

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
H.P. 1083 - L.D. 1467

**An Act To Promote a Circular Economy through Increased Post-consumer
Recycled Plastic Content in Plastic Beverage Containers**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 28-A MRSA §1355-A, sub-§5, ¶J is enacted to read:

J. A rectifier and a holder of a distillery or small distillery license shall comply with all applicable requirements of Title 38, section 1612.

Sec. 2. 28-A MRSA §1381, sub-§4, as enacted by PL 2019, c. 615, §4 and affected by §7, is amended to read:

4. Conditions on certificate of approval. A certificate of approval under this section is subject to the laws of the State, including, but not limited to, all applicable requirements of Title 38, section 1612, and the rules of the bureau.

Sec. 3. 38 MRSA §1612 is enacted to read:

§1612. Plastic beverage containers

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Beverage" has the same meaning as in section 3102, subsection 1.

B. "Beverage container" means a bottle, can, jar or other container made of glass, metal or plastic that has been sealed by a manufacturer and at the time of sale contains 4 liters or less of a beverage. "Beverage container" does not include a container composed, in whole or in part, of aluminum and plastic or aluminum and paper in combination as long as the aluminum content represents 10% or less of the unfilled container weight, the container materials represent 5% or less of the total weight of the container and its contents and the container is filled with a nonalcoholic beverage. "Beverage container" does not include a container composed of cardboard in combination with a plastic liner.

C. "Beverage manufacturing industry association" means an association that represents the interests of companies that manufacture beverages.

D. "Dealer" has the same meaning as in section 3102, subsection 6.

E. "Distributor" means a person that engages in the sale of beverages in beverage containers to a dealer in this State and includes a manufacturer that engages in such sales.

F. "Initiator of deposit" or "initiator" means a manufacturer, distributor or other person that initiates or is required to initiate under section 3103 a deposit on a plastic beverage container containing a beverage other than spirits.

G. "Manufacturer" means a person, partnership, association, corporation or other entity that, through its own action or through contract or control of another entity, is primarily responsible for the production of a beverage contained in a plastic beverage container for sale or distribution in the State.

H. "Nonrefillable beverage container" means a beverage container that, after being used by a consumer, is not to be reused as a beverage container by a manufacturer.

I. "Plastic" means a synthetic material made from fossil fuel or organic-based polymers, such as polyethylene, polystyrene, polypropylene and polycarbonate, that can be molded or blown into specific shapes.

J. "Plastic beverage container" means a nonrefillable beverage container that is composed wholly or in large part of plastic. "Plastic beverage container" does not include a beverage label or a beverage cap that may be screwed onto or otherwise affixed to a nonrefillable beverage container.

K. "Post-consumer recycled plastic" means plastic produced from the recovery, separation, collection and reprocessing of plastic that was originally sold for consumption and that would otherwise be disposed of or processed as waste. "Post-consumer recycled plastic" does not include post-industrial plastic or pre-consumer plastic.

L. "Proprietary information" has the same meaning as in section 1771, subsection 6-A.

M. "Spirits" has the same meaning as in Title 28-A, section 2, subsection 31.

N. "Spirits manufacturer" means a person that is:

(1) An in-state rectifier, distillery or small distillery licensed under Title 28-A, section 1355-A that produces spirits contained in a plastic beverage container; or

(2) An out-of-state spirits supplier that transports spirits contained in a plastic beverage container into the State or causes such spirits to be transported into the State and has been issued a certificate of approval under Title 28-A, section 1381.

As used in this paragraph, "rectifier" has the same meaning as in Title 28-A, section 2, subsection 25 and "out-of-state spirits supplier" has the same meaning as in Title 28-A, section 1381, subsection 1.

2. Post-consumer recycled plastic requirement. Except as provided in subsection 7, beginning January 1, 2026 and ending December 31, 2030, an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 25% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

Except as provided in subsection 7, beginning January 1, 2031, an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 30% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

3. Determination of compliance with post-consumer recycled plastic requirement; advisory committee. For the purposes of determining an initiator of deposit's or spirits manufacturer's compliance with the post-consumer recycled plastic requirement in subsection 2, an initiator or spirits manufacturer may rely on Maine-specific data regarding plastic beverage container sales and material use, if available, or may alternatively rely on the same type of data applicable to a region or territory in the United States that includes the State.

A. If an initiator of deposit or spirits manufacturer elects to rely on data regarding plastic beverage container sales and material use derived from data applicable to a region or territory in the United States that includes the State, the initiator or spirits manufacturer shall:

(1) Prorate that regional or territorial data to determine Maine-specific figures based on market share or population in a manner that ensures that the percentage of post-consumer recycled plastic calculated for plastic beverage containers sold in the State is the same percentage as calculated for that larger region or territory; and

(2) Document the methodology used to determine those Maine-specific figures calculated under subparagraph (1) in the report required under subsection 4.

B. The department may form an advisory committee composed of stakeholders to determine the ability of initiators of deposit and spirits manufacturers to measure and report the Maine-specific information required under this subsection and to develop any recommendations for improving the data determination and reporting process. The department may, as necessary, contract with a qualified 3rd-party entity to assist the advisory committee in developing recommendations under this paragraph. Any costs to the department associated with this paragraph may be offset through any fees collected by the department pursuant to this section.

4. Initiator of deposit and spirits manufacturer reporting; payment of fees; product removal for noncompliance. On or before April 1, 2024, and annually thereafter, an initiator of deposit or spirits manufacturer that has in the prior calendar year sold, offered for sale or distributed for sale in the State a plastic beverage container shall submit a report to the department identifying, by resin type when applicable, the amount by weight in pounds of post-consumer recycled plastic, the amount by weight in pounds of plastic that is not post-consumer recycled plastic and the percentage of post-consumer recycled plastic in the total weight of all plastic beverage containers the initiator or spirits manufacturer sold, offered for sale or distributed for sale in the State in that prior calendar year.

A. If the initiator of deposit or spirits manufacturer has determined the data required to be reported under this subsection using regional or territorial data, the initiator or spirits manufacturer shall describe in the report the methodology used to determine the Maine-specific figures.

B. At the time that an initiator of deposit or spirits manufacturer submits a report required under this subsection, the initiator or spirits manufacturer shall pay to the department an annual registration fee and, on or after January 1, 2026, any fee required by subsection 5. The department shall set the amount of the annual registration fee, which may not exceed \$500 and which must be designed to offset the costs to the department of administering and overseeing this section. Any fees received by the department pursuant to this section must be deposited in the Maine Environmental Protection Fund established in section 351.

An initiator of deposit or spirits manufacturer that in the prior calendar year sold, offered for sale or distributed for sale in the State less than 10,000 plastic beverage containers or, in the aggregate, less than 200 pounds of plastic that is not post-consumer recycled plastic is not required to pay an annual registration fee under this paragraph but shall otherwise comply with all applicable requirements of this section, including, but not limited to, submission of the report required under this subsection and payment of any fee required by subsection 5.

C. The department may conduct audits or take other necessary actions to verify the accuracy of initiator of deposit or spirits manufacturer data reported under this subsection.

D. Proprietary information submitted to the department in a report required under this subsection or submitted to the department as part of an audit or other action taken by the department under paragraph C that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

E. The department shall make available on its publicly accessible website all reports submitted under this subsection, except that the department shall redact or remove from such reports any proprietary information identified pursuant to paragraph D.

F. An initiator of deposit may submit the report required under this subsection using information provided to the initiator by a manufacturer. An initiator of deposit or a spirits manufacturer may contract with a 3rd party to submit the report on the initiator's behalf. The submission of the report required under this subsection by an initiator of deposit using information provided by a manufacturer or by a 3rd party on an initiator's or spirits manufacturer's behalf does not relieve the initiator or spirits manufacturer from complying with the other requirements of this section.

G. Not more than once every 5 years, the department may require initiators of deposit and spirits manufacturers to fund a 3rd-party verification of accuracy of the information submitted under this subsection. The 3rd party selected by the department to conduct such verification must be agreed upon by the initiators of deposit and spirits manufacturers.

An initiator of deposit or spirits manufacturer may elect to satisfy the requirements of this paragraph by submitting to the department a 3rd-party verification, or, in the case of an initiator of deposit, a manufacturer's verification, of the accuracy of substantially similar information to that required to be reported under this subsection that was submitted to another state with a post-consumer recycled plastic content requirement that is substantially similar to the requirements of this section as long as that other state

is included in the region or territory identified by the initiator or spirits manufacturer under paragraph A.

H. Except as provided in paragraph I, if an initiator of deposit or spirits manufacturer fails to submit the report and pay all applicable fees required under this subsection within 60 days of the reporting deadline, the department may prohibit the initiator or spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container.

(1) If, pursuant to this paragraph, the department prohibits an initiator of deposit from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to any manufacturer whose plastic beverage containers are sold, offered for sale or distributed for sale in the State by the initiator and to dealers and distributors in the State. A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of the initiator commits a violation of this section.

(2) If, pursuant to this paragraph, the department prohibits a spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, which shall ensure that the plastic beverage containers of the spirits manufacturer are promptly removed from sale in the State.

(3) An initiator of deposit or spirits manufacturer prohibited by the department pursuant to this paragraph from selling, offering for sale or distributing for sale in the State any plastic beverage container that subsequently sells, offers for sale or distributes for sale in the State a plastic beverage container commits a violation of this section.

I. Notwithstanding any provision of this section to the contrary, if an initiator of deposit lacks the information necessary to submit the report required under this subsection by the reporting deadline and calculate the fee required under subsection 5 due to the failure of one or more manufacturers whose plastic beverage containers the initiator sold, offered for sale or distributed for sale in the State during the prior calendar year to provide such information to the initiator, the department may:

(1) Allow the initiator to submit the required report and calculate and pay the required fee based only on the manufacturer information available to the initiator and to thereby be deemed in full compliance with those requirements;

(2) Allow the initiator to sell, offer for sale or distribute for sale in the State any plastic beverage container of any manufacturer that provided the initiator with the information necessary to satisfy the reporting requirement and calculate the required fee but prohibit the initiator from selling, offering for sale or distributing for sale in the State any plastic beverage container of any manufacturer that failed to provide such information to the initiator. If the initiator of deposit sells, offers for sale or distributes for sale in the State a plastic beverage container subject to a

prohibition imposed under this subparagraph, the initiator commits a violation of this section; and

(3) Provide written notification of a prohibition imposed under subparagraph (2) to manufacturers, dealers and distributors in the same manner as in paragraph H, subparagraph (1). A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of an initiator of deposit subject to a prohibition imposed under subparagraph (2) commits a violation of this section.

5. Post-consumer recycled plastic content fee. Pursuant to the provisions of this subsection, an initiator of deposit or spirits manufacturer shall calculate the amount of a post-consumer recycled plastic content fee and shall remit such amount to the department pursuant to subsection 4, paragraph B as follows:

A. The initiator of deposit or spirits manufacturer shall add the total amount by weight in pounds of post-consumer recycled plastic and the total amount by weight in pounds of plastic that is not post-consumer recycled plastic used by the initiator in all plastic beverage containers it sold, offered for sale or distributed for sale in the State during the prior calendar year. The initiator of deposit or spirits manufacturer shall calculate the figure under this paragraph based on the information reported by the initiator or spirits manufacturer pursuant to subsection 4;

B. The initiator of deposit or spirits manufacturer shall multiply the figure calculated under paragraph A by the minimum post-consumer recycled plastic percentage required under subsection 2 during the prior calendar year;

C. The initiator of deposit or spirits manufacturer shall subtract from the figure calculated under paragraph B the total amount by weight in pounds of post-consumer recycled plastic used by the initiator or spirits manufacturer in all plastic beverage containers it sold, offered for sale or distributed for sale in the State during the prior calendar year; and

D. The initiator of deposit or spirits manufacturer shall multiply the figure calculated under paragraph C by 20¢. If the figure calculated under this paragraph is less than or equal to zero, the initiator of deposit or spirits manufacturer is not required to pay a post-consumer recycled plastic content fee to the department pursuant to subsection 4, paragraph B.

6. Waiver. At the request of an initiator of deposit or spirits manufacturer or a manufacturer as provided in paragraph A, and in accordance with the provisions of this subsection, the department may grant a one-year waiver from payment of the fee that would otherwise be required pursuant to subsection 5 if the initiator, spirits manufacturer or manufacturer demonstrates to the department's satisfaction that it was unable to meet the applicable post-consumer recycled plastic requirement of subsection 2 due to anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic.

A. A manufacturer may on its own initiative request a waiver from the department pursuant to this subsection with respect to a plastic beverage container of the manufacturer for which an initiator of deposit is required pursuant to subsection 4 to

submit a report and pay to the department an annual registration fee and the fee required pursuant to subsection 5. If a manufacturer requests a waiver pursuant to this paragraph, both the initiator of deposit and the manufacturer are responsible for responding to any requests for information made by the department pursuant to paragraph C.

B. A waiver request submitted under this subsection by an initiator of deposit or spirits manufacturer must be submitted with the report required under subsection 4 and must include payment to the department by the initiator of a \$100 waiver processing fee. A waiver request submitted under this subsection by a manufacturer pursuant to paragraph A must be submitted on or before the reporting deadline under subsection 4 and must include payment to the department by the manufacturer of a \$100 waiver processing fee. A waiver request must include sufficient information to demonstrate the anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic causing the initiator of deposit, spirits manufacturer or manufacturer to be unable to meet the applicable post-consumer recycled plastic requirement of subsection 2.

C. An initiator of deposit, spirits manufacturer or manufacturer that submits a waiver request to the department shall promptly respond to any request from the department for additional information relating to the waiver request. The department may return a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer as incomplete for processing if the initiator, spirits manufacturer or manufacturer fails to provide sufficient information for the department to review the waiver request or fails to promptly respond to a request from the department for additional information relating to the waiver request. A determination by the department under this paragraph to return a submitted waiver request as incomplete for processing does not constitute a final agency action as defined in Title 5, section 8002, subsection 4 and may not be appealed to the board or to the Superior Court.

D. As a condition of granting a waiver request under this subsection, the department may require an initiator of deposit, spirits manufacturer or manufacturer to submit a corrective action plan describing the actions the initiator, spirits manufacturer or manufacturer intends to implement to ensure its compliance with the requirements of subsection 2 during the current calendar year. If the initiator of deposit, spirits manufacturer or manufacturer has been granted 2 consecutive waiver requests pursuant to this subsection, the department shall require the initiator, spirits manufacturer or manufacturer to submit a corrective action plan pursuant to this paragraph as a condition of granting a 3rd waiver request.

(1) The department may approve the corrective action plan as submitted, approve the plan with required changes or reject the plan.

(2) The department may require the initiator of deposit, spirits manufacturer or manufacturer to demonstrate implementation of an approved corrective action plan before the department grants the waiver request submitted by the initiator, spirits manufacturer or manufacturer under this subsection.

(3) If the department rejects a corrective action plan required under this paragraph or if the department determines that the initiator of deposit, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan, the

department shall require the initiator or spirits manufacturer to pay the fee required pursuant to subsection 5 within 45 days of the date of the department's rejection of the corrective action plan or within 45 days of the department's determination that the initiator, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan.

E. If the department denies a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer pursuant to this subsection, the initiator or spirits manufacturer shall pay to the department the fee required pursuant to subsection 5 within 45 days of the date of the department's denial of the waiver request.

7. Review of post-consumer recycled plastic requirements. Beginning January 1, 2026, and not more than annually thereafter, the department, on its own initiative or at the petition of a beverage manufacturing industry association, may initiate a review of the applicable post-consumer recycled plastic requirement under subsection 2 to determine whether that requirement should be reduced due to market conditions for post-consumer recycled plastic, including the demand for such plastic for food-grade applications, and a review of recycling rates, progress made by initiators of deposit, spirits manufacturers and manufacturers in complying with the post-consumer recycled plastic requirement under subsection 2 and any other factors reviewed by the department.

A. A petition for review submitted pursuant to this subsection by a beverage manufacturing industry association must be evaluated by the department based on information provided by the association and any other information available to the department. The department may require the beverage manufacturing industry association to fund a 3rd-party verification of the accuracy of information submitted by the association under this subsection. The 3rd party selected by the department to conduct such verification must be agreed upon by the beverage manufacturing industry association.

The department may reject the petition for review if the beverage manufacturing industry association fails to provide sufficient information, as determined by the department, for the department to make a determination under this subsection regarding the need for a reduction in the post-consumer recycled plastic requirement under subsection 2 or if the association fails to reach an agreement with the department regarding the selection of a 3rd party to verify the accuracy of submitted information.

B. After conducting the review authorized by this subsection, the department may adopt rules reducing the applicable post-consumer recycled plastic content requirement under subsection 2.

8. Department reporting. Beginning February 15, 2025, and annually thereafter, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters regarding the requirements of this section and including any recommendations for changes to those requirements. The report must describe, in the aggregate, the data submitted to the department by initiators of deposit and spirits manufacturers under subsection 4.

A. Beginning February 15, 2028, and annually thereafter, the report under this subsection must include information regarding initiator of deposit and spirits manufacturer compliance with the requirements of subsection 2, including, at a minimum, information on the number of noncompliant initiators and spirits

manufacturers, the number of waiver requests received and granted or rejected by the department under subsection 6 and the total funds generated from payment of the annual registration fee under subsection 4 and the payment of the post-consumer recycled plastic content fee as calculated under subsection 5. The report must include any recommendations by the department regarding whether the requirements of this section should be amended to better ensure initiator of deposit and spirits manufacturer compliance.

B. The report under this subsection may be included in the report required pursuant to section 1772, subsection 1. After reviewing the report under this subsection, the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters may report out legislation relating to the report.

9. Administration and enforcement; rules. The department shall administer and enforce this section and may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The department may, as necessary, contract with qualified 3rd-party entities to assist in the implementation of this section and the development of any rules to be adopted pursuant to this subsection.

10. Violations. A person that violates a provision of this section is subject to civil penalties under section 349.

11. Preemption. Beginning April 1, 2024, the State intends to occupy the whole field of regulation of the amount of post-consumer recycled plastic contained in plastic beverage containers. A local government may not adopt an ordinance regulating the amount of post-consumer recycled plastic contained in plastic beverage containers and, beginning April 1, 2024, any ordinance or regulation that violates this subsection is void and has no force or effect.