

§3106. Application**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

1. Dealer acceptance. Except as otherwise provided in this section, a dealer operating a retail space of 5,000 square feet or more may not refuse to accept from any consumer or other person not a dealer any empty, unbroken and reasonably clean beverage container or refuse to pay in cash the refund value of the returned beverage container as established by section 3103 unless the dealer has a written agreement with a redemption center to provide redemption services on behalf of the dealer and that redemption center:

A. Is located within 10 miles from the dealer, as measured along public roadways; or [PL 2019, c. 526, §7 (NEW).]

B. If there is no redemption center located within 10 miles from the dealer under paragraph A, is the redemption center in closest proximity to the dealer, as measured along public roadways. [PL 2019, c. 526, §7 (NEW).]

This subsection does not require an operator of a vending machine to maintain a person to accept returned beverage containers on the premises where the vending machine is located.

[PL 2019, c. 526, §7 (AMD).]

2. Permissive refusal by dealer.

[PL 2019, c. 526, §7 (RP).]

3. Limitation or number of returnables accepted. A dealer may limit the total number of beverage containers that the dealer will accept from any one consumer or other person in any one business day to 240 containers, or any other number greater than 240.

[PL 2015, c. 166, §14 (NEW).]

4. Limitation on hours for returning containers. A dealer may refuse to accept beverage containers during no more than 3 hours in any one business day. If a dealer refuses to accept containers under this subsection, the hours during which the dealer will not accept containers must be conspicuously posted.

[PL 2015, c. 166, §14 (NEW).]

5. (TEXT EFFECTIVE UNTIL 10/15/24) Distributor acceptance. A distributor may not refuse to accept from any dealer or redemption center any empty, unbroken and reasonably clean beverage container or any beverage container that has been processed through an approved reverse vending machine that meets the requirements of rules adopted by the department pursuant to this chapter of the kind, size and brand sold by the distributor or refuse to pay to the dealer or redemption center the refund value of a beverage container as established by section 3103.

[PL 2019, c. 526, §7 (AMD).]

5. (TEXT EFFECTIVE 10/15/24) Acceptance by commingling group. A commingling group or its agent may not refuse to accept from any dealer or redemption center any empty, unbroken and reasonably clean beverage container, whether refillable or nonrefillable, or any beverage container that has been processed through an approved reverse vending machine or account-based bulk processing program that meets the requirements of rules adopted by the department pursuant to this chapter of the kind, size and brand sold by the members of the commingling group or refuse to pay to the dealer or redemption center the refund value of a beverage container as established by section 3103.

[PL 2023, c. 482, §13 (AMD); PL 2023, c. 482, §43 (AFF).]

5-A. Cost apportionment; waiver process. A dealer or redemption center may apply for and the department may approve a temporary waiver during which the dealer or redemption center may apportion beverage container costs to distributors using an alternative method that does not require

processing of all beverage containers through a reverse vending machine or similar technology requiring the scanning of each container.

A. Prior to approving a temporary waiver under this subsection, the department shall establish procedures regarding the administration of the temporary waiver process. In establishing those procedures, the department shall solicit and consider input from interested persons. The procedures must require that, prior to approving any submitted application from a dealer or redemption center for a temporary waiver, the department solicit input from interested persons regarding the application. [PL 2023, c. 482, §14 (NEW).]

B. The department may approve a temporary waiver upon a finding that the dealer or redemption center has demonstrated to the department's satisfaction that it will implement an alternative method of apportioning beverage container costs to distributors that:

- (1) Uses a beverage container count method based on a statistically valid sample of beverage containers that is at least as accurate as the beverage container count method currently used by the dealer or redemption center;
- (2) Apportions beverage container costs to distributors using the beverage container count method described in subparagraph (1) by approximating the costs currently apportioned to distributors by the dealer or redemption center in a manner that is at least as accurate as that used under the auditing process described in section 3109, subsection 5-B; and
- (3) Implements a process by which the dealer or redemption center will return to a distributor an amount of beverage containers by weight that corresponds to the amount of the beverage container costs apportioned to the distributor in accordance with subparagraph (2). [PL 2023, c. 482, §14 (NEW).]

C. A temporary waiver approved by the department may not exceed one year in duration. Prior to the expiration of an approved waiver, the dealer or redemption center may apply to the department for an extension of the waiver. The department may approve the waiver for a period not to exceed one additional year in duration upon a finding that the dealer or redemption center has submitted sufficient information to the department to demonstrate that the alternative apportionment method implemented during the previous waiver period satisfies the requirements of paragraph B. [PL 2023, c. 482, §14 (NEW).]

D. A distributor that had beverage container costs apportioned to it by a dealer or redemption center using an alternative apportionment method under a waiver approved pursuant to this section may apply to the department for reimbursement of beverage container costs or other financial losses incurred as a direct result of the alternative apportionment method if the distributor can demonstrate to the department's satisfaction that the distributor:

- (1) Would have been paid additional beverage container costs if the distributor's beverage containers were processed through a reverse vending machine or similar technology that scanned each container; or
- (2) Otherwise suffered a financial loss as a direct result of the alternative apportionment method implemented under the waiver.

A distributor must submit a request for reimbursement under this paragraph prior to December 31, 2025. If the department determines that a distributor is eligible for reimbursement under this paragraph, the department shall reimburse the distributor using funds from the Cost and Carbon Efficient Technology Fund established under section 3114-A. [PL 2023, c. 482, §14 (NEW).]

As used in this subsection, "beverage container costs" means a beverage container's refund value as established by section 3103 and the amount of the reimbursement of handling costs as established by subsection 7.

On or before February 15, 2025, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters describing its findings or recommendations regarding the implementation of the temporary waiver process under this subsection. The report may be included in the report required pursuant to section 3115, subsection 3 that is required by February 15, 2025. After reviewing the report, the committee may report out legislation relating to the report.

This subsection is repealed January 1, 2026.
[PL 2023, c. 482, §14 (NEW).]

6. (TEXT EFFECTIVE UNTIL 10/15/24) Obligation to preserve recycling value. Notwithstanding subsection 8, a distributor or its agent may refuse to accept, or pay the refund value and handling costs to a dealer, redemption center or other person for, a beverage container that has been processed by a reverse vending machine in a way that has reduced the recycling value of the container below current market value. This subsection may not be interpreted to prohibit a written processing agreement between a distributor and a dealer or redemption center and does not relieve a distributor of its obligation under subsection 8 to accept empty, unbroken and reasonably clean beverage containers. The department shall adopt rules to establish the recycling value of beverage containers under this subsection and the rules may authorize the use of a 3rd-party vendor to determine if a beverage container has been processed by a reverse vending machine in a manner that has reduced the recycling value below current market value. The rules must outline the method of allocating among the parties involved the payment for 3rd-party vendor costs.
[PL 2019, c. 526, §7 (AMD).]

6. (TEXT EFFECTIVE 10/15/24) Obligation to preserve container value. Notwithstanding subsection 8-A, a commingling group or its agent may refuse to accept, or pay the refund value and handling costs to a dealer, redemption center or other person for, a beverage container that has been processed by a reverse vending machine or account-based bulk processing program in a way that has, for a nonrefillable beverage container, reduced the recycling value of the container below current market value or, for a refillable beverage container, has damaged the container in a manner that prevents its reuse. This subsection may not be interpreted to prohibit a written processing agreement between a commingling group and a dealer or redemption center and does not relieve a commingling group of its obligation under subsection 8-A to accept empty, unbroken and reasonably clean beverage containers. Beginning July 15, 2025, the cooperative, on behalf of its member commingling groups, shall negotiate agreements with dealers and redemption centers regarding processing payments for each beverage container material type. The department shall adopt rules to establish the recycling value of beverage containers under this subsection and the rules may authorize the use of a 3rd-party vendor to determine if a beverage container has been processed by a reverse vending machine or account-based bulk processing program in a manner that, for a nonrefillable beverage container, has reduced the recycling value below current market value or, for a refillable beverage container, has damaged the container in a manner that prevents its reuse. The rules must outline the method of allocating among the parties involved the payment for 3rd-party vendor costs.
[PL 2023, c. 482, §15 (AMD); PL 2023, c. 482, §43 (AFF).]

7. Reimbursement of handling costs. Reimbursement of handling costs is governed by this subsection.

A. In addition to the payment of the refund value, the initiator of the deposit under section 3103, subsections 1, 2 and 4 shall reimburse the dealer or redemption center for the cost of handling beverage containers subject to section 3103, in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010, at least 4¢ for containers picked up on or after March 1, 2010 and before January 1, 2020, at least 4 1/2¢ for containers picked up on or after January 1, 2020 and before May 1, 2023, at least 5 1/2¢ for containers picked

up on or after May 1, 2023 and before September 1, 2023 and at least 6¢ for containers picked up on or after September 1, 2023. The initiator of the deposit may reimburse the dealer or redemption center directly or indirectly through a party with which it has entered into a commingling agreement. [PL 2023, c. 48, §1 (AMD).]

B. In addition to the payment of the refund value, the initiator of the deposit under section 3103, subsection 3 shall reimburse the dealer or redemption center for the cost of handling beverage containers subject to section 3103 in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010, at least 4¢ for containers picked up on or after March 1, 2010 and before January 1, 2020, at least 4 1/2¢ for containers picked up on or after January 1, 2020 and before May 1, 2023, at least 5 1/2¢ for containers picked up on or after May 1, 2023 and before September 1, 2023 and at least 6¢ for containers picked up on or after September 1, 2023. The initiator of the deposit may reimburse the dealer or redemption center directly or indirectly through a contracted agent or through a party with which it has entered into a commingling agreement. [PL 2023, c. 48, §1 (AMD).]

C. [PL 2019, c. 133, §1 (RP).]

D. [PL 2019, c. 526, §7 (RP).]
[PL 2023, c. 48, §1 (AMD).]

8. Obligation to pick up and recycle containers. Prior to October 15, 2024, the obligation to pick up and recycle beverage containers subject to this chapter is determined as follows.

A. A distributor that initiates the deposit under section 3103, subsection 2 or 4 has the obligation to pick up and recycle any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the distributor from dealers to whom that distributor has sold those beverages and from licensed redemption centers. A distributor that, within this State, sells beverages under a particular label exclusively to one dealer, which dealer offers those labeled beverages for sale at retail exclusively at the dealer's establishment, shall pick up any empty, unbroken and reasonably clean beverage containers of the kind, size and brand sold by the distributor to the dealer only from those licensed redemption centers that are located within 25 miles from the dealer, as measured along public roadways. A dealer that manufactures its own beverages for exclusive sale by that dealer at retail has the obligation of a distributor under this section. The department may establish by rule, in accordance with the Maine Administrative Procedure Act, criteria prescribing the manner in which distributors shall fulfill the obligations imposed by this paragraph. The rules may establish a minimum number or value of containers below which a distributor is not required to respond to a request to pick up empty containers. Any rules adopted under this paragraph must allocate the burdens associated with the handling, storage, transportation and recycling of empty containers to prevent unreasonable financial or other hardship. [PL 2019, c. 315, §19 (AMD); PL 2019, c. 526, §7 (AMD).]

B. The initiator of the deposit under section 3103, subsection 3 has the obligation to pick up and recycle any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the initiator from dealers to whom a distributor has sold those beverages and from licensed redemption centers. The obligation may be fulfilled by the initiator directly or indirectly through a contracted agent. [PL 2019, c. 526, §7 (AMD).]

C. An initiator of the deposit under section 3103, subsection 2, 3 or 4 has the obligation to pick up and recycle any empty, unbroken and reasonably clean beverage containers that are commingled pursuant to a commingling agreement along with any beverage containers that the initiator is otherwise obligated to pick up and recycle pursuant to paragraphs A and B. [PL 2019, c. 526, §7 (AMD).]

D. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation under this subsection to pick up and recycle empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the initiator from dealers to whom a distributor has sold those beverages and from licensed redemption centers every 15 days. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation to make additional pickups when a redemption center has collected 10,000 beverage containers from that initiator of deposit or from the initiators of deposit who are members of a commingling agreement. [PL 2019, c. 526, §7 (AMD).]

The obligations of the initiator of the deposit under this subsection may be fulfilled by the initiator directly or through a party with which it has entered into a commingling agreement. A contracted agent hired to pick up beverage containers for one or more initiators of deposit is deemed to have made a pickup at a redemption center for those initiators of deposit when it picks up beverage containers belonging to those initiators of deposit.

This subsection is repealed October 15, 2024.
[PL 2023, c. 482, §16 (AMD).]

8-A. Obligation to pick up and recycle containers. Beginning October 15, 2024, in accordance with the requirements of this subsection and the rules adopted pursuant to this subsection, a designated pick-up entity has the obligation to ensure the timely pickup and recycling of all empty, unbroken and reasonably clean beverage containers subject to the requirements of this chapter from dealers and redemption centers, including from any locations where an account-based bulk processing program is in operation. As used in this subsection, "designated pick-up entity" means, prior to July 15, 2025, a commingling group or its pick-up agent and, beginning July 15, 2025, the cooperative or its pick-up agent or agents.

A. Notwithstanding any provision of this subsection to the contrary, prior to July 15, 2025, in the case of a designated pick-up entity that is a commingling group, the commingling group's responsibilities under this subsection apply only to those beverage containers from the initiators of deposit that are members of that commingling group. [PL 2023, c. 482, §17 (NEW).]

B. The department shall adopt rules to implement this subsection. The rules must, at a minimum, establish pickup frequency standards based on the volume of beverage containers collected by each dealer or redemption center, accounting for any irregularities in volume, in a manner that promotes communication between designated pick-up entities and dealers and redemption centers and that increases transportation efficiency while maintaining the level of service provided to dealers and redemption centers such that dealers and redemption centers are not required to store collected beverage containers for extended periods of time without contact from and compensation provided by the designated pick-up entity. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 482, §17 (NEW).]

[PL 2023, c. 482, §17 (NEW).]

9. Plastic bags. Plastic bags used by a dealer or redemption center and the cost allocation of these bags must conform to rules adopted by the department concerning size and gauge. Beginning July 15, 2025, the cooperative shall provide to the dealer or redemption center, or reimburse the dealer or redemption center for the cost of, the plastic bags used by the dealer or redemption center to contain redeemed beverage containers.

[PL 2023, c. 482, §18 (AMD).]

10. Application to containers originally sold in the State. The obligations to accept or take empty beverage containers and to pay the refund value and handling fees for such containers as described in subsections 1, 5, 7 and 8 apply only to containers originally sold in this State as filled beverage containers. A person who tenders to a dealer, distributor, redemption center or bottler more than 48 empty beverage containers that the person knows or has reason to know were not originally

sold in this State as filled beverage containers is subject to the enforcement action and civil penalties set forth in this subsection. At each location where consumers tender containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information: "WARNING: Persons tendering containers for redemption that were not originally purchased in this State may be subject to a fine of the greater of \$100 per container or \$25,000 for each tender. (38 MRSA Section 3106)." A person who violates the provisions of this subsection is subject to a civil penalty of the greater of \$100 for each container or \$25,000 for each tender of containers.

[PL 2019, c. 526, §7 (AMD).]

11. License revocation. The department may revoke the license of a dealer or redemption center that has been adjudged to have committed a violation of this section.

[PL 2015, c. 166, §14 (NEW).]

12. Bulk redemption. In order to prevent fraud from the redemption of beverage containers not originally sold in this State, this subsection governs the redemption of more than 2,500 beverage containers.

A. A person tendering for redemption more than 2,500 beverage containers at one time to a dealer or redemption center must provide to the dealer or redemption center that person's name and address and the license plate number of the vehicle used to transport the beverage containers. The dealer or redemption center redeeming these beverage containers shall forward that information to the department within 10 days, and the information must be kept on file for a minimum of 12 months. [PL 2015, c. 166, §14 (NEW).]

B. After complying at least once with the requirements of paragraph A, a person need not comply with paragraph A each subsequent time that person tenders to a dealer or redemption center for redemption more than 2,500 beverage containers if:

- (1) All of the containers were collected at one location in this State;
- (2) All proceeds of the refund value benefit a nonprofit organization that has been determined by the United States Internal Revenue Service to be exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3); and
- (3) The person tendering the containers for redemption signs a declaration indicating the person's name, the address of the collection point and the name of the organization or organizations that will receive the refund value. [PL 2015, c. 166, §14 (NEW).]

[PL 2015, c. 166, §14 (NEW).]

13. Private right of action; containers not originally sold in the State. An initiator of deposit may maintain a civil action in Superior Court against a person, other than a redemption center licensed in accordance with section 3113, that tenders to a redemption center or retailer more than 48 empty beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers. If the initiator of deposit prevails in any action, the initiator of deposit is entitled to an award of reasonable attorney's fees and court costs, including expert witness fees.

[PL 2019, c. 526, §7 (AMD).]

SECTION HISTORY

PL 2015, c. 166, §14 (NEW). PL 2019, c. 133, §1 (AMD). PL 2019, c. 315, §19 (AMD). PL 2019, c. 526, §7 (AMD). PL 2023, c. 48, §1 (AMD). PL 2023, c. 482, §§13-18 (AMD). PL 2023, c. 482, §43 (AFF).

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