individually negotiated as part of the contract between the initiator and the pickup agent. Contracted costs can be impacted by a number of factors, including (but not limited to): container material and size, sales volume and whether the scrap material is the property of the initiator or the pickup agent.

There are two licensed pickup agents in the State, TOMRA and Maine Recycling, who pay an annual \$500 fee to DEP. The licensed pickup agents annually provide DEP with current lists of IoDs they are contracted with and beverage containers which they pick up, and notify DEP when changes are made.

Pickup agents bring the pre-sorted and counted containers back to their processing location, crush them, bale them, and send them on to recyclers. While there is no obligation that pickup agents are responsible for the processing of commodities, this is the way that both pickup agents in Maine operate.

State Administration

DACF administered the redemption program for 38 years from its inception in 1978 until the recent transfer to DEP in November 2015. DACF continued to do the inspection and licensing of redemption centers and checks for product compliance at applicable retailers until the end of a memorandum of understanding with DEP in November 2016. DEP is now responsible for the overall administration of the redemption program including: maintaining the label and product registry; licensing and inspection of redemption centers, pickup agents and initiators of deposit; developing rules and regulations; and removing out of compliance containers from sale.

DEP's initial efforts after taking over the redemption program were focused on managing the re-registration process, meeting with stakeholders and adjusting rules for the transition. DEP is now moving into a phase of looking at improvements to the system, including:

- requirements and guidance for redemption centers;
- ongoing inspections;
- fraud auditing;
- a centralized complaint process; and
- potential enforcement mechanisms for noncompliance with program requirements.

MRS's role in the redemption program is to collect unredeemed deposits, known as escheat, from non-commingling initiators of deposit (currently there are 123). Initiators of deposit (IoD) submit deposit transaction fund reconciliation reports to MRS on a monthly basis. MRS can encourage compliance by assessing any of the tax penalties specified under the general provisions of Title 36², including understatement penalties, interest, and failure to pay penalties. Exhausting all other avenues, MRS can request DEP to remove a non-compliant initiator's product from sale in Maine.

² Title 36 is the taxation title which sets out the general administrative and enforcement provisions of the State Tax Assessor, including the tax penalties that can be imposed. The redemption program statute specifies that the return and the escheat fall within Title 36 in terms of obligations on filing returns or paying unredeemed deposits.

OPEGA observed that the State collects very little data on the program that can be used to assess the program's costs and impacts.

Commingling Agreements

In 2003, legislation was enacted to allow for commingling agreements between two or more IoDs allowing dealers and redemption centers to commingle the containers for which they have initiated deposits. This means that containers can be sorted by like size, material, or type of beverage container for all IoDs who are part of the group. Statute also requires that IoDs that enter into a commingling agreement shall permit any other IoD to become party to that agreement on the same terms and conditions as the original agreement.

Like product groups are those that are made up of the following products:

- Beer, ale or beverage produced by fermenting malt, wine, and wine coolers
- Spirits
- Soda
- Noncarbonated water
- All other beverages

Containers are considered to be of like materials if made up of one of the following materials:

- Plastic
- Aluminum
- Metal other than aluminum
- Glass

There are currently four qualified commingling agreements filed with DEP: Maine Beverage Association (Coca-Cola and Pepsi), Maine Beer & Wine Wholesalers Association (8 distributors), Polar and Nestle, and SoPo Wine Commingling. BABLO has also been deemed a qualified commingling group for spirits products, but no agreement exists.

Commingling agreements effectively transfer the burden of multiple, physical sorts of containers from redemption centers to the IoDs. Rather than physically sort the containers, the IoDs instead allocate the costs of deposit reimbursements, handling fees, and pick up of the containers via an accounting exercise performed by either agreement participants or a third-party administrator. In practice, commingling agreements are often unnatural partnerships between competitors that require trust and confidence in other agreement members' ability to track and record sales data throughout their respective distribution channels.

Parties to these qualified commingling agreements receive two primary benefits. The first is a 1/2 cent reduction in the handling fee paid to redemption centers for containers covered under the agreement. The second is an exemption from reporting and remitting unredeemed beverage container deposits to the State via MRS.

During preliminary research, OPEGA and program participants noted concerns with the interpretation and implementation of the statute governing commingling agreements.

OPEGA Recommendation on Project Direction

OPEGA recommends continuing this review of the Beverage Container Redemption Program with a focus on the following questions:

1. To what extent is the program accomplishing its intended purpose?
2. What types of costs are incurred by the State and Initiators of Deposit for the program and how are these costs potentially offset?
3. To what extent is commingling accomplishing its intended purpose?
4. To what extent are effective measures in place to address risks of non-compliance with program requirements and risks of potential fraud and abuse in the program?
5. How does Maine's program compare to beverage container redemption programs in other states?