

**§3107. Commingling of beverage containers**

Notwithstanding any provision of this chapter to the contrary, 2 or more initiators of deposit may enter into a commingling agreement through which some or all of the beverage containers for which the initiators have initiated deposits may be commingled by dealers and operators of redemption centers as provided in this section. No later than October 15, 2024, each initiator of deposit shall enter into a commingling agreement pursuant to subsection 1-A or 1-B. If, by October 15, 2024, an initiator of deposit has not entered into a commingling agreement pursuant to subsection 1-A or 1-B, the initiator commits a violation of this chapter, is subject to penalties under section 3111 and, as long as the violation exists, is prohibited from selling or distributing in the State any beverage container subject to the requirements of this chapter, and a distributor or dealer may not sell or distribute in the State any such containers of the initiator and the department may remove from sale any such containers of the initiator. [PL 2023, c. 482, §19 (AMD).]

An initiator of deposit that enters into a commingling agreement pursuant to this section shall permit any other initiator of deposit to become a party to that agreement on the same terms and conditions as the original agreement. [PL 2023, c. 482, §20 (AMD).]

For the purposes of this chapter and notwithstanding any provision of this chapter to the contrary, the State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, is deemed to be managing returned containers for which the State has initiated deposits in a commingling program pursuant to a qualified commingling agreement as described in subsection 1-A as long as the State allows a dealer or redemption center to commingle returned containers of like material, including, but not limited to, through use of an account-based bulk processing program. [PL 2023, c. 482, §21 (AMD).]

**1. Commingling requirement.** If initiators of deposit enter into a commingling agreement pursuant to this section, commingling of beverage containers must be by all containers of like product group, material and size. An initiator of deposit required pursuant to section 3106, subsection 8 or 8-A to pick up beverage containers subject to a commingling agreement also shall pick up all other beverage containers subject to the same agreement. The initiator of deposit may not require beverage containers that are subject to a commingling agreement to be sorted separately by a dealer or redemption center. [PL 2023, c. 482, §22 (AMD).]

**1-A. Qualified commingling agreements.** The department shall determine that a commingling agreement is qualified for the purposes of this chapter if:

A. Fifty percent or more of beverage containers of like product group, material and size for which the deposits are being initiated in the State are included in the commingling agreement; or [PL 2023, c. 482, §23 (AMD).]

B. The initiators of deposit included in the commingling agreement are initiators of deposit for beverage containers containing wine and each initiator of deposit sells no more than 100,000 gallons of wine or 500,000 beverage containers containing wine in a calendar year. [PL 2023, c. 482, §23 (AMD).]

C. [PL 2023, c. 482, §23 (RP).]  
[PL 2023, c. 482, §23 (AMD).]

**1-B. Special commingling agreements.** A designated pick-up agent for initiators of deposit that are not members of a commingling group and that cannot in the aggregate satisfy the requirements for a qualified commingling agreement under subsection 1-A, paragraph A shall execute and submit a special commingling agreement to the department for approval. Notwithstanding any provision of this section to the contrary, the department may approve a special commingling agreement that, in accordance with applicable requirements of this section, provides for the commingling by dealers and redemption centers of the beverage containers for which those initiators have initiated deposits.

A. Once approved, the designated pick-up agent shall permit any initiator of deposit that is not a member of a commingling group to become a party to the special commingling agreement. [PL 2023, c. 482, §24 (NEW).]

B. The department may approve up to 2 special commingling agreements pursuant to this subsection and shall adopt rules governing approval and administration of special commingling agreements, which must include, but are not limited to, rules regarding the administration of the agreement, data and reporting requirements for initiators that are parties to the agreement, beverage container sorting and auditing requirements, statewide assessment requirements for the pick-up agent to ensure geographical coverage and the process for addressing container count discrepancies and return of containers not covered by the agreement. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 482, §24 (NEW).]

[PL 2023, c. 482, §24 (NEW).]

**2. Commingling of like materials.** For purposes of this section, containers are considered to be of like materials if made up of one of the following:

A. Plastic; [PL 2015, c. 166, §14 (NEW).]

B. Aluminum; [PL 2015, c. 166, §14 (NEW).]

C. Metal other than aluminum; and [PL 2015, c. 166, §14 (NEW).]

D. Glass. [PL 2015, c. 166, §14 (NEW).]

[PL 2015, c. 166, §14 (NEW).]

**3. Commingling of like products.** For purposes of this section, like products are those that are made up of one of the following:

A. Beer, ale or other beverage produced by fermenting malt, wine and wine coolers; [PL 2015, c. 166, §14 (NEW).]

B. Spirits; [PL 2015, c. 166, §14 (NEW).]

C. Soda; [PL 2015, c. 166, §14 (NEW).]

D. Noncarbonated water; and [PL 2015, c. 166, §14 (NEW).]

E. All other beverages. [PL 2015, c. 166, §14 (NEW).]

[PL 2015, c. 166, §14 (NEW).]

**3-A. Commingling by 3rd party or stewardship organization.**

[PL 2023, c. 482, §25 (RP).]

**3-B. Commingling program operated by commingling cooperative.** Subject to the requirements of this subsection and notwithstanding any provision of this chapter to the contrary, by October 15, 2024, all commingling groups established pursuant to subsection 1-A and 1-B, including the State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, shall collectively establish a commingling cooperative to provide for the management of all beverage containers subject to the requirements of this chapter under a single commingling program, referred to in this subsection as "the program."

A. The cooperative must be established as a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3). The cooperative must be governed by a board of not less than 9 and not more than 15 members that represents the range of beverages and beverage container material types subject to the requirements of this chapter and that includes a board member representing each commingling group. The board shall convene an advisory group that includes as members representatives of the range of beverages and beverage

container material types subject to the requirements of this chapter as well as representatives of dealers, pick-up agents, recycling facilities, redemption centers that primarily sort containers manually, redemption centers that primarily sort containers using reverse vending machines, entities operating account-based bulk processing programs and environmental advocacy organizations. The board shall invite representatives of the department to participate in and provide input regarding the activities of the advisory group. [PL 2023, c. 482, §26 (NEW).]

B. By January 15, 2025, the cooperative shall submit a plan for the operation of the program to the department for review and approval. The plan must include, but is not limited to:

- (1) The method by which the program will facilitate the transition from beverage container sorting at redemption centers by brand to sorting by material type and, for redemption centers that manually sort containers, by size within each material type. The program may facilitate the negotiation of agreements with redemption centers to gather brand data through use of reverse vending machines, account-based bulk processing programs or similar technology as long as the cost of such data collection is paid by the program;
- (2) Standards to provide for fair apportionment of costs among the commingling groups and initiators of deposit included in the program, which may be based on:
  - (a) The combined beverage container sales by the initiators of deposit that are members of each commingling group;
  - (b) The unit or brand counts generated by reverse vending machines or account-based bulk processing programs as long as the reverse vending machines or account-based bulk processing programs are subject to periodic 3rd-party audits on a schedule approved by the department and with the costs of those audits paid by the program; and
  - (c) The rates of redemption, as determined pursuant to the method set forth in subparagraph (3) and in accordance with the requirements of subparagraph (5);
- (3) A method for determining the rate of redemption for beverage containers, which must be verified through a 3rd-party audit paid for by the cooperative, expressed as a percentage of the beverage containers redeemed that are available for redemption; the rate of redemption by beverage type and by beverage container material type; and, to the maximum extent practicable, regional redemption rates in the State. The method for determining the redemption rate may not include in its calculation any unredeemed beverage containers collected or processed by municipal or other recycling programs. The program must ensure that a single redemption rate, determined by the method specified in the plan, is used by all commingling groups and initiators of deposit to determine cost apportionment pursuant to subparagraph (2);
- (4) A budget for the program that includes, but is not limited to, identification of any start-up costs for the program that will not be ongoing, including, but not limited to, the costs of the study described in paragraph F, and a description of the method by which the cooperative will determine and collect payments from commingling groups to cover the program's start-up costs;
- (5) The method by which the cooperative will collect deposits from initiators of deposit for nonrefillable beverage containers and handling fees for redeemed containers, whether directly from the initiator of deposit or through the commingling group of which the initiator of deposit is a member. The program must ensure that an initiator of deposit is not required to pay any handling fees for its beverage containers that exceeds the applicable redemption rate for those containers as calculated pursuant to subparagraph (3);
- (6) A description of how the cooperative intends to segregate, maintain, calculate and expend unclaimed beverage container deposits in accordance with section 3108-A;

- (7) A description of how the cooperative will provide a consistent beverage container pick-up schedule for each redemption center in accordance with the pick-up requirements of section 3106, subsection 8-A and the rules adopted pursuant to that subsection. The program must ensure that pick-up schedules are designed to reduce transportation distances and minimize costs but must allow each commingling group to provide for beverage container pickup of the commingling group's equivalent container material;
- (8) Information on how the cooperative will be responsible for and ensure payment to a dealer or redemption center within 10 calendar days of any beverage container pickup of all applicable deposits and handling fees for the beverage containers picked up from the dealer or redemption center, except as otherwise provided under a written agreement entered into by the cooperative or a member commingling group and the dealer or redemption center, and the applicable costs of plastic bags provided to the dealer or redemption center in accordance with section 3106, subsection 9;
- (9) Information on how the cooperative will ensure that each commingling group and each initiator of deposit that is a member of the commingling group maintains ownership over the commingling group's and initiator of deposit's share of the beverage containers redeemed, collected and processed for recycling under the program;
- (10) Information on how the cooperative will calculate the base rates offered for the processing of beverage containers using an account-based bulk processing program or pick-up agents;
- (11) A certification that the cooperative will not share, except with the department as necessary, information provided by a commingling group or initiator of deposit that is proprietary information and that is identified by the commingling group or initiator of deposit as proprietary information. The certification must include a description of the methods by which the cooperative intends to ensure the confidentiality of that information;
- (12) Information on how the cooperative will maintain a publicly accessible website regarding the program that includes, at a minimum, the following:
- (a) A searchable list of all initiators of deposit and beverage container label registrations, including for beverages sold directly to consumers in the State, in a manner that allows redemption centers, dealers and consumers to obtain up-to-date information regarding whether a particular beverage is authorized for sale and redemption in the State;
  - (b) A search function through which consumers can identify nearby dealers or redemption centers offering redemption services based on information made available to the cooperative by the department; and
  - (c) The base rates for the processing of beverage containers by container type as determined in accordance with subparagraph (10);
- (13) A proposed timeline for implementation of the program plan, if approved, designed to ensure implementation of the plan on or before July 15, 2025 and a description of how the cooperative will notify commingling groups, initiators of deposit, dealers, distributors, pick-up agents and other affected entities regarding program implementation, which must include, but is not limited to, posting of information relating to program implementation on the website described in subparagraph (12);
- (14) A description of how the cooperative will support the development of infrastructure throughout the State for the collection and sanitization of refillable beverage containers and for the return of those refillable beverage containers to initiators of deposit of refillable beverage containers for refilling and sale. That infrastructure development may involve redemption centers, centralized washing and sanitization facilities and other methods;

(15) Information regarding the advisory group formed by the board in accordance with paragraph A, including, but not limited to, its membership and the length of the terms of its members, a proposed meeting schedule and a description of the role and responsibilities of the advisory group, which may include, but are not limited to, advising the board regarding the development of the plan submitted under this paragraph;

(16) A description of how the cooperative will operate the program in a manner designed to achieve an overall statewide redemption rate for all beverage containers subject to the requirements of this chapter, as determined in accordance with subparagraph (3), of 75% by January 1, 2027; of 80% by January 1, 2032; and of 85% by January 1, 2037; and

(17) Any other information required by the department. [PL 2023, c. 482, §26 (NEW).]

C. Within 120 days of receipt of a plan submitted by the cooperative under paragraph B, the department shall review the plan and approve the plan, approve the plan with conditions or reject the plan. Prior to determining whether to approve or reject a plan, the department shall hold a public hearing on the plan. The department shall notify the cooperative in writing of its determination and, if the plan is approved with conditions or rejected, shall include in the notification a description of the basis for the conditions or rejection.

(1) If the cooperative's plan is rejected, it may submit a revised plan to the department within 60 days of receiving the notice of rejection. The department may approve the revised plan as submitted or approve the revised plan subject to the implementation of specific changes required by the department.

(2) If the cooperative's plan is approved in accordance with this paragraph, the cooperative shall implement the plan on or before July 15, 2025 in accordance with the timeline for implementation described in paragraph B, subparagraph (13), subject to any changes or conditions imposed by the department. If the cooperative fails to implement an approved plan on or before July 15, 2025, the initiators of deposit that are members of each of the commingling groups included in the cooperative are deemed to be in violation of this chapter and are subject to penalties pursuant to section 3111. [PL 2023, c. 482, §26 (NEW).]

D. If the department determines that the program implemented by the cooperative pursuant to a plan approved under paragraph C has failed to make adequate progress toward fulfilling the requirements of the plan, excluding the redemption rate goals described in paragraph B, subparagraph (16), the department shall notify the cooperative in writing of its determination and may direct the cooperative to implement specific changes to the program within 30 days of the date of the notification. [PL 2023, c. 482, §26 (NEW).]

E. On or before April 1, 2026, and annually thereafter, the cooperative shall submit to the department and make available on its publicly accessible website a report that includes, but is not limited to:

(1) Contact information for the cooperative and a list of all initiators of deposit and beverage container label registrations, including for beverages sold directly to consumers in the State;

(2) Information on the rates of redemption for beverage containers calculated in accordance with plan requirements under paragraph B, subparagraph (3). The report must include information regarding the total number of beverage containers subject to the requirements of this chapter sold or distributed in the State during the previous calendar year by the members of each commingling group, aggregated within each commingling group to provide only a total, aggregated number for each commingling group. If the calculated overall statewide redemption rate for beverage containers is less than the applicable redemption rate goal described in paragraph B, subparagraph (16), the report must include recommendations for changes to the operation of the program that are designed to achieve the required rate, which

may include, but are not limited to, recommended increases in the deposit and refund value for beverage containers;

(3) Detailed information on the calculation and expenditure of unclaimed deposit funds in the previous calendar year in accordance with section 3108-A;

(4) A description of the education and outreach efforts implemented under the program in the previous calendar year to encourage participation in the beverage container redemption program, reduce instances of fraud in redemption and educate businesses and consumers on the value and safety of refillable beverage containers. The report must include the results of an assessment, completed by an independent 3rd party, of the effectiveness of the efforts;

(5) Any recommendations for changes to the program to improve the convenience of the collection system under the program, consumer education or program evaluation and any goals for supporting the use of refillable and reusable containers;

(6) A financial report on the program, as determined through a 3rd-party financial audit, that identifies the total cost of implementing the program and the specific administration, collection, transportation, disposition and communication costs for the program, including all costs associated with payment of handling fees, and an anticipated budget for the subsequent program year; and

(7) Any other information required by the department.

For the report due April 1, 2026 only, the department may modify or waive any of the reporting requirements set forth in this paragraph upon a finding that the information required cannot feasibly be determined or provided by the cooperative due to a partial-year operation of the program. [PL 2023, c. 482, §26 (NEW).]

F. Within 90 days of receiving approval of a program plan from the department under paragraph C, the cooperative, in consultation with the department, shall contract with an independent 3rd party to conduct a study: examining operating costs for redemption centers of a variety of sizes, in a variety of geographical locations and using a variety of redemption technologies; analyzing the effects that eliminating brand sorting of beverage containers may have on transportation costs and redemption center operating costs, including, but not limited to, labor and utilities costs; recommending a handling fee schedule and payment schedule designed to facilitate a stable and sustainable redemption system; and recommending other recycling-related services that may be provided at redemption centers to support statewide recycling efforts and diversify the redemption center business model.

(1) In consultation with the department, the cooperative shall ensure that the study contract specifies the scope of the study and provides for publication of an interim progress report or reports and a final report. All costs associated with the study must be paid by the cooperative.

(2) The cooperative shall provide any interim progress reports and the final report under subparagraph (1) to the department and, after receipt of the final report, the department shall provide a copy of the final report, along with any additional comments or recommendations of the department, to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters. The final report and any additional comments or recommendations of the department may be included in the report required pursuant to section 3115, subsection 3. After reviewing the final report and the department's additional comments or recommendations, if any, the committee may report out legislation relating to the final report or to the department's comments or recommendations. [PL 2023, c. 482, §26 (NEW).]

G. The cooperative shall pay to the department a reasonable annual fee established by the department, not to exceed \$600,000, as provided in this paragraph.

(1) On or before July 15, 2025, the cooperative shall pay to the department the annual fee under this paragraph to cover the department's costs for review of the program plan submitted by the cooperative pursuant to paragraph B and the department's costs prior to program plan implementation in its oversight of the development and implementation of the commingling program under this subsection. The department may require the cooperative to pay a portion of the fee required under this subparagraph at the time the cooperative submits a program plan for review and approval pursuant to paragraph B to cover the department's cost for review of the program plan.

(2) On or before April 1, 2026, and annually thereafter, the cooperative shall pay to the department the annual fee under this paragraph to cover the department's costs for review of the cooperative's annual report under paragraph E and the department's costs in the previous calendar year for its oversight, administration and enforcement of the commingling program implemented under this subsection. The cooperative shall pay the fee required pursuant to this subparagraph at the time it submits the annual report required pursuant to paragraph E. [PL 2023, c. 482, §26 (NEW).]

H. Reports submitted to the department under this subsection must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this subsection 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. [PL 2023, c. 482, §26 (NEW).]

I. Beginning July 15, 2025, an initiator of deposit that is not in compliance with all applicable requirements of the single commingling program implemented pursuant to this subsection:

(1) Commits a violation of this chapter and is subject to penalties pursuant to section 3111; and

(2) Is prohibited from selling or distributing in the State any beverage container subject to the requirements of this chapter as long as the violation exists. A distributor or dealer may not sell or distribute in the State any such containers of the initiator of deposit, and the department may remove from sale any such containers of the initiator of deposit. [PL 2023, c. 482, §26 (NEW).]

The department may adopt rules as necessary for the implementation of this subsection and the oversight of the cooperative and the single commingling program implemented pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 482, §26 (NEW).]

**4. Registration of commingling agreements.** Not later than 48 hours following the execution or amendment of a commingling agreement, including an amendment that adds an additional party to an existing agreement, the parties shall file a copy of the commingling agreement or amendment with the department.

[PL 2015, c. 166, §14 (NEW).]

**5. Reapproval of qualified commingling agreements.** This subsection provides for the reapproval of qualified commingling agreements that have been approved or reapproved by the department pursuant to this section.

A. The initiators of deposit participating in a qualified commingling agreement under this section that was approved as a qualified commingling agreement prior to November 9, 2016 shall, no later than July 1, 2021, submit to the department an application for reapproval of that commingling agreement in a form prescribed by the department. [PL 2019, c. 526, §8 (NEW).]

B. The initiators of deposit participating in a qualified commingling agreement under this section that was approved or reapproved on or after November 9, 2016 must submit to the department an application for reapproval of that commingling agreement in a form prescribed by the department at least 6 months prior to the date of expiration of the department's prior approval or reapproval. [PL 2019, c. 526, §8 (NEW).]

C. After review of an application submitted under this subsection, the department may reapprove the commingling agreement for an additional period not to exceed 10 years. [PL 2019, c. 526, §8 (NEW).]

[PL 2019, c. 526, §8 (NEW).]

#### SECTION HISTORY

PL 2015, c. 166, §14 (NEW). PL 2019, c. 526, §8 (AMD). PL 2023, c. 482, §§19-26 (AMD).

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