

# MAINE STATE LEGISLATURE

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## Maine's Beverage Container Redemption Program—Lack of Data Hinders Evaluation of Program and Alternatives; Program Design Not Fully Aligned with Intended Goals; Compliance, Program Administration, and Commingling Issues Noted

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Report No. SR-BOTTLE -17

**Recommendations OPEGA offers as a result of this review:**

- State should collect data necessary to monitor and assess the program. (pg. 40)
- OPEGA should further analyze the extent of non-compliance with requirements for reporting and remitting escheat. (pg. 42)
- MRS and DEP should establish formal policies and procedures for addressing non-compliance with escheat requirements. (pg. 42)
- Statute should be amended to clarify BABLO's commingling status and expectations for unredeemed deposits. (pg. 43)
- DEP should assess need for changes to certain provisions impacting redemption centers and dealers. (pg. 44)
- Opportunities to improve program design should be considered. (pg. 46)
- DEP should propose a process for addressing "shorted bags" complaints. (pg. 47).
- Intended benefits of commingling should be clarified and statute updated to maximize its impact. (pg. 48).

a report to the  
**Government Oversight Committee**  
from the  
**Office of Program Evaluation & Government Accountability**  
of the Maine State Legislature

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## ABOUT OPEGA & THE GOVERNMENT OVERSIGHT COMMITTEE

The Office of Program Evaluation and Government Accountability (OPEGA) was created by statute in 2003 to assist the Legislature in its oversight role by providing independent reviews of the agencies and programs of State Government. The Office began operation in January 2005. Oversight is an essential function because legislators need to know if current laws and appropriations are achieving intended results.

OPEGA is an independent staff unit overseen by the bipartisan joint legislative Government Oversight Committee (GOC). OPEGA's reviews are performed at the direction of the GOC. Independence, sufficient resources and the authorities granted to OPEGA and the GOC by the enacting statute are critical to OPEGA's ability to fully evaluate the efficiency and effectiveness of Maine government.

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## Acronyms Used in This Report

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AAG- Assistant Attorney General

AG- Attorney General

BABLO – Bureau of Alcoholic Beverages and Lottery Operations

DACF – Department of Agriculture, Conservation and Forestry

DAFS- Department of Administrative and Financial Services

DEP – Department of Environmental Protection

DNREC- Delaware Department of Natural Resources and Environmental Control

EPR- Extended Producer Responsibility

GOC – Government Oversight Committee

IoD – Initiator of Deposit

MBA- Maine Beverage Association

MOU- Memorandum of Understanding

MRS – Maine Revenue Services

MSW- Municipal Solid Waste

OPEGA – Office of Program Evaluation and Government Accountability

RVM – Reverse Vending Machine

UPC- Universal Product Code

# Maine's Beverage Container Redemption Program – Lack of Data Hinders Evaluation of Program and Alternatives; Program Design Not Fully Aligned with Intended Goals; Compliance, Program Administration, and Commingling Issues Noted

## Introduction

DEP administers Maine's Beverage Container Redemption Program. MRS also plays a limited administrative role in collecting unredeemed deposits.

The Maine Legislature's Office of Program Evaluation and Government Accountability (OPEGA) has completed a review of Maine's Beverage Container Redemption Program (Redemption Program). OPEGA performed this review at the direction of the Government Oversight Committee (GOC) for the 128<sup>th</sup> Legislature.

The Department of Agriculture, Conservation and Forestry (DACF) originally administered the program until those responsibilities were transferred to the Department of Environmental Protection (DEP) in November 2015. DEP staff are responsible for compiling and dispersing program information; licensing and registering program participants; and inspecting and enforcement of redemption centers. Maine Revenue Services (MRS), within the Department of Administrative and Financial Services (DAFS), also has a limited administrative role related to the reporting and collection of unredeemed deposits.

OPEGA's review focused primarily on program operation including costs and offsets and program risks. We also reviewed how the program compared to beverage container management in other states.

OPEGA's review focused on whether the program was operating as intended; the costs and offsets of the program for both the State and initiators of deposit (IoDs); the degree to which risks of non-compliance, fraud, and abuse were mitigated in the program; and how the program compared to the management of beverage containers in other states.

Our work included an extensive review of statutes and rules, interviews with past and present program administrators, interviews with a variety of program participants, review of existing commingling agreements, and a limited review of available program data. Appendix A describes our full scope and methods.

## Questions and Answers

### 1. To what extent is the program accomplishing its intended purpose?

See pages 38-40 for more on this point

The intended purpose of Maine's beverage container redemption program is to prevent beverage containers from becoming litter or being disposed of via the municipal solid waste stream. It is designed to achieve this purpose by incentivizing the return of containers. The purpose has remained unchanged since the enactment of the program in 1976.

The most relevant evidence that the program is achieving its intended purpose would be the State's overall redemption rate, calculated as the total number of containers redeemed divided by the total number of containers sold in Maine. The State lacks these pieces of basic program data, however, as initiators of deposit

(IoDs) that commingle are not required to report their statistics to the State. Consequently, OPEGA is unable to determine the State's overall redemption rate.

OPEGA was, however, able to calculate redemption rates for beverage containers that are not commingled as well as for distilled spirits containers. In CY16, IoDs whose containers are not subject to a commingling agreement self-reported to MRS total sales and redemptions of beverage containers that represent a redemption rate of 74.7%. The Bureau of Alcoholic Beverages and Lottery Operations (BABLO) provided OPEGA total sales and redemptions figures for CY16 that calculate to a redemption rate of 87.2% for distilled spirits.

These statistics indicate that a significant number of beverage containers are redeemed. To the extent these redemption rates are representative of the larger industry, the program appears to be 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?

See pages 21-27  
for more on this  
point

### Costs and Offsets to the State

DEP and MRS incur various costs associated with administration of the program. OPEGA estimates that program administration currently costs the State approximately \$230,000 with offsetting fee revenues and escheat of \$2 million.

DEP is responsible for the overall administration of the program. Its costs are primarily for two full-time positions, with some additional costs for travel, phone, technology, and rulemaking. These costs are offset by participant licensing fees, label registration fees, and applicable late fees.

MRS is responsible for the collection of unredeemed deposits from the IoDs that required by statute to remit those funds. It incurs the cost for 30% of one full-time position and some other less easily quantifiable personnel costs. Additionally, there are limited costs for data processing, computer maintenance, coding, and testing. MRS' costs are not directly offset by specific revenues but the State receives escheat as a result of its role.

If the program did not exist, there may be additional costs to the State, municipalities and/or residents for alternate methods of disposal of beverage containers. OPEGA is unable to quantify these costs due to limited existing data, the large number of potential responsible parties, and the wide variation in disposal programs and/or litter abatement.

### Costs and Offsets to IoDs

OPEGA observed that IoDs bear the majority of the program costs and the costs can vary substantially by IoD. An IoD's costs include licensing, registration and handling fees set by statute as well as costs for complying with program requirements like container labeling and pick up. IoDs also bear the cost of any program abuse such as when out of state containers are redeemed in Maine or redemption centers prepare bags with insufficient container counts. We learned of two IoDs incurring additional costs to implement measures intended to cut down on the redemption of out of state containers.

OPEGA identified three primary means by which IoDs can offset program costs. First, IoDs receive the commodity value of returned containers. Some IoDs sell their commodity to recyclers directly. Other IoDs use the commodity value to negotiate a lower contractual fee with their pickup agent. Secondly, IoDs that commingle or are small manufacturers/water bottlers retain their unredeemed deposits. Finally, IoDs may build the cost of compliance into their product cost such that the costs are ultimately born by consumers.

OPEGA is unable to calculate an average costs and offsets to all IoDs due to the wide variation in costs and offsets among IoDs. However, we examined BABLO's situation as an example of what IoDs might experience. We estimate that BABLO's costs in its role as an IoD exceed the unredeemed deposits and bailment revenues it receives by approximately \$600,000. This figure does not include costs related to label registrations paid by suppliers and does not take into consideration the extent to which any of BABLO's costs are passed onto consumers.

### 3. To what extent is commingling accomplishing its intended purpose?

See page 18-21 for more on this point

Commingling agreements allow redemption centers to sort beverage containers for multiple IoDs by like size and material. Commingling effectively transfers the redemption centers' burden of multiple, physical sorts of containers to IoDs who instead allocate the costs of deposit reimbursements, handling fees, and container pickup through an accounting exercise. Commingling IoDs receive a ½¢ reduction in the handling fee paid to redemption centers and are exempt from submitting their unredeemed deposits to the State.

The original goal of commingling appears to have been to reduce the number of sorts occurring at redemption centers. It is unclear in the legislative history, however, what benefits were intended to result from reduced sorts and who was intended to benefit.

Sixteen of the roughly 260 active IoDs are currently participating in the four existing commingling agreements which seem to cover the majority of containers, perhaps as much as 76%. OPEGA estimates that commingling has reduced the number of sorts for these containers by between 26 and 56.

We also observed several conditions creating barriers to the other IoDs forming new commingling groups or joining existing ones. As a result, the number of sorts required of redemption centers is still substantial and continues to increase as program scope is expanded or new brands enter the beverage market. OPEGA estimates there are still upwards of 500 sorts required of redemption centers, though they generally are not all in use at the same time.

Overall, then, commingling has reduced the number of sorts for the majority of containers being processed through redemption centers. Commingling is not, however, minimized sorts to the extent that may be possible.



#### 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?

OPEGA identified several non-compliance and program abuse risks that do not appear to be adequately mitigated by established controls.

See page 28-32 for more on this point

- IoDs could register under an incorrect license type that allows them to pay a reduced registration fee and exempts them from submitting unredeemed deposits to the State. This situation would decrease the amount of fee revenue and escheat the State receives.
- IoDs could inaccurately report, or not report, to MRS the sales and redemptions figures used to calculate the amount of escheat they are required to remit. This situation could potentially impact the amount and timing of the escheat the State receives.
- MRS and DEP may not take timely and effective action when instances of non-compliance with escheat requirements are identified. This situation may result in unnecessary delays in the collection of escheat funds.
- Redemption centers may “short” bags of redeemed containers. This situation increases costs to IoDs who pay deposits and handling fees on non-existent containers.
- Persons seeking to establish new redemption centers could take advantage of an existing loophole in statute to circumvent the statutory limits on licenses for new redemption centers. This situation could potentially impact the financial viability of existing redemption centers.

These risks and potential measures to mitigate them are discussed further in OPEGA's recommendations.

OPEGA also noted the risk that containers purchases out-of-state could be redeemed in Maine, thus increasing costs to IoDs. The State has established some mechanisms in statute intended to discourage the redemption of out-of-state containers, including financial penalties. We also learned of two IoDs who implemented their own measures to mitigate this risk including using unique product labels and barcodes. Employing such measures is at the discretion of IoDs, some of whom told OPEGA that the costs to do so were such that it did not make sense for them.

#### 5. How does Maine's program compare to beverage container redemption programs in other states? How do states without a beverage container redemption program handle the recycling of beverage containers?

See pages 33-38 for more on this point

There are ten states, including Maine, currently operating beverage container redemption programs. OPEGA broadly compared Maine's program to all ten programs and did a more detailed comparison to the five programs in California, Massachusetts, Michigan, Oregon, and Vermont. We noted other states reported redemption rates that ranged from 54% to 95%.

All of the redemption programs OPEGA considered included some beverage containers made out of plastic, aluminum, and glass. Vermont and Michigan also include some paper beverage containers in their programs. OPEGA noted that the scope of beverage containers covered by the programs evolved over time, generally with more types of containers being added in. Ultimately, each state is slightly different in its approach to size and contents of containers included in the programs. The scope of Maine's program is among the most comprehensive of the programs we compared.

Containers are redeemed in a variety of different ways across the programs. Massachusetts and Vermont have stand-alone redemption centers similar to Maine. In Michigan, all redemption takes place at retailers. In California, redemption takes place at privately-operated recycling centers. The centers also recycle other materials. In Oregon, redemption centers are relatively new and are owned by a cooperative of distributors.

The programs have different systems for the sorting of containers. Maine's specific approach to commingling is unique, although other states have systems that allow for containers to be mixed by material type. Vermont is the only other state with a commingling system but its system differs from Maine as there is a single commingling group for beer and soda and most brands are members of the group. In Oregon, containers are largely sorted by material type rather than brand since the program is implemented by a single cooperative. Similarly, in California containers are all sorted by material type because the program is state-run.

All redemption programs end up with some eligible containers that are not redeemed, and thus some deposits that are not paid back to consumers. In Maine, there are different obligations regarding the unredeemed deposits for different groups of initiators. Initiators in Oregon and Vermont may retain unredeemed deposits though, in practice, Oregon deposits remain with the cooperative. All unredeemed deposits are paid to the state in Massachusetts and Michigan. In California, all deposits are paid into the state-controlled fund. California statute sets out how the funds are to be spent on specified recycling-related programs.

OPEGA also considered one state that replaced its Bottle Bill with a Universal Recycling Law. Before repeal in 2010, Delaware's program reportedly had a redemption rate of only 15% and redemption occurred only through retailers, making it considerably different to Maine's system.

While not a state, Canadian province British Columbia has a unique Extended Producer Responsibility (EPR) model to recover beverage containers and other recyclables. The EPR system requires producers to meet a 75% recovery rate of their end of life products. Consumers pay both a deposit and a non-refundable fee upon purchase of beverage containers.

States without Bottle Bills

States without a beverage container redemption program handle containers through local recycling systems or their solid waste programs. The primary recycling systems in use in the United States (U.S.) are:

- curbside recycling;
- residential drop off recycling; and
- non-residential recovery programs and buyback centers.

According to a 2016 Pew Research Report<sup>1</sup>, an estimated 94% of the U.S. population has access to at least one recycling system and the nationwide recycling rate is 34.3%. Materials that are not recycled are disposed of through local trash schemes, such as landfills.

OPEGA offers the following recommendations as a result of this review. See pages 40-49 for further discussion and our recommendations.

- State should collect data necessary to monitor and assess the program.
- OPEGA should further analyze the extent of non-compliance with requirements for reporting and remitting escheat.
- MRS and DEP should establish formal policies and procedures for addressing non-compliance with escheat requirements.
- Statute should be amended to clarify BABLO's commingling status and expectations for unredeemed deposits.
- DEP should assess need for changes to certain provisions impacting redemption centers and dealers.
- Opportunities to improve program design should be considered.
- DEP should propose a process for addressing "shorted bags" complaints.
- Intended benefits of commingling should be clarified and statute updated to maximize its impact.

<sup>1</sup> DeSilver, D. (2016, October 07). Perceptions and realities of recycling vary widely from place to place. Retrieved October 25, 2017, from <http://www.pewresearch.org/fact-tank/2016/10/07/perceptions-and-realities-of-recycling-vary-widely-from-place-to-place/>

# About the Beverage Container Redemption Program

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## Program Description

### Relevant Statute and Rules

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Maine's beverage container redemption program was enacted by referendum in November 1976 and implemented in January 1978.

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Maine's Beverage Container Redemption Program (also known as the Bottle Bill) was enacted by referendum in November 1976 and was implemented in January 1978. DACF administered the redemption program for 38 years until those responsibilities were transferred to DEP in November 2015.<sup>2</sup> Enabling statute for the program was originally contained in 32 M.R.S. §§ 1861-1869 but is now contained in 38 M.R.S. §§ 3101-3118. Statutory provisions address program purpose and intent, definitions, refund rates, responsibilities, application, rules, prohibitions, and penalties under law.

DEP Rules Ch. 426: *Responsibilities under the Returnable Beverage Container Law* clarify the responsibilities of program participants for the pickup and sorting of empty beverage containers. The rules also establish a timeframe for payment of deposits, refunds and handling fees.

### Program Intent

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The redemption program is intended to remove the blight on Maine's landscape caused by the disposal of beverage containers and to reduce the increasing costs of litter collection and municipal solid waste.

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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:

- remove the blight on the landscape caused by disposal of these containers on the highways and lands of the State; and
- reduce increasing costs of litter collection and municipal solid waste disposal.

The program is designed to meet these intentions by creating incentives for consumers to redeem containers and pick up containers that have been littered (deposit value) and for redemption centers and dealers to take back containers (handling fee). There are also requirements for IoDs to initiate the deposit, pay handling fees, and retrieve their containers from redemption centers.

### History of Program Changes

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Legislative changes have expanded the scope of beverage containers in the program and enacted commingling.

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Since its inception, most Legislatures have passed legislation impacting the program.<sup>3</sup> In addition to the transfer of the program from DACF to DEP, two pieces of legislation made major alterations to the program:

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<sup>2</sup> P.L. 2015, ch. 166 "An Act to Promote Recycling Program Integration and Efficiencies".

<sup>3</sup> No legislation was enacted in the 110<sup>th</sup>, 112<sup>th</sup>, 113<sup>th</sup>, 118<sup>th</sup>, 119<sup>th</sup>, 122<sup>nd</sup>, and 125<sup>th</sup> Legislatures.

1. P.L. 1989, ch. 585 expanded the program to include wine, spirits, water, and carbonated and noncarbonated beverages, though it specifically excluded milk products and unpasteurized apple cider.
2. P.L. 2003, ch. 499, enacted commingling, made unredeemed deposits for non-commingled containers accrue to the State, and required BABLO to try and enter into a qualified commingling agreement.

The 128<sup>th</sup> Legislature also recently passed P.L. 2017, ch. 140 “An Act to Include 50 Milliliter and Smaller Liquor Bottles in the Laws Governing Returnable Containers.” This law expands the program to cover wine and spirit containers under 50 milliliters and assigns them a 5¢ deposit and becomes effective January 1, 2019.

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Maine's redemption program includes glass, metal and plastic beverage containers. Containers are subject to the program based on container contents. There are exemptions for particular beverage products.

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Program Scope

Maine's redemption program currently 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.

Containers are subject to the program based on a container's contents rather than the container itself. Beverages included are:

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

**Excluded Beverages and Container-Types**

- unflavored rice milk, unflavored soymilk, milk and dairy-derived products;
- certain containers composed of a combination of aluminum and plastic/paper filled with non-alcoholic 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;
- products frozen at sale or intended for consumption in a frozen state;
- broths and soups; and
- products in paper or cardboard containers.

*Source: 38 M.R.S. § 3102(1) and DEP Rules Ch. 426: Responsibilities under the Returnable Beverage Container Law.*

Containers for particular products, such as milk, nutritional beverages, and Maine-produced juices, are exempted. OPEGA noted that some of the exemptions appear inconsistent with the program's intent. This observation is discussed further in Recommendation 6.

### Deposit and Handling Fees

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The program creates financial incentives for consumers and redemption centers to redeem beverage containers.

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Consumers redeem containers at redemption centers because there is a financial incentive to do so. Statute establishes a container deposit that consumers pay upon purchase and that consumers receive as a refund when they redeem the container. 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.

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Statute sets the deposit value on containers at either 5¢ or 15¢. Statute also sets per container handling fees at 3¢, 3.5¢, or 4¢ dependent on certain criteria.

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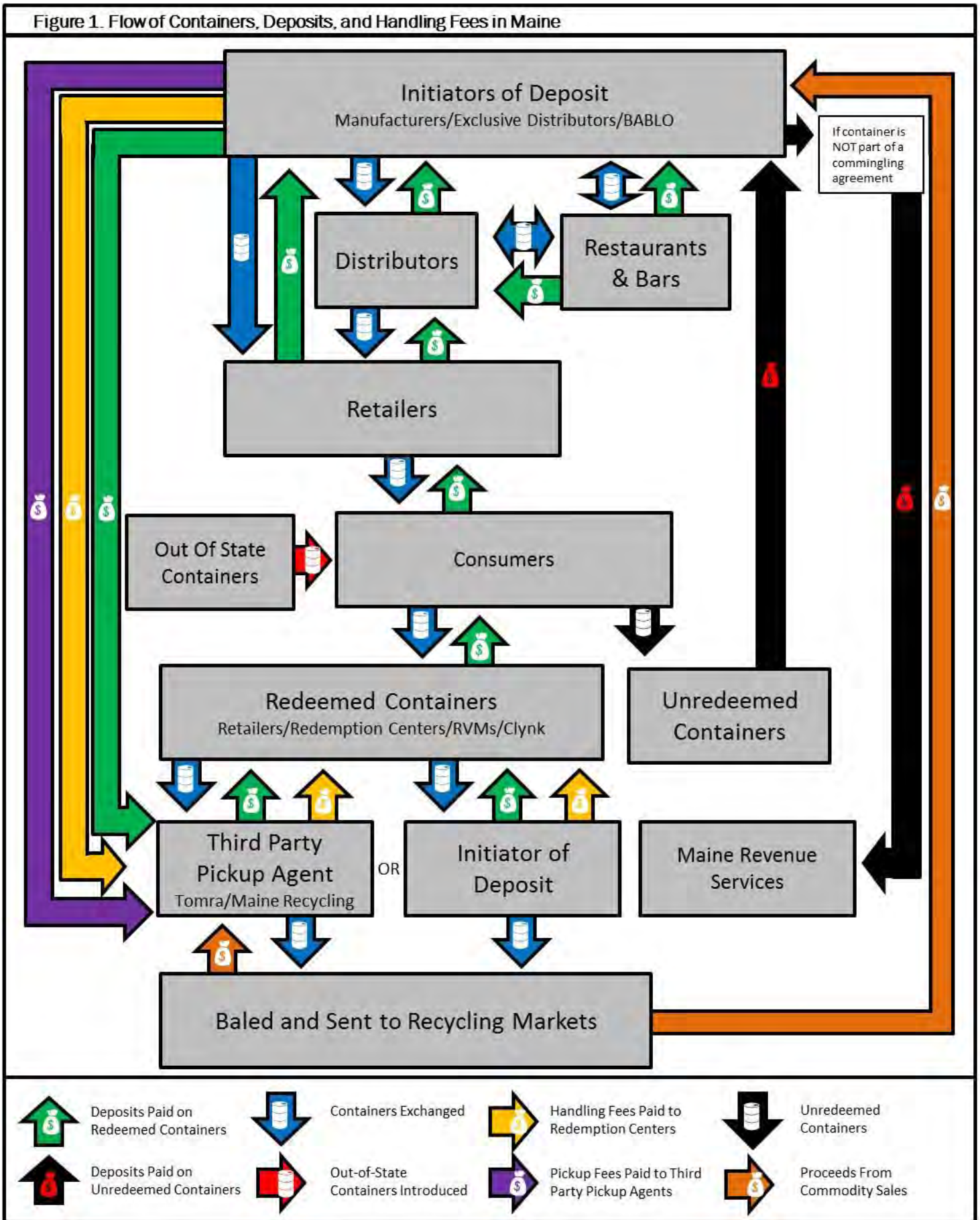
The program also creates a financial incentive for redemption centers to operate. Statute requires that IoDs, typically the manufacturers or distributors, pay redemption centers a fee to cover the cost of handling beverage containers. The handling fees set in statute are:

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

OPEGA learned that no IoDs are taking advantage of the 3¢ handling fee and we note there may be negative fiscal impacts on redemption centers if they did. This observation is discussed further in Recommendation 5.

Figure 1 shows the exchange of containers, deposits and handling fees among program participants. 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 the container; and finally the manufacturer pays the redemption center for redeemed containers. In situations where distributors and/or pickup agents are also in the container delivery and return cycle, the deposit transfer includes them as well.

Figure 1. Flow of Containers, Deposits, and Handling Fees in Maine



## State Agency Roles in the Program

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The State plays an administrative role in the program through DEP and MRS. The State, through BABLO, is also an initiator of deposit in the program.

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BABLO, through its contractor, is responsible for meeting statutory IoD requirements.

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The State plays two distinct roles in the redemption program. First, the State has limited administrative responsibilities carried out by DEP and MRS as described below.

Second, the State is a program participant. The State of Maine, by law, is the sole wholesaler of distilled spirits and the Bureau of Alcoholic Beverages and Lottery Operations<sup>4</sup> (BABLO) is the State agency tasked with administering this business. In this role, BABLO serves as the one and only IoD for all distilled spirits sold in the State. Program rules specify that, although BABLO must initiate deposits for spirits sold in the State, the suppliers of spirits doing business with BABLO are the entities responsible for meeting the labeling requirements and registering the beverage containers with DEP. BABLO meets its other responsibilities as an IoD through its contractor, Pine State Trading Co., which assists BABLO in the administration of the spirits business in the State. IoD responsibilities are described in the Program Participants section of this report.

### DEP's Role as Primary Program Administrator

DEP is responsible for the overall administration of the redemption program and establishes the program rules and regulations. When necessary, DEP takes action to stop sales of containers for IoDs that are not compliant with program requirements.

The Department's primary administrative duties include registering and licensing program participants:

- IoDs must register annually with DEP, paying one of two registration fees based on size and type of IoD.
- Redemption centers apply to DEP and the Commissioner may approve a license if they meet the statutory requirements. DEP inspects every new redemption center.
- All contracted agents that pick up containers from redemption centers must be licensed by DEP. They must also report to DEP on the IoDs they contract with and the specific beverage containers they pick up. The contracted agents provide a list to DEP annually and must also notify DEP of any interim changes.

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DEP is the primary program administrator. DEP maintains a label and product registry; licenses program participants; develops rules and regulations; and removes out of compliance containers from sale.

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DEP's role also involves maintaining a label and product registry through which it compiles and shares information needed for the program to run. Statute requires IoDs to register container labels of any beverages offered for sale in the State on which the IoDs initiate a deposit. Rules set the label fees to \$1 for wine labels and \$4 for all other beverage container labels. IoDs must specify method of collection for the container, collection agent, commingling agreement (if applicable), and provide proof of a collection agreement. Registrations are completed annually and updated whenever there is a Universal Product Code (UPC) change or change in container appearance or material composition. DEP processes the registrations and posts an updated list of registered products daily.

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<sup>4</sup> BABLO is an agency under the Department of Administrative and Financial Services.



The label and product registry is used by redemption centers and reverse vending machines (RVMs) to “charge” the correct initiators of deposit for beverage containers. Redemption centers also use the list to know which pickup agent is responsible for a given product. DEP most often becomes aware of unregistered IoDs/products from redemption centers or pickup agents that encounter the products and inform DEP. When pickup agents and redemption centers inform DEP of containers that do not have registered labels, DEP will contact manufacturers to register with the program.

### MRS' Role in Collecting Unredeemed Deposits

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MRS has a limited administrative role. MRS receives reports of container sales and redemptions and collects unredeemed deposits from IoDs that are required to report and remit to the State.

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MRS receives information and funds from those IoDs required by statute to report and remit their unredeemed deposits (escheat) to the State. According to MRS, there are currently 187 IoDs registered with that agency. Registered IoDs report the number of containers sold and redeemed and turn over unredeemed deposits to MRS on a monthly basis.

On a monthly basis, DEP provides MRS with a list of IoDs currently registered with DEP. MRS compares this list to its own list of IoDs registered to report and remit escheat to MRS. Any initiators on DEP's list who are statutorily required to report and remit unredeemed deposits but are not yet registered with MRS are sent an introductory email that outlines the reporting requirements and allowed exemptions from reporting. The email also includes an application for registering with MRS to begin reporting.

MRS described employing several control activities to gather financial information and encourage compliance with statute. The agency reviews all monthly submissions by IoDs for calculation errors and also reviews reports over a longer period of time to identify any reporting anomalies. For example, an IoD's reported sales or redemption rate that is inconsistent with the IoD's previous reports. In these cases, MRS can undertake a “desk review” and request supporting documentation for the figures the IoD reported, i.e. distributor and pickup agent invoices. In some cases, MRS might request information directly from distributors and pickup agents, though the private parties would not be obligated to provide the information.

### Challenges in Monitoring Program Performance and Compliance

DEP has the ability to pull products from sale in the State in the event that IODs are non-compliant with their obligations under the redemption program<sup>5</sup>. However, there is very little data available to DEP to allow it to identify non-compliance and take enforcement action. For instance,

- DEP does not have any sales data for beverage containers
- DEP does not have any redemption data for IoDs that are not required to report to MRS. Commingling IoDs and small beverage manufacturers (producing no more than 50,000 gallons per year) and water bottlers (selling

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<sup>5</sup> DACF was granted the ability to pull product that is sold or distributed in the State that is not in compliance with the IoD or labeling requirements through P.L. 2007, ch. 299 “An Act to Preserve the Recycling Value of Beverage Containers.” The ability transferred to DEP with the rest of the program in 2015.

no more than 250,000 containers of up to one gallon per year) are exempt from filing monthly IoD reports containing sales and redemptions to MRS.

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A fundamental lack of program data hinders DEP's ability to monitor program performance and participant compliance.

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As a result, it is not possible for DEP, or MRS, to monitor whether companies making use of the small producer exemptions continue to be under the statutory limits. It is also not possible for DEP to obtain any data from comminglers to assess whether the agreements continue to function as they should.

Ultimately, DEP is hindered in its ability to identify container redemption rates, monitor commingling agreements, and to consider whether small breweries/water bottlers are appropriately claiming an exemption to pay the escheat to the State. These issues and others relating to DEP's authority and capacity for addressing program non-compliance are discussed further in Recommendations 1, 3 and 7.

## Program Participants and Responsibilities

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The day-to-day operation of the redemption program is mainly handled by private program participants.

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The day-to-day operation of the beverage container redemption program is mainly handled by private program participants. The various types of program participants and their roles and responsibilities within the program are described below.

### Initiators of Deposit (IoDs)

IoDs are manufacturers or exclusive distributors who begin the deposit cycle by collecting deposits on containers they sell from retailers. IoDs pay out the deposit refund to redeeming consumers by way of redemption centers. There are currently about 260 IoDs that are active and operating in the State.

IoDs register labels and mark beverage containers with the refund value prior to selling them to a distributor or retailer. IoDs are required to complete product label registration with DEP annually or whenever the label or container is altered in certain ways. Manufacturers are responsible for label registration when BABLO is the IoD.

IoDs are also responsible for picking up redeemed containers for the beverages they sell that are empty, unbroken, and reasonably clean. They are required to:

- provide redemption centers with up-to-date listings of containers for which they are responsible;
- pick up empty, unbroken and reasonably clean beverage containers at least every 15 days;
- fulfill a redemption center's request for an additional pickup if volume requirements are met; and
- pay the redemption center all deposits and handling charges due within 10 business days of collection.

Statute allows for initiators of deposit to fulfill this obligation indirectly through a contracted agent or "pickup agent." IoDs are required to reimburse redemption centers the cost of the refund value and the handling fee for its containers. The pickup agent reimburses the redemption center and invoices the IoD in cases where IoDs are contracting out container collection.

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Initiators of deposits (IoDs) are manufacturers or exclusive distributors who begin the deposit cycle by collecting deposits on containers they sell. There are currently about 260 active in the State. IoDs also register labels with DEP and are responsible for collecting redeemed beverage containers from redemption centers.

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As previously discussed, some IoDs must report their sales and redemptions and remit their unredeemed deposits to MRS monthly. This requirement does not apply to IoDs in commingling agreements or to small beverage manufacturers/water producers.

### Dealers

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Dealers are entities that sell beverage containers to consumers and can include retailers, eating establishments, and operators of vending machines. They are required to redeem containers of the type they sell unless they have an agreement with a redemption center.

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Dealers are entities that sell beverage containers to consumers and can include retailers, eating establishments, and operators of vending machines. When dealers purchase beverage containers, they pay the deposit to the manufacturer or distributor. When the product is sold, the deposit is charged to consumers, resulting in the dealer breaking even on the deposit.

Statute requires dealers to redeem for consumers any empty, unbroken, and reasonably clean beverage containers of the kind, size, and brand they sell. They are exempted from this requirement if they are party to a DEP-approved “member-dealer agreement” with a local redemption center. Member-dealer agreements allow dealers to outsource their statutorily-required redemption responsibilities to a local redemption center.

Dealers that sell their own brand products must also act as an IoD for those products. For example, some retailers sell their own branded waters and soft drinks. Dealers can, therefore, potentially act in three different capacities: as dealers/retailers, as redemption centers, and as IoDs.

### Redemption Centers

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Redemption centers are businesses that accept and handle empty returnable beverage containers from consumers, dealers, or both. Redemption center income is the statutorily-set handling fee. There are currently 449 redemption centers licensed by DEP.

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Redemption centers are businesses that accept and process empty returnable beverage containers from consumers, dealers, or both. Redemption centers pay out the deposit value of containers to consumers who return containers, sort the containers according to standards agreed to with industry, make the sorted containers available for pickup, and receive the container deposit value plus a handling fee from the IoDs or their pickup agents. Redemption center income is the statutorily-fixed per container handling fee.

There are currently 449 redemption centers licensed by DEP. The licensing process requires an inspection and \$50 fee. Redemption centers must renew their licenses annually. Program rules require redemption centers to operate in a way that does not cause nuisance to the surrounding area. Regulations cover:

- protecting against pests;
- maintaining adequate health, safety and sanitary conditions; and
- maintaining a clean and orderly area.

Redemption centers are also required to post specified signs, including those describing penalties for redeeming out of State containers, hours of operation and product lists. Redemption centers must also submit to DEP forms completed by customers who redeem more than 2,500 containers. Redemption centers also play an informal, but important role in identifying and rejecting ineligible containers and reporting suspicious redemptions to the State.

DEP can suspend or not renew redemption center licenses for good cause, including unsafe practices, falsification of reports or serious/continued violation of statute/rules. However, DEP does not, as yet, have any established program-specific procedure for enforcement action. DEP does have department-wide *Non-Compliance Response* and standard operating procedures related to enforcement procedures. DEP's role in enforcement of redemption centers is covered in Recommendation 7.

Redemption centers process containers and refund deposits in several different ways. Some redemption centers sort containers into bags and cartons specific to each IoD, pickup agent and/or commingling group. Others use 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. Other redemption centers use both physical sorting and RVMs. Pickup agents regularly visit redemption centers to collect the sorted containers or crushed materials.

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Some IoDs contract their responsibility to pick up redeemed containers to third party pickup agents.

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### Pickup Agents

IoDs may contract with a third party pickup agent to collect their redeemed containers. The cost of a pickup agent's service is variable and individually negotiated. Contracted costs can be impacted by a number of factors, including container material and size, sales volume, and whether the scrap material is the property of the IoD or the pickup agent. Pickup agents are subject to the same requirements as IoDs collecting their own containers.

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Pickup agents bring pre-sorted and counted containers back to their processing locations, crush them, bale them, and, in some cases, send them on to recyclers.

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Pickup agents, with the agreement of redemption centers, set the bag/box counts for the brands of containers that they collect. They also offer additional services to their IoD clients to "audit" bag counts of collected containers. These audits involve counting the number of containers in a bag to identify any "shorted bags" where the claimed bag count is less than the expected count. If the count takes place at the redemption center and the bag is "shorted", the pickup agent might refuse to collect the bag until the bag is corrected. If the count takes place away from the redemption center, the pickup agent might inform the IoD and redemption center of the issue. There is currently no State procedure to resolve disputes or take enforcement action. This issue is discussed further in Recommendation 7.

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There are three licensed pickup agents in the State who pay an annual \$500 fee and annually provided DEP with current lists of their contracted IoDs and the beverage containers they pick up.

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Pickup agents bring the pre-sorted and counted containers back to their processing location, crush them, bale them, and, in some cases, send them on to recyclers. There is no obligation for pickup agents to process commodities, but this is often part of the pickup agent process. Pickup agent contracts with IoDs specify what happens to the collected material. In some situations, IoDs request their materials back from their pickup agents and arrange for recycling on their own.

There are three licensed pickup agents in the State who pay an annual \$500 fee: TOMRA, Maine Recycling, and CLYNK. There are notable differences in the approach each takes to collecting and processing containers. TOMRA and Maine Recycling annually provide DEP with current lists of their contracted IoDs and the

beverage containers which they pick up. They also notify DEP when changes are made. CLYNK plays a unique role in the program as described below.

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There are notable differences in the approaches of the three contracted pickup agents currently participating in the program.

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- TOMRA Systems is a Norwegian multinational corporation that is active in both the development of recycling technologies (such as reverse vending machines) and in the processing of commodities. TOMRA plays a role in other bottle bill states. According to TOMRA, it contracts as a pickup agent with around 300 IoDs in Maine. The majority of TOMRA's pickup accounts are with initiators who are not parties to commingling agreements, though it also handles one large commingling account. TOMRA agents go to each redemption center and collect containers, bring them back to the processing location, crush them, bail them, and then send the materials on to recyclers. TOMRA also manufactures and services many of the reverse vending machines in use in the State at both stores and redemption centers.
- Maine Recycling is a cooperative that was started by beer distributors in Maine as a way to process (i.e. sort, crush and/or bale) their containers after the institution of the redemption program. It currently has two roles within the program. First, it continues to process beverage container materials from the beer distributors and other clients. Secondly, it acts as a pickup agent. As a pickup agent, Maine Recycling collects containers on behalf of Gatorade and PepsiCo. Maine Recycling also divides collections of beer containers with the beer distributors and serves as a subcontractor for some of Pine State's collection of liquor containers for BABLO. After pickup, Maine Recycling audits a sample of bags of containers, processes and then recycles all materials, and provides reports to clients.
- CLYNK acts as a hybrid of a redemption center and pickup agent and holds both license types. Generally, CLYNK picks up bagged containers from locations that are technically redemption centers even though CLYNK does the sorting off-site. In this scenario, consumers create a CLYNK account and leave bags of containers at designated drop-off locations. CLYNK drivers transport the bags to the CLYNK processing facility where every container barcode is scanned and containers are sorted by material type and baled. Consumers' accounts are credited within 48 hours for valid redeems and IoDs are electronically billed for each valid container redeemed. CLYNK does not sort containers or materials by IoD. Instead, the baled scrap material is assigned to IoDs, or their pickup agent, based on commodity weight corresponding to containers redeemed through the system. Manufacturers usually arrange directly with CLYNK to send their scrap wherever the manufacturer requests. Alternatively, the manufacturer's third party pickup agent retrieves the material on their behalf. The pickup agents pay CLYNK and CLYNK gives them the materials which these agents handle according to client contracts.

The CLYNK system rejects containers with no UPC or UPCs not registered in Maine. CLYNK monitors and sends letters to customers with out of state addresses and high volume redemptions informing them of State penalties for redeeming out of state containers.

## Competing Interests

OPEGA observed that the participants in the program often have competing interests, which makes it a challenge to find consensus in any proposed changes to the program and/or to set program arrangements that are acceptable to all participants. For example:

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OPEGA observed that the participants in the program often have competing interests, which can make it a challenge to find consensus in any proposed changes to the program.

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- Redemption centers have an interest in seeking to increase the statutorily set handling fee per container, particularly as labor and other overhead costs increase. IoDs have an interest in handling fees remaining the same or being reduced, as this impacts their costs.
- Redemption centers have an interest in the program remaining large in scope in terms of types and sizes of containers as their income is derived from the per container handling fee. IoDs have an interest in reducing the scope of containers within the program, as they bear the costs of the handling and pick-up fees.
- IoDs have a strong interest in combating shorted bags and redemption of out of State containers, as ultimately the IoDs bear the costs of these types of program abuses. Redemption centers may be less motivated to identify containers that may have been purchased out of State since their income is based on the per container handling fee. In some cases, redemption centers may intentionally short bags collected by pickup agents in order to gain the additional handling fee revenue.
- Some hand-sort redemption centers expressed a desire for more commingling in order to reduce sorts and, therefore, their labor costs. However, redemption centers using RVMs do not receive any positive benefits from commingling though they still lose ½¢ handling fee per container. Additionally, the State does not benefit from increased commingling, as it reduces the escheat paid into the General Fund.
- The State has an interest in both having accurate program data and having the funds from unredeemed deposits paid into the General Fund. IoDs that are required to report and remit unredeemed deposits to the State may be less motivated to accurately report their container sales and redemption figures. In some cases, IoDs may intentionally misreport these numbers to minimize the amount of unredeemed deposits due to MRS.

# Commingling of Containers

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Statutory provisions were added in 2003 to enact commingling, allowing beverage containers for involved IoDs to be sorted together by like product group, material, and size.

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Commingling agreements effectively transfer the burden of multiple, physical sorts of containers from redemption centers to the IoDs who instead allocate costs via an accounting exercise.

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Qualified commingling agreements entitle IoDs to pay a reduced handling fee to redemption centers. Commingling agreements are qualified if DEP determines that more than 50% or more of beverage containers of a like product group are covered by the agreement.

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IoDs participating in commingling agreements are not required to report or remit unredeemed deposits to the State.

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## Statutory Provisions for Commingling

In 2003, provisions were added to the redemption program statute to allow and encourage the commingling of containers from multiple IoDs during the container sorting process. Commingling is accomplished through commingling agreements that allow the beverage containers for two or more initiators to be commingled, or sorted together, by dealers and redemptions centers according to like product group, material, and size.

Commingling agreements effectively transfer the burden of multiple, physical sorts of containers from redemption centers to the initiators of deposits who instead allocate the costs via an accounting exercise. Commingling agreements can be managed internally by agreement participants or via a third-party administrator.

### Like product groups are:

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

### Like container materials are:

- Plastic
- Aluminum
- Metal other than aluminum
- Glass

Title 38 contains several key statutory provisions relevant to commingling:

- Section 3106(7)(C) specifies that the handling fee an IoD is obligated to pay the redemption center must be reduced by  $\frac{1}{2}\text{¢}$  for any returned container that is subject to a “qualified” commingling agreement.
- Section 3106(7)(C) defines a “qualified” commingling agreement as one where DEP determines that 50% or more of the beverage containers of like product group for which the deposits are being initiated in the State are covered by the commingling agreement. This section also requires the State, through DAFS and BABLO, to make every reasonable effort to enter into a qualified commingling agreement with every other initiator of deposit for beverage containers that are of like product group, size, and material for which the State is the initiator.
- Section 3107 requires that an initiator of deposit that enters into a commingling agreement shall permit any other initiator of deposit to become party to that agreement on the same terms and conditions as the original agreement.
- Section 3108 further specifies that the requirement to report and remit unredeemed deposits to the State does not apply to beverage containers subject to a commingling agreement.

## Commingling Implementation

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There are currently four qualified commingling agreements filed with DEP. BABLO also has been treated as a qualified commingling group for spirit products.

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

Our review of DACF's acceptance letters to proposed commingling groups found DACF applied four criteria to the agreements that DACF cited as statutory requirements:

- includes two or more initiators of deposit;
- includes 50% or more of the beverage containers of like product group, material, and size for which deposits are being initiated in the State;
- other IoDs may become parties to the agreement on the same terms and conditions as the original agreement; and
- reduces the number of sorts required of redemption centers by allowing these redemption centers to commingle containers that would otherwise require separation.

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The way that statutory commingling provisions have generally been interpreted may have limited the formation of new commingling groups.

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Interviews with program participants and past and present program administrators all reflected a shared understanding and acceptance of these conditions. In particular, the "50% or more of beverage containers of like product" provision was widely accepted and understood to mean that there could be only one commingling group for each of the five product groups.

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There have also been challenges in expanding existing commingling groups.

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This interpretation in and of itself would not limit commingling or be a barrier to further reducing sorts if IoDs could join existing agreements under the same terms and conditions as the original agreement as statutorily required. However, this is not the case. In practice, commingling agreements are often unnatural partnerships between competitors that require both trust and confidence in other agreement members' abilities to track and record sales data throughout their respective distribution channels.

The commingling groups cited these concerns as reasons to not allow IoDs to join their existing agreements. Some IoDs who were not part of a commingling agreement reported an inability to join. DEP reported having no role in the management of commingling agreements or the acceptance of IoDs into existing agreements as the agreements were contracts between private entities. We did not see evidence of any additional IoDs joining any of the first three commingling agreements during the time they have been in place.

One IoD was successful in getting legislation introduced and passed in 2011 that expanded the definition of a qualified commingling agreement to include agreements in which the IoDs are initiators for wine containers and sell no more than 100,000 gallons of wine or 500,000 beverage containers that contain wine in a calendar year. This commingling group began operating in May 2013 with two IoDs and has since added two more.



Additionally, the IoD noted that the Assistant Attorney General (AAG) representing MRS had interpreted statute to allow for two types of commingling agreements with differing benefits even though the program has never been operated in this manner.

OPEGA confirmed with the AAGs for MRS and DEP that their current interpretation of statute establishes two types of commingling agreements: a commingling agreement between at least two IoDs, and a *qualified* commingling agreement that additionally includes the “50% or more of the beverage containers of like product group” requirement and the small wine distributor alternative. All IoDs in commingling agreements would be exempt from reporting and remitting unredeemed deposits to MRS, while IoDs in qualified commingling agreements would receive an additional ½¢ reduction in the handling fee paid to redemption centers.

OPEGA found no indication of any legislative intent to create two types of commingling agreements. However, either interpretation of commingling has significant impacts on the program. Our observations related to commingling and its potential impacts are further discussed in Recommendation 8.

OPEGA also found that BABLO is being treated as though it is participating in a qualified commingling agreement even though it technically does not meet the statutory criteria for such. As a singular initiator of deposit, BABLO does not appear to meet the requirements that commingling agreements involve two or more IoDs and, appropriately, does not have an agreement filed or approved by DACF/DEP. Nonetheless, BABLO receives the ½¢ discount on handling fees paid to redemption centers which do commingle BABLO containers by size and material type. BABLO also retains its unredeemed deposits as IoDs in qualified commingling agreements do. BABLO's status as a commingler is further discussed in Recommendation 4.

### Commingling Impact

OPEGA received sometimes conflicting descriptions of what benefits were to occur as the end result of commingling. Some benefits cited include the following:

- to accomplish the long-term goal of ultimately getting everything commingled and bringing down the cost of managing redemption centers;
- to help the people running redemption centers to make a good living by cutting down on space and manpower required to run the businesses;
- to modernize redemption centers and provide them with greater efficiencies;
- to serve as a compromise between industry and redemption centers-- industry would be able to commingle in exchange for redemption centers receiving an increase in the handling fee;
- to provide distributors with an unidentified benefit; and
- to provide unidentified benefits to initiators of deposit, redemption centers, the environment, and the citizens of Maine.

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OPEGA found that commingling was intended to reduce the number of sorts but did not get a clear understanding of the benefits that legislators expected to derive from reduced sorts.

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OPEGA found that commingling has reduced the number of possible sorts at redemption centers for the majority of beverage containers, but that there is still a large number of potential sorts.

While it was clear to OPEGA that any benefits from commingling were to result from a reduction in sorts at redemption centers, we were unable to come to a definitive understanding of what benefits were expected and for whom those benefits were intended. This lack of clarity is discussed further in Recommendation 8.

OPEGA found that commingling reduces the number of current sorts by somewhere between 26 and 56, depending on the mix of permissible sorts that a redemption center chooses to use. Seventy-six percent of the containers that passed through one redemption center over a 12-month period were commingled.

Our research indicated that the remaining containers that are not commingled could potentially require over 500 sorts. While it is unlikely that all of these sorts would be in use at the same time, this large number of sorts for non-commingled containers continues to be a problem for redemption centers in terms of space for storage and the efficiency of the center.

Overall, commingling has not minimized sorts to the extent that may be possible.

Overall, commingling has reduced the number of required sorts for the majority of containers processed through redemption centers. However, as agencies administering the program have interpreted statute in a way that does not allow new commingling agreements to be formed and as commingling groups have not allowed IoDs to join existing agreements, commingling has not minimized sorts to the extent that may be possible. This observation is also discussed in Recommendation 8.

## Costs and Offsets in the Program

### Costs and Offsets to the State

The State incurs various costs and receives offsetting revenues through the administration of the program by DEP and MRS.

The State incurs various costs associated with DEP's administration of the program and MRS' role in collecting unredeemed deposits due to the State. These costs are partially offset by participant registration fees, label registration fees, and any applicable late fees that are paid to DEP. The funds are held in the Beverage Container Enforcement Fund, which is used by DEP to carry out the required administrative and enforcement responsibilities of the program. The unredeemed deposits, escheat, MRS collects can also be viewed as offsets to the State's program costs even though the funds themselves do not have a specified purpose and are held in the General Fund.

DEP's current direct costs consist of salary and benefits for two full-time positions, information technology costs related to the creation and

<b>Costs</b>	
Personnel	\$182,978
All Other	\$21,308
<b>Total</b>	<b>\$204,286</b>
<b>Offsets</b>	
Licensing Fees	\$218,217
Late Fees	\$69
<b>Total</b>	<b>\$218,286</b>
<b>Net</b>	
Net Revenue	\$14,000
Source: DEP	

Data indicates that DEP's program costs are entirely offset by fee revenues, resulting in annual net revenue of \$14,000.

maintenance of a new participant and label registration portal, and other phone, travel, and rulemaking costs directly attributable to the program. DEP estimates these costs will total about \$204,000 in FY18.<sup>6</sup> DEP also reported to OPEGA that fee revenue received in FY17 totaled approximately \$218,000. OPEGA's comparison of costs to offsets for DEP, as shown in Table 1, indicates that in a typical year DEP's program costs are entirely offset by revenues, resulting in net revenue of \$14,000.

<b>MRS Costs</b>	
Personnel	\$21,995
All Other	\$4,194
<b>Total</b>	<b>\$26,189</b>
<b>State Offsets</b>	
Escheat	\$1,862,941
<b>Net Revenue</b>	<b>\$1,836,751</b>
Source: MRS data as of 8/7/2017.	

MRS' current direct costs consist of salary and benefits for 30% of one full-time position and other less quantifiable personnel costs. MRS also incurs minimal costs related to computer maintenance, data processing, coding, and testing. MRS estimates these costs totaled about \$26,000 in CY16. MRS also reported to OPEGA that it collected about \$1.86 million in escheat in CY16.

The escheat that MRS collects from program participants far exceeds MRS's program costs, and resulted in net CY16 revenues to the State of over \$1.8 million.

OPEGA's comparison of costs to offset for MRS, as shown in Table 2, indicates that in a typical year the escheat MRS collects far exceeds its program costs and results in net CY16 revenues to the State of over \$1.8 million.

**Costs and Offsets to IoDs**

OPEGA observed that IoDs bear the majority of the costs of the redemption program and the offsets they might receive are unlikely to make up for these costs. It is likely the costs difference is passed on to consumers.

OPEGA's understanding of the program costs and potential offsets for IoDs comes from interviews with program participants and an analysis of what BABLO experiences in its role as an IoD. OPEGA observed that IoDs bear the majority of the costs associated with the beverage container redemption program and the offsets they might receive are unlikely to make up for the costs they bear. Any difference in costs and offsets are likely to ultimately be borne by consumers through incorporation into product costs. We also noted program costs can vary substantially among IoD's depending on the business model they each operate under and the business decisions they each make.

IoD Costs

IoD costs are highly variable; many depend on individual business decisions.

A primary source of costs for IoDs is the statutorily-set fees they are required to pay to DEP or redemption centers/dealers. Some of these fees are less for IoDs in a commingling group or that meet the statutory definition of a small brewer, manufacturer or water bottlers.

- **Annual IoD registration with DEP.** The required annual registration fee for IoDs is \$50 for small breweries and small wineries that annually produce no more than 50,000 gallons of product; water bottlers annually selling no more than 250,000 containers containing no more than one gallon each; and manufacturers producing less than 50,000 gallons annually. The fee is \$500 for all other IoDs.

<sup>6</sup> OPEGA used DEP's FY18 estimated program costs as prior year costs were impacted by transition of the program from DACF to DEP and did not reflect the annual cost for a fully staffed program administered entirely by DEP.

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IoD costs include program and product label registrations; costs of handling fees and pick up; and costs associated with program abuse and abuse prevention.

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- **Annual label registration with DEP.** The required annual label registration fee is \$1 per wine label and \$4 for all others. Total costs will depend on how many different products the responsible entity sells in State.
- **Per container handling fee paid to redemption centers/dealers.** The per container handling fees that statute requires IoDs to pay for containers redeemed and collected is 3¢ for small brewers/water bottlers, 3.5¢ for comminglers or 4¢ for all others. OPEGA observed that, in practice, all IoDs are paying either the 3.5¢ or 4¢ handling fee per container redeemed. The actual cost to IoDs will vary depending on whether or not they are a member of a commingling group and the volume of redeemed containers.

Two other statutory requirements for container labeling and pickup create costs for IoDs.

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Statute requires IoDs to collect containers from redemption centers and dealers. The cost of collection may vary significantly by IoD.

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- **Container labeling.** Statute requires products to be labelled with the deposit amount. Most manufacturers do not incur additional costs for this as they include the deposit amount on printed paper labels or the indicia stamped on the top of aluminum cans. However, some wine and spirits containers do not have the deposit amount already on the label. In these cases, the IoD must affix a sticker that identifies the IoD and the deposit amount. The cost of affixing stickers on wine and spirit containers includes the cost of stickers and any associated equipment, as well as the labor costs associated with opening cases of product, affixing stickers, and repackaging for distribution.
- **Container pick up.** IoDs are required to collect containers from redemption centers and dealers. Some IoDs self-collect from redemption centers and/or bars and restaurants using their own delivery trucks. Other IoDs use third party pickup agents. Still others use a combination of the two approaches. The IoDs cost of collection can vary substantially depending on these choices.
  - Self-collection. IoDs that self-collect incur costs associated with logistical planning and administration, storage space, staffing and additional transportation costs beyond their pre-existing delivery costs. However, IoDs that choose to collect containers from bars/restaurants that they distribute/deliver to can avoid paying handling fees to redemption centers.
  - Third-party pickup agents (TOMRA or Maine Recycling). IoDs using a third-party pickup agent incur contractual costs for pickup. These costs are negotiated individually based on a number of factors, including volume of containers, material type, container size, and whether the IoD, or the pickup agent, takes ownership of the commodity material. IoDs may use a pickup agent for all or part of the IoD's collections from redemption centers or to process materials that were self-collected.

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IoDs may incur additional costs for administration, program compliance, administration of commingling agreements, or program abuse/prevention.

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Finally, IoDs may incur several additional costs associated with the program that are not driven by statutory requirements and can vary substantially by IoD.

- **General administration.** Administrative costs can include staffing costs for such duties as liaising with a pickup agent, reviewing and paying invoices, and compiling data and completing monthly MRS returns on sales and redemptions for applicable IoDs. An IoD's size, product volume and degree of organization and record keeping impact the administrative costs an IoD incurs.
- **Commingling administration.** IoDs participating in commingling agreements incur staff time and other costs for tracking and sharing data on sales and redemptions necessary to determine fair division of responsibilities for collecting containers from redemption centers, and fair division of scrap commodity under the agreement terms. Commingling groups may also contract for professional services such as a bookkeeper, administrator or lawyer to assist with managing the agreement. Costs will vary per commingling group depending on the group's approach and whether they engage third party services.
- **Program abuse.** IoDs incur costs associated with two forms of program abuse which can occur intentionally or unintentionally. The first form is the redemption of containers purchased out of State. The second form is "shorted bags" where redemption centers present bags for pick up that have fewer containers than the standard counts. In both cases, IoDs incur per container costs for non-existent containers including the cost of the deposit refund, the handling fee paid to the redemption center and any contractual costs to the pickup agent.
- **Program abuse prevention.** Some IoDs have made a business decision to label containers sold in and out of state differently as a control against redemption of out of state containers. One large IoD uses a different barcode for top selling products sold in non-bottle bill States, while another large IoD uses a visibly distinct label for products sold in non-bottle bill states. The costs of these measures include the labor costs of tracking and monitoring shipments of two different product lines and correcting shipping errors that may occur.

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IoDs costs may be offset through retained unredeemed deposits, commodity value for container materials, and transfer of costs to consumers.

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#### IoD Offsets

IoDs can offset the program costs they incur in three primary ways:

1. IoDs that are members of a commingling group and IoDs that are small manufacturers/water bottlers retain their unredeemed deposits;
2. all IoDs can potentially receive financial benefit from the commodity value of the redeemed container materials; and
3. all IoDs can potentially build the costs incurred from the redemption program into their product cost thus passing the costs onto consumers.

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The materials from redeemed containers have varying value as a commodity. Pickup agents generally send on containers to recyclers.

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The amount IoDs receive from the commodity materials will vary based on volume, current market value, and how and where the commodity is processed and sold. Some IoDs retain and sell the commodity materials to recyclers directly. Other IoDs use the commodity value to reduce their pickup costs through arrangements with pickup agents such that the agent assumes ownership of the commodity. The pickup agent may either negotiate a lower pickup rate or credit the IoD with the value of the scrap.

Program participants reported to OPEGA that the value of commodities varies. Aluminum is considered the most valuable material followed by PET, which is the clear plastic used for water and soda bottle containers. Glass is considered to have no value if it is not color sorted and has little value even when sorted. When glass containers are processed through RVMs in the State, the containers are automatically crushed together making it impossible for the material to be color separated. While pickup agents told OPEGA that they were invested in recycling all materials that came into their facilities, OPEGA heard of situations where beverage container materials—particularly unsorted glass—would end up landfilled. OPEGA's observations about the final disposition of beverage container materials are discussed in Recommendation 6.

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OPEGA did not attempt to quantify average costs and offsets for IoDs for several reasons. We did, however, examine BABLO's costs and offsets as an example of what an IoD might experience.

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#### BABLO's Costs and Offsets

OPEGA did not attempt to quantify average costs and offsets for IoDs given the survey efforts that would be required and the substantial degree of variability we were likely to encounter. We did, however, examine the program costs and offsets for BABLO as an example of IoDs might experience.

As an IoD, BABLO pays the \$500 licensing fee to DEP on an annual basis. BABLO does not pay the label registration fees that a typical IoD pays because statute specifies that the suppliers doing business with BABLO are responsible for these fees.

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BABLO incurs costs through its role as an IoD in the program.

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BABLO stated that no staff positions exist at the agency solely because of the redemption program. BABLO did note that any proposed program changes impact the administration of the agency and some unquantifiable administrative costs are incurred as they respond to proposals, develop cost estimates, and implement any program changes.

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BABLO meets its IoD obligations through its contractor, which pays redemption center deposits and handling fees and manages the collection of redeemed containers.

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Under its contract with BABLO, Pine State handles the warehousing and distribution for all distilled spirits sold in the State. Pine State is also responsible for complying with the requirements of the redemption program, including paying redemption centers the deposits and handling fees and managing the collection of redeemed containers. BABLO pays Pine State 4.95% of sales for all these services.

OPEGA asked BABLO and Pine State to estimate how much less BABLO would pay Pine State if the responsibilities and costs of complying with the redemption program were removed from the contract. Pine State estimated that the percentage of sales BABLO pays to Pine State would decrease from 4.95% to 4.49%. We applied the percentage difference to BABLO's FY17 sales of \$168,626,788, which resulted in a \$775,683 reduction in the overall annual contract cost to the State. This represents the BABLO's primary costs associated with the redemption program in FY17.

BABLO's costs are partially offset through bailment revenue related to Pine State's efforts in stickering containers that do not already have the deposit amount on the labels. Pine State charges suppliers fees for performing this and other services on their inventory in Pine State's warehouse. The money generated is called bailment. The State receives all bailment revenue and then pays Pine State 4.95% on that bailment revenue by contract. Stickering bailment is generated when beverage container redemption program deposit labels are affixed to beverage containers. It only exists because of the beverage container redemption program. In CY16, the State received net revenue of \$27,013.97 from stickering bailment.

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As the qualified commingler for spirits, BABLO retains the associated unredeemed deposits.

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BABLO also retains unredeemed deposits for spirits containers due to its treatment as a qualified commingler. Pine State holds these unredeemed deposits and, as shown in Table 3, those funds have accumulated to a total of \$406,500 since the Pine State's contract began in FY2015. While there is agreement that these funds belong to the State, there is currently an open question regarding where exactly they should go. BABLO told OPEGA there is no defined mechanism for transferring the funds to the State or expectation as to what they should be used for. The lack of clarity for the disposition of BABLO's unredeemed deposits is further discussed in Recommendation 4.

FY	Amount
FY15	\$119,007
FY16	\$146,901
FY17	\$140,592
Total	\$406,500
Source: BABLO	

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OPEGA's comparison of BABLO's estimated costs and offsets indicates BABLO's revenues do not offset the costs the agency incurs through its role as an IoD. Compliance with the program currently costs the agency a net of approximately \$600,000 annually.

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As shown in Table 4, OPEGA's comparison of BABLO's estimated costs and offsets indicate that revenues do not offset the costs the agency incurs in its role as an IoD. Compliance with the program currently costs the agency an estimated net of approximately \$600,000 annually. This figure does not include the costs suppliers pay for label registrations or take into account any costs that are passed onto consumers.

<b>Costs</b>	
FY17 IoD Registration Fee	\$500
FY17 Pine State Contract Estimated Program Costs	\$775,683
Total	\$776,183
<b>Offsets</b>	
CY16 Stickering Bailment Revenue	\$27,013
FY16 Unredeemed Deposits	\$146,901
Total	\$173,914
<b>Net</b>	
Net Cost	\$(602,268.03)
Source: BABLO	

## Costs Avoided Due to Redemption Program

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If the redemption program did not exist, beverage containers would still need to be disposed of in some manner. There are three primary avenues through which this might occur and each avenue has associated costs. These costs are potentially avoided due to the program.

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If the redemption program did not exist, beverage containers would still need to be disposed of in some manner. OPEGA's research identified three primary avenues through which this might occur: disposal via the municipal solid waste stream, recycling, and litter. Each of these avenues has associated costs which are avoided to the extent beverage containers are redeemed under Maine's program.

Municipal solid waste (MSW) costs in Maine are borne by municipalities and their residents. Municipalities employ a variety of systems to collect and dispose of this waste. We noted the following common approaches:

- municipal crews perform MSW curbside pick up;
- municipalities staff transfer stations where residents drop off waste and the municipality arranges for the trucking and disposal;
- municipalities may contract with private companies to provide curbside pick up or transfer station services; or
- municipalities may pay access fees for landfills, but expect residents to haul their own waste or make arrangements with private haulers.

In addition to the obvious direct costs for labor and contracted services associated with each of these approaches, there can also be indirect environmental and health costs associated with increased use of incineration and landfilling, as well as limits to landfill capacity<sup>7</sup>.

Likewise, there are multiple and varied approaches to recycling in the State. Some municipalities have curbside pick up, some provide recycling at transfer stations, others have mandatory recycling ordinances and some do not offer recycling at all. Recycling involves handling, sorting, storage and transportation costs. Some of these costs may be offset by the commodity value of the recycled materials but the commodity market fluctuates and not all materials have the same value.

Lastly, littered beverage containers would carry costs as well. Litter abatement costs may be borne by private businesses, municipalities and counties, the State and the Maine Turnpike Authority. Though, many entities cannot accurately estimate the costs they incur to clean up litter, it is reasonable to expect that direct costs for litter pickup (personnel, equipment), disposal fees would increase if more litter abatement efforts were needed. Our research also found there are indirect costs associated with beverage containers that are littered like damage to farm equipment or injuries to livestock or people<sup>8,9</sup>.

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<sup>7</sup> The state of municipal solid waste in Maine. (2014). Retrieved November 7, 2017, from <http://web.colby.edu/stateofmaine2014/the-state-of-municipal-waste-in-maine/> First chapter in The state of Maine's environment 2014, a report produced by the Environment Policy Group in the Environmental Studies Department at Colby College.

<sup>8</sup> National visible litter survey and litter cost study (2009). MSW Consultants for Keep America Beautiful, Inc.

<sup>9</sup> Estimating beverage container litter quantities and cleanup costs in Michigan (April 2015). Container Research Institute. Retrieved October 25, 2017 from <http://www.bottlebill.org/assets/pdfs/benefits/MichiganLitterCleanupCosts%20FINAL%20Apr2015.pdf/>.



# Risks of Non-compliance and Program Abuse

OPEGA identified several risks for non-compliance with program requirements and program abuses. Not all were adequately mitigated by established controls.

While there is a risk that IoDs may not register their product labels with DEP, this risk is largely mitigated through redemption centers' informal role as a detective control.

The risk that IoDs may register under an incorrect fee type is not well mitigated by existing controls. Fee revenue and escheat due to the State may be impacted as a result.

OPEGA identified several risks for non-compliance with program requirements and program abuses, whether intentional or unintentional, and assessed the measures in place to mitigate each. We observed that the extent to which effective measures were established to mitigate these risks varied and there were a few risks where the measures seemed inadequate. These control weaknesses are discussed in Recommendations 1, 3 and 5. In Recommendation 2, OPEGA also proposes further analysis of the data sets we obtained for this review to determine the potential scope and impact of instances of non-compliance.

## Risks of Non-compliance with Program Requirements

### IoDs May Not Register Labels with DEP

IoDs are required to register their labels with DEP and DEP maintains a database of all currently registered labels. Redemption centers use this database when they encounter a product they are not familiar with in order to identify which IoD the container belongs to and who will be collecting it.

If an IoD has not registered its labels, a redemption center may not be able to identify the necessary parties to process the container. Redemption centers will likely end up holding the container until the issue is resolved, but may refuse to accept subsequent containers of the same type, both of which undermine the efficient operation of the program and could inconvenience consumers.

OPEGA observed that the risk of labels continuing to go unregistered is largely mitigated through the informal role redemption centers play as a detective control. As unknown containers with unregistered labels enter the redemption center, redemption centers call and alert DEP, sometimes even informing DEP where customers claim the product was purchased. DEP, in turn, investigates the sale of the product to identify the responsible IoD and pursues getting all the necessary registrations that help redemption centers and the program to run efficiently.

### IoDs May Be Registered Under an Incorrect Type

The standard annual IoD registration fee is \$500. There is a reduced fee of \$50 for specified IoDs that produce or sell a low volume of product.

IoDs self-select their fee type during registration and may incorrectly selecting one of the reduced fee types. This would decrease the fee revenue that DEP receives. More important, however, is the potential impact of this action on compliance with requirements for unredeemed deposits.

IoD registration fees are reduced to \$50 for:

- Beer or wine producer of no more than 50,000 gallons annually;
- Water producer that annually sells no more than 250,000 containers each containing no more than one gallon; and
- Small beverage manufacturer whose total production of all beverages from all combined manufacturing locations is less than 50,000 gallons annually.

DEP provides a list of IoD registrations, including fee type information, to MRS for that agency to use in determining whether a newly established IoD must report and remit unredeemed deposits. IoDs with reduced fee types are statutorily exempt from these requirements. Thus, MRS does not contact or otherwise have involvement with these entities. Neither MRS nor DEP have any data that would allow them to determine whether IoDs have selected the correct fee type or whether small brewers, water bottlers, or manufacturers have exceeded statutory production and sales thresholds that allow exemption.

#### IoDs May Inaccurately Report, or Not Report, Escheat

On a monthly basis, DEP provides MRS with a list of IoDs currently registered with DEP. MRS compares this list to its own list of IoDs registered to report and remit escheat to MRS. MRS contacts any initiators on DEP's list who are statutorily required to report and remit unredeemed deposits but are not yet registered with MRS and informs them of steps to comply.

Monthly, IoDs report container sales and redemption counts to MRS in conjunction with remitting the required escheat calculated from those figures. MRS reviews all monthly submissions by IoDs for calculation errors and also reviews reports over a longer period of time to identify any reporting anomalies. For example, an IoD's reported sales or redemption rate that is inconsistent with the IoD's previous reports. In these cases, MRS can undertake a "desk review" and request supporting documentation for the figures the IoD reported, i.e. distributor and pickup agent invoices. In some cases, MRS might request information directly from distributors and pickup agents, though the private parties would not be obligated to provide the information.

Despite these controls, OPEGA identified one IoD that has never reported or remitted unredeemed deposits to the State dating back to 2004. OPEGA confirmed this situation with MRS and DEP and learned this IoD is only now being brought into compliance.

Additionally, IOs that do report the number of containers sold and redeemed on monthly basis, and turn over the unredeemed deposits to MRS, are providing self-reported figures. If the self-reported figures for sales are understated, or redemptions overstated, the amount of unredeemed deposits due to MRS as escheat is reduced, thus decreasing General Fund revenues. While MRS may request supporting documentation for sales and redemption figures, this is only a request. The data necessary to verify these figures is not required to be reported to either DEP or MRS.

#### MRS and DEP May Not Address Escheat Non-compliance in a Timely Manner

When MRS identifies IoDs that are not compliant with escheat requirements, its first step is to call or email the IoD and work with the initiator to come to a solution. Missing returns and underpayments go through a "noticing process" with many notices that go out automatically. These notices may include a demand to file, notice of underpayment, demand to pay, and/or a 10-day demand depending on the situation.

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OPEGA identified one instance in which an IoD did not report and remit escheat as required. It appears situation was not detected for some time, despite controls in place at MRS. We also noted that MRS and DEP lack data to determine whether IoDs are accurately reporting the container sales and redemption figures escheat is calculated on.

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OPEGA also noted a risk that MRS and DEP may not address escheat non-compliance in a timely manner due to a lack of a formalized process that includes timeframes for notification to DEP and subsequent enforcement actions.

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If MRS is unable to come to a resolution with the IoD, or if the demands for filing or noticing go unanswered, MRS can notify DEP that the IoD is not in compliance with the reporting and payment requirements established in Title 38 § 3108(8). DEP has authority to remove from sale beverages sold or distributed by that IoD (“pull product”) until such time as MRS notifies the DEP that the IoD is in compliance.

OPEGA noted that, in the previously described instance of an IoD never reporting, the non-compliance dates back to 2004. MRS began working with this IoD in December 2015 and the IoD is coming into compliance. It is still unknown whether the non-compliance was discovered at any point before that. MRS did not notify DEP until August 2017 and it is also unknown whether MRS ever notified DACF. The administering agencies have never taken steps to pull the IoD’s products from sale as allowed by statute.

OPEGA’s observed that there were no established timeframes for when MRS should notify DEP. MRS explained that it may not notify DEP as long as the IoD was engaging with them toward a resolution. We also noted that statute allows DEP to take enforcement actions but does not mandate that it must.

### Risks of Program Abuse

#### Dealers May Circumvent Statutory Limits on New Redemption Centers

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OPEGA identified a potential loophole to statutory population thresholds for the licensing of new redemption centers. Dealers might circumvent those limits as a result.

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In 2009, P.L., ch. 405 established population thresholds for the licensing of new redemption centers that ultimately limited the number of new redemption centers that could be established in a given geographic area. These limits were established because of concerns that allowing too many redemption centers in a given geographic area would make it difficult for any of the redemption centers to achieve the volume of containers necessary to continue to operate their low-margin businesses.

There are, however, two statutory provisions that might allow dealers to circumvent the limits on new redemption centers and, thus, establish a redemption center in areas where the threshold has already been reached. DEP staff reported that to their knowledge, only one individual has pursued this avenue, but never opened a business.

DEP may grant a license to a redemption center if the following requirements are met:

- A. The department may license up to 5 redemption centers in a municipality with a population over 30,000;
- B. The department may license up to 3 redemption centers in a municipality with a population over 20,000 but no more than 30,000; and
- C. The department may license up to 2 redemption centers in a municipality with a population over 5,000 but no more than 20,000.

For a municipality with a population of no more than 5,000, the department may license redemption centers in accordance with rules adopted by the department.

Consumers May Redeem Containers Purchased Out of State


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The risk of out-of-state containers being redeemed in Maine impacts IoDs costs. The State has enacted some deterrents including penalties.

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Under statute, a person who knowingly redeems more than 48 out-of-state containers at a time is subject to enforcement action and civil penalties. When consumers knowingly, or unknowingly, redeem containers that were not originally sold in Maine, IoDs in Maine must reimburse deposits that they never collected and pay handling fees for the containers. They may also incur additional pickup costs.

The State has enacted some deterrents to minimize redemption of out-of-state containers. For instance, statute requires redemption centers and dealers acting as redemption centers to report to DEP information on individuals redeeming 2,500 beverage containers at one time within 10 days. Statute also requires these locations to display a warning that persons redeeming out-of-state containers may be subject to a fine of the greater of \$100 per container or \$25,000 for each tender per 38 M.R.S § 3106.

We were unable to estimate the extent of out-of-state redemption as program data is either limited or nonexistent. We did, however, observe that there is increased potential that consumers will seek to redeem out-of-state containers given that:

- New Hampshire does not have a redemption program;
- Massachusetts does have a redemption program, but it includes fewer types of containers than Maine's program; and
- for the vast majority of containers, the appearance and labeling of the container is the same in every state, making the detection of out-of-state containers difficult, or impossible, when redemption centers are hand-sorting.

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Some IoDs implement their own preventive measures, such as unique UPCs and/or labels, to combat out-of-state redemption. Most, however, find these measures cost prohibitive.

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In 2011, a Kittery redemption center owner was found guilty of knowingly redeeming over 100,000 containers brought in from New Hampshire and Massachusetts.

Program participants OPEGA interviewed identified using labels and barcodes unique to bottle bill states as potentially the most effective measures to address out-of-state redemption. However, employing such measures creates additional burdens and costs to IoDs related to the labeling, warehousing, shipping, and general management of two separate inventories of the same product within the IoD's distribution channels. IoDs additionally described costs resulting from shipping errors in which incorrectly labeled containers are sent to bottle bills states. Such errors result in pulling the product from sale and, in some cases, destroying the containers and product.

Ultimately, almost all IoDs have made the business decision to not use unique barcodes and labels as the related costs outweigh the risks and costs of out-of-state redemption in their estimation. OPEGA learned of two IoDs, however, who choose to take such measures: Coca-Cola and Poland Spring.

For its top four product lines, Coca-Cola of Northern New England includes a "01" on the end of the UPC on containers sold in non-bottle bill states. This acts

as a control against out-of-state redemption, as the distinct UPC will prevent RVMs or CLYNK from accepting the containers. However, this might not have a significant impact at hand-sort redemption centers, unless staff notices the different UPC.

For its top Poland Spring product lines, Nestle uses a distinctive label with a red line around the edges on containers sold in non-bottle bill states, along with a distinct UPC on one of its product lines. This reduces the risk of out-of-state redemption as RVMs and CLYNK reject containers with the unique UPC, and hand-sort redemption centers are able to easily identify and reject red-line containers.

### Redemption Centers May Short Bags of Containers

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“Shorting” bags occurs when redemption centers under fill standard-size bags, pickup agents accept those bags, and IoDs incur costs as if the bags contained the correct number of redeemed containers.

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Redemption centers are not required to individually count containers into bags. Instead, the industry has established standard counts of containers that should fill standard bag sizes for various sizes of containers. For example, bags filled with 12 ounce aluminum cans are filled to an established level and the redemption center, pickup agent, and IoD all accept that the bag contains 320 cans which is the standard count for that container size.

OPEGA heard that some redemption centers intentionally and continually under fill or “short” these bags. When a bag of containers is shorted but picked up and accepted by the IoD or pickup agent, there are two consequences for every container “missing” from the bag:

- The redemption center is reimbursed for a deposit that they never paid out to consumers, thus gaining 5¢. The center is also paid a handling fee for a container that they never handled, thus gaining another 3.5¢ to 4¢.
- The IoD loses the amount of deposit and handling fee paid to the redemption center and may also pay a pickup agent to pick up a container that does not exist, thus incurring additional loss.

Additionally, for non-commingled containers, the extent to which bags are shorted artificially inflates the IoD’s number of redemptions, which in turn decreases the escheat to the State.

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“Short” bags mean IoDs incur costs for non-existent containers. They can also decrease the escheat to the State.

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At present, the only measure in place to address the practice of bag shorting is that IoDs and/or pickup agents can refuse to take bags that are visibly under filled and can request that a redemption center correct the problem.

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At present, the only measure in place to address the practice of bag shorting is that IoDs and/or pickup agents can refuse to take bags that are visibly under filled and can request that the redemption correct the problem. In practice, this may be difficult given the overall volume of containers to be collected and other competing priorities, such as the delivery of new product.

IoDs, pickup agents, and program administrators all acknowledged the shorting of bags as a potential risk and additionally cited three issues that prevent the shorting of bags from being addressed effectively:

- There is no established and enforceable procedure in place for conducting a bag audit in which the number of containers is verified.
- There are no penalties for redemption centers that short bags.
- DEP has no formal role, process or authority to resolve concerns reported by IoDs and pickup agents.

## Other States' Programs

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There are ten states, including Maine, currently operating beverage container redemption programs.

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Unlike Maine, some states have targeted redemption rates specified in statute or rules.

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All redemption programs OPEGA considered include some beverage containers made out of plastic, aluminum, and glass. Vermont and Michigan also include some paper beverage containers. Each state is slightly different in its approach to size and contents of containers.

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### Other States with Redemption Programs

There are ten states, including Maine, currently operating beverage container redemption programs. Appendix B provides an overview of each state's program, including the year implemented, deposit amounts, fees paid between participants, beverages and containers covered, and how unredeemed deposits are handled.

Of these ten states, OPEGA selected five states for a more detailed comparison. California, Oregon and Michigan were selected because each has a program that is substantially different from Maine's program. Massachusetts and Vermont were selected due to their geographic proximity to Maine as the similarities and differences in the programs are more likely to have a direct impact on Maine via the flow of containers across state borders. Appendix C provides a brief overview of the programs in the five states including the beverages covered, container materials, container sizes, handling of unredeemed deposits, redemption rate and label registration requirements. OPEGA observed a number of notable similarities and differences between Maine's and other states' programs.

#### Targets and redemption rates

Maine has no targets set in statute or rules for the redemption program. Oregon and California have targeted redemption rates of 80% of beverage containers sold. In Oregon, legislative action was taken to encourage movement towards the target by introducing a trigger. If the redemption rate falls below 80% for two consecutive years, the refund value will increase. This trigger was activated and the refund value increased in April 2017.

Maine does not have sufficient reporting requirements or data to determine the State's overall redemption rate. Other states with redemption programs reported redemption rates that vary significantly and range from 54% to 95%. OPEGA cannot attest to the reliability of the reported redemption rates, which can be impacted by a number of factors, including accuracy of self-reported data, extent of any audit/verification procedures, and the extent to which cross-border redemption or any other program abuses might affect the rate.

#### Scope

All redemption programs considered include some beverage containers made out of plastic, aluminum, and glass. Vermont and Michigan also include some paper beverage containers. OPEGA noted that the scope of programs evolve over time. Maine is adding nips containers in 2019 and Oregon recently expanded the scope of its program to include tea, coffee, hard cider, juice, kombucha, coconut water and any other beverage not explicitly exempt. Ultimately, each state is slightly different in its approach to size and contents of containers. The scope of beverage types included in Maine's program is among the most comprehensive of the programs considered.

Commingling and container sorting

The sorting of containers and presence and characteristics of commingling differ across the states. In Maine, sorting by default happens by IoD. IoDs can also be members of commingling groups and have their products sorted together at redemption centers.

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The sorting of containers varies by program. In programs that also have commingling, it takes on different characteristics than in Maine's program.

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In Oregon, a member-owned cooperative of distributors picks up and processes the vast majority of containers redeemed in state. The cooperative manages the deposit flow, reimburses retailers for paid out deposits and picks up and processes containers redeemed through cooperative-controlled redemption centers. Cooperative containers are sorted by material and a small handful of non-members' containers are sorted by brand. Similar to Oregon, the state-run and controlled California system sorts all containers by material type rather than brand.

Michigan and Massachusetts both sort by brand and do not have a form of commingling. However, the programs have a smaller scope of beverages included than does Maine, meaning that there are fewer maximum sorts.

Commingling in Vermont is most similar to Maine. Vermont has a single commingling group for beer and soda. Most brands are members of the group, with the exception of Coca-Cola, Polar and new craft beers, who have elected not to join. The group is established through statute, but is managed by a private third party. Vermont statute requires that liquor bottles, managed by the State liquor agency, are sorted and collected as a separate group. In Vermont, commingling agreements are required by rules to include pickup of at least 30% of the containers redeemed in the State.

Redemption centers

Similar to Maine, both Massachusetts and Vermont have stand-alone, privately owned and operated redemption centers. The other states we considered had different approaches to redemption.

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Redemption happens in variety of ways across the programs including stand-alone redemption centers, redemption through retailers, and cooperative-owned redemption centers.

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In Michigan, redemption primarily takes place at retailers through RVMs or hand sorting. In California, redemption takes place at privately-operated recycling centers. The centers recycle a range of materials rather than just beverage containers. The California recyclers are permitted to pay by material weight based on minimum per pound rates established by the State.

In Oregon, redemption centers are relatively new. Prior to the introduction of the single cooperative in 2009, redemption took place at retailers as there was no funding stream for stand-alone redemption centers. The cooperative has gradually introduced cooperative-owned redemption centers that allow drop off of bagged containers for credit to an account similar to the CLYNK system, self-service use of RVMs, and a hand count option limited to 50 or fewer containers.

Reporting


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States handle reporting in a variety of different ways. Some states require reporting by size and/or material type.

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Maine is unique in its approach to reporting in that some types of IoDs are required to provide monthly reports on sales and redemptions to the state and some are not. Vermont has no reporting requirements. Other states have monthly or annual reporting requirements.

In Oregon, there are statutory reporting requirements for the cooperative and non-member distributors to report sales and redemption data. These figures are calculated separately for glass, metal and plastics. From this data, the responsible State agency is required to calculate and publish the redemption rate by material type.

California has an online system for reporting monthly sales by material type and size, whether the containers are under or over 24oz, which is used to calculate the amount of deposit and associated fees due to the state. Recycling centers are required to report the weight of processed materials. In Massachusetts, all distributors are required to provide monthly reports on their sales and redemptions.

Unredeemed deposits


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Maine is the only state considered that has some IoDs turn over unredeemed deposits to the state while allowing other IoDs to retain their unredeemed deposits.

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Maine is also unique in its approach to unredeemed deposits. The other states considered are consistent in whether initiators are permitted to retain unredeemed deposits or required to pay them to the state. Only Maine has different requirements for different types of IoDs.

In Oregon and Vermont, initiators may retain unredeemed deposits though, in practice, Oregon deposits remain with the cooperative. In Massachusetts and Michigan, all unredeemed deposits are paid to the State. In Michigan the funds are earmarked for specific purposes, including 25% that is paid to retailers as there is no handling fee to fund redemption. In California, all deposits are paid into the state-controlled fund and statute sets out how unredeemed deposits are to be spent on specified recycling-related programs. Escheat received by MRS is not earmarked for any particular programs and is deposited into the General Fund.

Label registration


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Of the five states considered, the only other state to require registration of individual products/labels specific to the bottle bills in Vermont.

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Maine requires the registration of labels as a 2001 report for the Maine Legislature found that this requirement would help both in enforcement of deposit initiations and in establishing a for determining the owners of containers that had been redeemed. Of the states considered, the only other state to require registration of individual products/labels specific to the bottle bills is Vermont.

Massachusetts, Oregon and Michigan do not require product/label registration. California requires registration of the distributor/manufacturer, but not the individual labels/products.



Other factors of note

In light of recommendations that OPEGA makes later in the report, OPEGA notes that:

- Vermont's program rules set out provisions that allow for audits on containers that retailers/redemption centers present for redemption and sets a progressive range of penalties for inclusion of foreign containers found in the audit sample.
- Vermont statute has a special provision for the treatment of containers from the State liquor agency, allowing them to be sorted together at redemption centers.
- Michigan statute prohibits beverage containers from being disposed in a landfill, thereby requiring that containers be recycled.

**Other Redemption Programs of Interest**

OPEGA also considered the cases of Canadian province British Columbia, as it has a distinctive model, and Delaware, which ended its redemption program.

British Columbia's Extended Producer Responsibility Model

Canadian province British Columbia has a unique model for the recovery of beverage containers. Extended Producer Responsibility (EPR) models are sometimes considered a form of bottle bill. British Columbia has an EPR system which requires producers of certain categories of products to submit, and have approved, a product stewardship plan that results in a 75% recovery rate of their end of life products. Producers must provide annual reports that include (among other information) products sold and received, a recovery rate, and amounts of deposits received and refunds issued. Industry stewardship agencies work together informally in consultation with the Ministry of Environment to meet regulatory expectations codified in law.

Encorp Pacific is the stewardship agency for beverage containers. Encorp developed and administers the Return-It program through its 174 privately-operated Return-It depots. Nine other stewardship programs also use Encorp's Return-It depots for collecting and managing their recyclables.

In the Return-It program, empty beverage containers are collected and sorted and transported and sold to be recycled using contracted processors and transporters. Generally, the system should be self-funding, but when it is not container recycling fees are introduced. The fee is charged to consumers along with the price of the beverage and the deposit. The deposit is due back to consumers upon return of the container, the fee is not refundable. The fee differs by commodity and size is adjusted by Encorp in response to changing financial and commodity factors,

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Canadian province British Columbia has an Extended Producer Responsibility model for a variety of categories of products, including beverage containers. Under the system, producers must have an approved product stewardship plan and achieve a 75% recovery rate of their end of life products.

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Delaware replaced its Bottle Bill with a Universal Recycling Law in 2010. Delaware's program was substantially different than Maine's having no stand-alone redemption centers and achieving a low redemption rate.

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### The end of Delaware's Bottle Bill

Delaware replaced its Bottle Bill with a Universal Recycling Law in 2010. Delaware's Bottle Bill, enacted in 1982, covered beer, malt, ale, soft drinks, mineral water, and soda water under two quarts in size. It specifically excluded aluminum containers. The deposit was 5¢ and there was a 1¢ handling fee. Redemption occurred at retail stores.

In a conversation with current Delaware Department of Natural Resources and Environmental Control (DNREC) staff, OPEGA learned that there were never any stand-alone redemption centers and that unredeemed deposits were retained by distributors/bottlers.

DNREC staff also explained that the goal of the legislation had been to reduce litter, which it did, but that as a mechanism for recycling it was inefficient. Staff reported that the redemption rate had been around 15%. Under the new recycling law, waste haulers in the State are required to offer recyclable collection in addition to their waste collection.

### **Other States without Redemption Programs**

States without bottle bills manage recovery of beverage containers through whatever local systems they have for recycling. The 2016 national recycling rate is around 34%. Internet resources point to several potential ways beverage containers could be recovered<sup>10</sup>. Beverage containers that are not recycled are managed through local solid waste systems.

#### Curbside Recycling Programs

Curbside programs have the second highest level of recovery of beverage containers after deposit systems. Curbside programs accept all plastic, glass, and aluminum beverage containers, but they are usually limited to recovering containers used at homes. Access to curbside recycling programs varies. Curbside recycling and beverage container deposit systems can also be used complementarily. When used together, they result in higher recycling rates and less cost for curbside recycling.

#### Residential Drop-Off Programs

Residential drop-off programs have the third highest level of recovery of beverage containers, but they recover far fewer containers than deposit systems and curbside programs. Drop-off programs generally accept all types of plastics, glass and aluminum beverage containers. They also are generally limited to containers used at homes.

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States without bottle bills manage recovery of beverage containers through whatever local systems they have for recycling. The 2016 national recycling rate was around 34%.

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OPEGA notes that when beverage containers are not recycled, they are managed through local solid waste systems.

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<sup>10</sup> OPEGA drew from DeSilver, D. (2016, October 07). Perceptions and realities of recycling vary widely from place to place. Retrieved October 25, 2017, from <http://www.pewresearch.org/fact-tank/2016/10/07/perceptions-and-realities-of-recycling-vary-widely-from-place-to-place/>; Understanding beverage container recovery (2002). Businesses and Environmentalists Allied for Recycling (BEAR). Retrieved 10/25/17 at [BottleBill.org](http://BottleBill.org). Study compared program effectiveness and cost for various systems of handling beverage containers; and Curbside recycling access rates and beverage container recycling (2012). Container Recycling Institute. Retrieved October 25, 2017 from [BottleBill.org](http://BottleBill.org). Provides information on other methods of beverage container recovery in addition to deposit systems.

### Other Programs

Grouped together, all of the other programs recover slightly more beverage containers than residential drop-off programs. These programs include non-residential recovery programs operated in commercial businesses, schools, universities, workplaces and public venues and buy-back centers, which are generally privately-operated facilities that share some of the commodity value for materials brought to their facilities with those who bring them in.

## Achievement of Intended Purpose

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In enacting Maine's redemption program, the Legislature found that beverage containers were a major source of litter and solid waste and that the collection and disposal of this litter and solid waste was a financial burden for Maine citizens.

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A fundamental lack of program data prevented OPEGA from determining the State's overall redemption rate which would be the most relevant measure of program success.

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OPEGA was able to calculate the CY16 redemption rates for two smaller groups of beverage containers in Maine. Non-commingled containers had a redemption rate of 74.7%, and spirits containers had a rate of 87.2%.

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The intent of Maine's redemption program is to

- remove the blight on the landscape caused by disposal of beverage containers; and
- reduce the costs of litter collection and municipal solid waste disposal.

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. As discussed throughout this report, the program incents redemption and processing of redeemed containers through financial mechanisms, such as deposit value and handling fees, and requirements imposed on IoDs.

The primary and most relevant evidence that the program is achieving this intended purpose would be the State's overall redemption rate. However, a fundamental lack of program data prevented OPEGA from determining the State's overall redemption rate. In order to calculate this figure, OPEGA would need the number of beverage containers sold in Maine and the number of those containers redeemed. OPEGA notes that DEP does not collect this data in its role as the administering agency of the program. The lack of program data is further described in Recommendation 1.

We were able to obtain sufficient data to calculate the redemption rates for two discrete groups of beverage containers that represent relatively small segments of the beverage market: non-commingled containers and distilled spirits containers. As of July 24, 2017, IoDs whose containers are not subject to a commingling agreement had self-reported to MRS CY16 total container sales and redemptions of 111,226,846 and 83,137,418, respectively. This represents a redemption rate of 74.7%. BABLO reported to OPEGA that its CY16 total container sales and redemptions of beverage containers were 9,741,934 and 8,493,736, respectively. This represents a redemption rate of 87.2% for spirits containers.

The Maine Beverage Association (MBA) described the redemption rate for its commingling group members (Coca Cola of Northern New England and PepsiCo)

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Maine Beverage Association reports a 2016 redemption rate of 85.5% for its commingling group.

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Based on these redemption rates, the program appears to be achieving its intent.

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OPEGA found, however, that some elements in the the current design of the redemption program could be improved to better align with the intended goals of the program.

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as 85.5% of the 249,000,000 containers sold in 2016. Given that Northbridge also estimates there were about 922,000,000 total containers sold in Maine in 2016, the MBA estimate also represents a relatively small segment of the beverage market.<sup>11</sup>

To the extent that these any of these redemption rates are representative of the larger industry, the program appears to be accomplishing its intended purpose. A significant number of beverage containers appear to be appropriately redeemed and thus do not become, or remain, litter or end up disposed of via the municipal solid waste stream.

### **Misaligned or Unnecessary Provisions of Statute**

OPEGA also assessed how well the current design of the redemption program, as set out in statute and rules, supported the intended outcomes. We found that the current design could be improved to better align with the intended goals of the program. We identified instances where statute does not seem aligned with the intentions of the program and certain provisions of statute that no longer reflect the current program and/or may no longer be necessary. Noted design issues are briefly described below and discussed further in Recommendations 5 and 6.

**Deposit.** The deposit amounts on beverage containers relate to contents as opposed to size or material. For instance, a glass beer bottle and a glass wine bottle of similar size will have different deposit values. Additionally, there is no data to evaluate whether deposit values are high enough, or higher than necessary, to incent redemption.

**Scope.** OPEGA also noted that some beverages excluded from the program should be re-assessed, given the intention of the program to remove beverage containers from MSW and as a source of litter. At present, some excluded products have been identified by some litter studies<sup>12</sup> as convenience packaging that is more likely to be littered. Additionally, some products that would otherwise be covered by the program, like Maine-produced apple cider and blueberry juice, are specifically excluded from the program in rules even though they are sold in containers that would otherwise be redeemed.

**Program Measurement.** There are no goals or targets specified in statute to measure program performance like a targeted redemption rate. There are also no statutory requirements for the reporting data to DEP that would allow for measuring program performance.

**Minimizing MSW and Maximizing Commodity Value.** Despite the goal of reducing MSW costs, there is nothing in statute to prevent containers from entering the solid waste stream or being landfilled once they are retrieved by initiators of deposit, or their contracted agents. Additionally, there is nothing in

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<sup>11</sup> Northbridge's estimate is based on regular reporting by member companies and their contractors to Northbridge Environmental Management Consultants (Northbridge), which provides administrative services to the commingling group. Northbridge also developed an estimate of the number of containers sold in Maine based on market share information from industry resources such as the Beer Institute and Wine Institute and surveys it has conducted in Massachusetts and Vermont.

<sup>12</sup> National visible litter survey (2009)

statute that requires sorting of glass by color which could preserve the commodity value and reduce the likelihood of the material being landfilled.

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We also noted some provisions of the redemption program statute that are not widely used and/or seem no longer relevant.

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**IoD Geographic Coverage.** Title 38 § 3106 (8-A, 8-B) provides an exemption allowing some IoDs to not pick up their redeemed containers in areas outside of where their products are sold. These provisions seem to conflict with the impetus in the current program to have IoDs responsible for retrieving all their containers covered under the program.

**Dealer Acceptance of Containers and Member Dealer Agreements.** At present, statute requires “dealers” to redeem beverage containers of the type they sell without requiring dealers to be licensed as redemption centers. In lieu of accepting redeemed containers, a dealer can have a member dealer agreement with a local redemption center. Title 38 § 3109(4) provides an exemption allowing some redemption centers to not take back containers if those containers are sold by dealers with whom the redemption centers do not have member dealer agreements. Statute requires member dealer agreements to be sent to DEP and posted by redemption centers. OPEGA noted these provisions may be outdated given the way the program currently operates.

**Three cent handling fee.** Statute permits small brewers/water bottlers to pay redemption centers a 3¢ handling fee rather than the usual 3.5¢ or 4¢ fee. We learned, however, that no manufacturers are using this discounted rate.

## Recommendations

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### ***State Should Collect Data Necessary to Monitor and Assess the Program***

The State does not have sufficient and reliable data to assess program success, monitor compliance with program requirements, or make informed decisions about proposed changes to the program. The absence of data to assess the effectiveness of the program has been a long-time concern and was reported by a Study Commission in 2001.

Currently, the only data reported by any program participants is to MRS. Some IoDs are required to report sales and redemption figures in conjunction with remitting unredeemed deposits to the State. However, IoDs in commingling groups, and those categorized as small beverage manufacturers or water bottlers, are exempt from reporting requirements. Additionally, MRS has no data sources to use in verifying the IoDs' self-reported sales and redemptions.

Without additional data, the State is not in a position to:

- calculate and monitor an overall redemption rate;
- assess the extent to which redeemed containers are being recycled rather than disposed of in a landfill;
- ensure the State is receiving the correct amount of escheat from unredeemed deposits; or

- validate that IoDs registered in categories exempt from reporting and remitting escheat continue to meet the criteria for exemption.

There is also a lack of current, reliable activity data available to inform potential changes to the program. Counts of sold and redeemed containers by size or deposit amount within the different product groups are examples of data that may have been useful in addressing the proposed legislation considered in the most recent legislative session.

### **Recommended Management Action:**

DEP, in conjunction with MRS, should determine what data is needed on an ongoing basis to effectively and efficiently administer the program, assess program outcomes and inform policy and decision-making relevant to the program. The Department should then initiate legislation to require regular reporting of that data by program participants. OPEGA suggests that at a minimum:

- all IoDs should report annual sales and redemption figures to DEP; and
- third party pickup agents should report redemptions for each IoD to DEP.

The data from third party pickup agents would be used by DEP and MRS to verify the self-reported redemptions.

OPEGA recognizes that there may be increased costs to all parties if these recommendations are implemented.

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### ***OPEGA Should Further Analyze the Extent of Non-compliance with Requirements for Reporting and Remitting Escheat***

OPEGA compared State data to program participant data to check for compliance with unredeemed deposits requirements. In our initial, but limited, comparison we identified:

- One IoD, with significant product volume, that was required to report and remit escheat to MRS but had not done so in 2016. Follow-up with DEP and MRS confirmed that this IoD has not been compliant with this requirement since 2004 and has been working with MRS to come into compliance since 2015.
- One IoD registered as a small bottler who did not report and remit escheat to MRS but may have exceeded the gallonage limits that allow an exemption.
- Potential discrepancy between 2016 total redemption figures IoDs reported to MRS and 2016 redemption figures for these IoDs provided to OPEGA by third party pickup agents.

All of these potential areas of non-compliance would directly impact General Fund revenues. OPEGA has not yet done full analysis of the data sets we obtained to

identify all potential instances of non-compliance or determine the extent and impact of the instances we did identify. At present, OPEGA is the only entity with the data sets necessary to do the analyses.

### **Recommended Legislative Action:**

The Legislature should consider directing OPEGA to complete the remaining data analyses to identify potential instances of non-compliance and the impact.

OPEGA would report the overall results of the analysis to the GOC as appropriate and consistent with taxpayer confidentiality considerations. OPEGA would share the detailed results with MRS and DEP, as appropriate, for follow-up and enforcement.



### ***MRS and DEP Should Establish Formal Policies and Procedures for Addressing Non-compliance with Escheat Requirements***

MRS and DEP both have a role in enforcing the requirements for reporting and remitting of unredeemed deposits (escheat) to the State. There are, however, no formal policies and procedures established to help ensure instances of non-compliance are identified and effectively addressed in a timely and consistent manner.

MRS manages the collection of unredeemed deposits and is the agency ultimately responsible for determining compliance with the reporting and remitting requirements. MRS relies on information provided by DEP to identify non-compliant IoDs and works with those taxpayers to bring them into compliance.

MRS explained that it follows its standard taxpayer notification procedures which have established timeframes for taxpayer response. The agency will continue to work with the taxpayer as long as the taxpayer is making good faith effort to resolve the non-compliance.

MRS has no means to estimate how much the IoD owes the State, however, and therefore cannot use its standard mechanisms for compelling compliance when that becomes necessary. MRS must instead communicate the issue to DEP which has the statutory authority to pull the non-compliant IoD's products from retailer shelves. OPEGA noted there are no established timeframes in statute, agency rule, or policy outlining when MRS is to notify DEP of non-compliance.

OPEGA also observed that while statute grants DEP, and previously DACF, with the authority to pull products, it does not establish any conditions or timeframes for when this action should occur. Neither agency rules nor policies address this authority.

OPEGA is aware of one IoD that has never complied with reporting/remitting requirements and has been non-compliant since 2004. MRS reports that it began

working with this IoD in December 2015. DEP reports that it was not made aware of the non-compliance until August 2017. Neither MRS, DEP nor DACF could explain to OPEGA whether the IoD's non-compliance had been identified prior to 2015 and, if so, why it had not been acted on. MRS told OPEGA the IoD has now registered with MRS and is currently in the process of reporting and remitting the escheat owed since 2004.

#### **Recommended Management Action:**

DEP and MRS should jointly establish a set of formal policies and procedures that provide clear guidance on the actions to be taken in response to instances of non-compliance with escheat requirements. This guidance should specify the conditions that warrant action, and the actions to be taken and by whom. Timeframes for these actions should also be established. MRS has offered some ideas for what might be included in these policies and procedures.

The agencies should also introduce legislation and/or amend program rules as necessary to implement the established policies and procedures.



#### ***Statute Should Be Amended to Clarify BABLO's Commingling Status and Expectations for Unredeemed Deposits***

BABLO, in its role as an IoD, is currently treated as a "qualified" commingler even though it does not meet the statutory criteria as it is not party to an agreement with any other IoD. OPEGA also noted that it is unclear what is supposed to happen with the funds from the unredeemed deposits BABLO retains.

Statute requires BABLO to make every reasonable effort to enter into a "qualified" commingling agreement with every other initiator of deposit for beverage containers that are of like product group, size, and material as the beverage containers for which the State is the initiator of deposit. A "qualified" commingling agreement is one in which 50% or more of the beverage containers of one of five product groups specified in statute is covered by an agreement between two or more IoDs. Entering into such an agreement is impossible for BABLO, however, as there are no other IoDs in its product group with which to commingle. Despite this, BABLO has been treated as a "qualified" commingling group by both DACF and DEP and thereby pays a reduced handling fee to redemption centers and is exempt from reporting and remitting unredeemed deposits to MRS.

OPEGA noted that statute does not contain any expectations for where the funds from BABLO's unredeemed deposits should go or how they should be used. In the past, the funds have generally been deposited in the General Fund. At the end of the BABLO contract with Maine Beverage, Maine Beverage turned the unredeemed deposits that it had been holding over to the State. A portion of the unredeemed deposits went to fund the new contractor's, Pine State, start up process. The remainder of the unredeemed deposits went as undedicated revenue to the General Fund.



Currently, Pine State is holding the unredeemed deposits accumulated since the beginning of its contract in FY15. DAFS is working to settle the question of whether the deposits should go with the rest of the spirits revenue to BABLO's net clearing account and bond service or if they should become undedicated revenue in the General Fund. BABLO is also working on creating procedures for how the funds will be transferred and with what frequency.

### **Recommended Legislative Action:**

The Legislature should consider amending statute to clarify that BABLO is entitled to the same benefits as "qualified" comminglers and remove requirements for BABLO to attempt to enter into commingling agreements. Statute should also be amended, as necessary, to specify how unredeemed deposit funds should be processed and used by the State.



### ***DEP Should Assess Need for Changes to Certain Provisions Impacting Redemption Centers and Dealers***

OPEGA identified several statutory provisions impacting redemption centers and dealers that appear to be of limited relevance given the way the program currently operates. Some of these provisions could create situations that appear contrary to program objectives.

- **Limits on new redemption centers could be circumvented.** Title 38 § 3113 sub-§ 3 establishes limits on the number of redemption centers DEP can license in a municipality based on the municipality's population. This provision seems intended to ensure standalone redemption centers will receive an adequate volume of containers to remain viable and to prevent an unmanageable increase in pick-ups for those collecting containers. Statute specifies, however, that food establishments and distributors are not subject to this provision.<sup>13</sup> Additionally, dealers who sell beverages in containers or operate a vending machine are required to redeem beverage containers of the type they sell.<sup>14</sup> OPEGA observes that, theoretically, either of these statutory provisions could be used to circumvent the intent to limit the number of redemption centers in any given municipality. For example, a person could operate a redemption center by establishing a site with one vending machine. The vending machine would make the person a "dealer" that must redeem containers of the type they sell unless the dealer has a "member-dealer agreement" with a redemption center. There does not appear to be anything keeping this dealer from redeeming other types of containers as well.
- **"Member-dealer agreements" seem unnecessary and create administrative burden.** The requirement for dealers to accept redemptions unless they have a "member-dealer agreement" with a redemption center, and the need for the "member-dealer agreements" themselves, seems outdated given the number of standalone redemption centers currently operating. Both dealers and redemption centers experience some administrative burden in establishing, posting and maintaining the agreements. These requirements

<sup>13</sup> 38 M.R.S. § 3113(4)(B)

<sup>14</sup> 38 M.R.S. § 3106(1)-(4)

might pose an additional challenge for some dealers like small stores that may not have the space or capacity to accept redemptions or to handle the administrative associated with an agreement.

- Two provisions serve to limit where consumers can redeem containers.** Under current statute, IoDs are not required to pick up redeemed containers in geographic areas outside where their products are sold. In addition, redemption centers do not have to take back containers sold by a dealer they do not have an agreement with and have no incentive to do so especially if the containers are not going to get picked up. These provisions can result in situations where consumers are not able to redeem containers in certain parts of the State thus increasing the potential they will end up as litter or in the solid waste stream. Redemption centers can also end up losing money if they redeem containers that will not get picked up as they will not be reimbursed for the deposit. OPEGA observes that maximizing commingling as discussed in Recommendation 8 could eliminate the need for these provisions. We also observe that these provisions interact with the “member-dealer agreement” provision discussed above and should be taken into account if elimination of “member-dealer agreement” requirements are considered.
- Reduced handling fee allowed for small brewers and water bottlers is not being used.** Statute permits IoDs registered as small brewers or water bottlers to pay redemption centers a 3¢ handling fee rather than the usual 3.5¢ or 4¢ fee.<sup>15</sup> OPEGA observes that no IoDs are currently taking advantage of this reduced fee and it would negatively impact redemption centers if they did. Redemption center revenues would be reduced. Additional sorting would also be required if a brewer in a commingling group wished to make use of the discounted fee, as containers would need to be counted and sorted separately from the commingling group.

#### **Recommended Management Action:**

DEP should assess the statutory provisions OPEGA has identified for continued relevance and alignment with program objectives. DEP should report back on results of that assessment to the 129<sup>th</sup> Legislature by January 31, 2019. The Department should also propose legislation to the 129<sup>th</sup> Legislature to amend statute and rule as deemed necessary and appropriate.



#### ***Opportunities to Improve Program Design Should Be Considered***

OPEGA noted several program elements that could be addressed to better align the design of the program with the legislative intent:

**Program Scope.** Exemptions of certain beverage containers from the program appear inconsistent with the program’s intent to remove containers from MSW or reduce roadside litter. Program rules specifically exempt some products, such as Maine-produced apple cider and blueberry juice, that would otherwise fall in

<sup>15</sup> 38 M.R.S. § 3106(7)(D)

categories of beverages covered by the program. Other excluded products are in convenience packaging and have been identified by litter studies as more likely to be littered. An example is energy shots, which appear to be considered nutritional supplements and are, therefore, excluded.

**Deposit Value.** The deposit amounts for containers are set at 5¢ or 15¢ based on the contents of the container as opposed to the container material or size. The rationale for this approach is unclear to OPEGA. We note, for example, that wine bottles and beer bottles in containers of the same size and material type are subject to different deposit amounts. Wine bottles have a deposit of 15¢ and the deposit on beer bottles is 5¢. Containers for spirits are also assigned a higher deposit value. It is unclear whether the higher deposit values are necessary to incent consumers to return wine and spirit containers. Analysis that might inform this policy choice is hindered by the lack of data discussed in Recommendation 1.

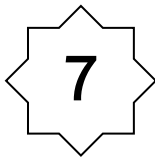
**Performance Measurement.** There are no set quantifiable performance measures and targets against which to measure the outcomes of the redemption program. Consequently, even with sufficient data, it would be difficult to assess the extent to which the program results meet legislative expectations.

**Final Disposition of Redeemed Materials.** One of the legislative intents of the program is to minimize the number of containers ending up as MSW. However, OPEGA noted that there is nothing in statute to prevent containers from entering the waste stream or being landfilled once they have been picked up by IoDs or their contracted agents. We observe that the risk of containers ending up in landfills is greatest for containers made of materials with low commodity values.

**Maximizing Commodity Values.** The materials generated from the redemption program have commodity value that can offset some of the program costs borne by IoDs. OPEGA learned that glass is not as valuable a commodity as aluminum and plastic and also loses its value if it is not separated by color. OPEGA saw evidence that glass, particularly glass which has not been separated by color, is making its way into landfills because of its lack of value. At present, there is nothing in statute that requires sorting glass by color to maximize the commodity value and, thereby, minimize the risk of glass ending up in landfills rather than being recycled.

#### **Recommended Legislative Action:**

The Legislature should consider addressing the areas described above for possible statutory or rule changes that could improve the program. The Legislature should also seek input from DEP to ensure all potential consequences of program changes are identified and considered.



## ***DEP Should Propose a Process for Addressing “Shorted Bags” Complaints***

DEP and program participants described a lack of consequences for redemption centers that routinely “short bags” by presenting bags for pick-up that contain fewer containers than the standard bag counts. DEP has no formal role, process or authority to resolve concerns reported by participants.

For instance, pickup agents may call DEP about a redemption center that continually provides bags of redeemed containers that are under the agreed upon count. DEP does not have means to assist in resolving the dispute. DEP does not have the staff or authority to travel to redemption centers and count containers to ensure redemption center compliance. DEP also does not have program-specific enforcement procedures to play this role even if the Department did have sufficient staff.

At present, bag shorting is largely dealt with by those collecting containers refusing to take bags that are visibly short and requesting the redemption center correct the problem. There is no formal mechanism for a pickup agent to conduct an audit that is enforceable or actionable and pickup agents are not able to charge redemption centers if a bag that is counted off-site contains fewer containers than required.

IoDs bear the cost of shorted bags by reimbursing the deposit amount and paying the handling fee for non-existent containers. This cost to IoDs may ultimately be built into product costs and passed on to consumers. It is also important that IoDs and pickup agents have an accurate record of the number of containers redeemed, as this impacts reporting and payment of the escheat to the State. Inaccurate counts of redemptions due to shorted bags would also result in the calculation of an inaccurate redemption rate.

DEP has begun discussions with program participants about their concerns and how an audit process might operate. As of the date of this report, however, no detailed proposals on how to address the situation had been developed.

### **Recommended Management Action:**

DEP should propose a process for addressing “shorted bags” that defines an appropriate role for DEP in identifying and resolving complaints and meaningful consequences in cases of intentional program abuse by participants. If necessary, this should include statutory and/or rule changes to ensure that DEP has sufficient authority to impose sanctions, such as fines or suspending or revoking licenses of participants, when appropriate. The proposal should include identification of any additional resources that would be required for implementation.



## ***Intended Benefits of Commingling Should Be Clarified and Statute Updated to Maximize Impact***

Commingling provisions were added to statute in 2003 apparently to reduce the number of sorts that redemption centers had to perform in processing returned beverage containers. OPEGA found it quite unclear, however, as to what benefits were intended to result from reduced sorts and to whom those benefits were expected to accrue. OPEGA also observed that commingling is not currently minimizing the number of sorts to the extent possible.

Program administrators and participants have interpreted statutory provisions to mean that IoDs can only form commingling groups if they meet the definition of a “qualified” group that collectively makes up more than 50% of the market in a given product category. This has resulted in IoDs with large market share joining together in three “qualified” commingling agreements that have stayed at status quo since shortly after commingling was enacted. In 2011, statute was amended to expand the definition of a “qualified” commingling group to allow two small wine distributors to form a new group. Two more IoDs have joined that group since it began operation in 2013.

Sixteen of the roughly 260 active IoDs are participating in these four agreements which seem to cover the majority of containers, perhaps as much as 76%. OPEGA estimates that these agreements are currently reducing the number of sorts that would otherwise be required for these containers by between 26 and 56 sorts depending on the criteria used. The participating IoDs pay reduced handling fees to redemption centers for these containers. The IoDs are also exempt from reporting and remitting unredeemed deposits to the State.

Opportunity for the other IoDs to form new commingling groups is limited if there is already a “qualified” commingling arrangement for their product category as, by default, they cannot meet the criteria of having more than 50% of the market. OPEGA notes that the Attorney General’s (AG) office interprets the statutory provisions as allowing the formation of commingling groups that are not “qualified” and do not need to meet the market share criteria. These groups would also be exempt from turning over unredeemed deposits to the State, but would still pay the full handling fee of 4¢ to redemption centers.

This possibility for forming other commingling groups has apparently not been recognized by State program administrators and to our knowledge has been explored by only one IoD. OPEGA is unclear whether the Legislature intended to create two types of commingling groups or whether this is an oversight in the statutory language. We note that, under the AG’s interpretation, any IoDs would be able to join together and commingle, but that would not necessarily guarantee that the number of required sorts would be significantly reduced as a result.

There are also barriers to IoDs joining the existing commingling agreements even though statute seems to intend that they be allowed to do so. In reality, IoDs are unnatural partners in competitive markets. Special processes and trust need to be established to make commingling agreements between these private parties work. OPEGA has heard of instances where IoDs were turned away or discouraged from joining commingling agreements for these reasons. IoDs who are parties to commingling agreements point out that letting others join is a business decision.

Ultimately then, while it seems to have been envisioned that commingling practices would continue to reduce sorts even as new products and IoDs enter the market, this has not been the case. There has been a reduction in the number of sorts for the majority of beverage containers in the program, but the amount of small volume containers that must be sorted has largely been unaffected by commingling. OPEGA heard this described as a problem of “little sorts.” The problem seems compounded when the scope of the program is expanded and when new brands enter the beverage market. OPEGA estimates there are still upwards of 500 sorts required of redemption centers, though they are not generally all in use at the same time.

More commingling to achieve a substantial reduction in sorts would appear beneficial. Possibilities for encouraging more commingling include:

**Follow Current Statute.** The AG’s interpretation of current statute already allows the formation of commingling groups that have less than 50% of market share in product categories. Consideration should be given to additional measures that may be needed to ensure that these groups result in a reasonable reduction in sorts.

**Establishment of a Catch-all Commingling Group.** Another option would be to empower DEP to establish an additional commingling group that IoDs that are currently not in commingling agreements could join. DEP could potentially contract an external group to administer the agreement. Vermont has a model similar to this.

OPEGA recognizes that more commingling would reduce the amount of escheat remitted to the State if comminglers remain exempt from escheat requirements. It would also mean less revenue for redemption centers if comminglers continue to pay a reduced handling fee. These impacts should be taken into account if changes to maximize commingling are considered.

#### **Recommended Management Action:**

The Legislature, in consultation with DEP, should re-consider and clarify the intended benefits of commingling and how it is intended to operate. The Legislature should then direct DEP to suggest to the Joint Standing Committee on Environment and Natural Resources the most appropriate approach for achieving those expectations, including proposing legislation, needed to amend current statute.

## Acknowledgements

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OPEGA would like to thank the management and staff of the Department of Environmental Protection tasked with the Beverage Container Redemption Program for their cooperation throughout this review. We also appreciate the information provided by:

- management and staff at the Department of Administrative and Financial Services including the Bureau of Alcoholic Beverages and Lottery Operations and Maine Revenue Services;

- management and staff at the Department of Agriculture, Conservation and Forestry;
- private participants in the beverage container redemption program, including redemption centers, IoDs, commingling groups, pickup agents, and distributors; and
- staff of the Attorney General's office, Maine Turnpike Authority, and Victor Horton of the Maine Municipal Association for contextual information.

## Agency Response

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In accordance with 3 M.R.S.A. § 996, OPEGA provided the Department of Environmental Protection, Maine Revenue Services and the Bureau of Alcoholic Beverage and Lottery Operations an opportunity to submit additional comments after reviewing the report draft. DEP is proposing to take the following actions in response to the issues identified in this report.

**1**

### **State Should Collect Data Necessary to Monitor and Assess the Program**

The DEP, in conjunction with MRS, will determine what data is needed on an ongoing basis to effectively and efficiently administer the program, assess program outcomes and inform policy and decision-making relevant to the program. Legislation will be necessary to require additional reporting and to classify information as “Confidential Business Information.” The Department plans to propose legislation in **Q3 FY 19** to require regular reporting of data on sales and redemption by program participants to enable assessment of program outcomes and inform policy-making.

**3**

### **MRS and DEP Should Develop A Clear Process for Making and Acting on Notifications of IOD Non-compliance**

DEP will work with MRS to develop the recommended set of policies and procedures to “provide specific and clear guidance on the actions to be taken in response to IODs who are noncompliant in reporting and remitting unclaimed deposits to MRS.” In **1Q FY19**, the Department will complete development of written policies and procedures for DEP compliance response action from the date of notification of noncompliance by MRS to DEP.

**5**

### **DEP Should Assess Need for Changes to Certain Provisions Impacting Redemption Centers and Dealers**

This report highlights provisions of statute that no longer reflect the network of redemption centers that comprise the collection system which has evolved over the past 40 years. The initial law required any entity that sold beverages to accept empty containers of the products they sold and to refund the consumer's deposit. This ensured that consumers could conveniently redeem their containers, thus minimizing litter and the number of containers that end up disposed of as MSW. As redemption centers independent of beverage retailers (dealers) began to be established, dealers were allowed to enter into “Member-Dealer Agreements” with nearby stand-alone redemption centers, and to send their customers there to return

their containers and receive their refunds rather than meeting the licensing and operational requirements of a redemption center.

Today Maine has a convenient network of over 400 licensed redemption centers, comprised of independent “stand-alone” redemption centers, redemption centers associated with retailers primarily engaged in the sale of beverages, larger grocery retailers, and a few smaller retailers. To encourage transportation efficiencies in the container collection network and ensure adequate volumes to create viable businesses, the law includes limits on the number of redemption centers based on local population. However, the law still allows for anyone that sells beverages, no matter how incidental to their business, to license as a redemption center, which can be used to circumvent the limits on the number of redemption centers. The law also requires all entities selling beverages in containers subject to the law to have member-dealer agreements even though a comprehensive system of larger redemption centers that provides convenient collection sites for consumers across the state has existed for a long time. It also allows redemption centers to refuse to take back containers from beverages not sold by their member dealers, a restriction that is difficult at best to implement and causes confusion to consumers.

OPEGA recommends that the DEP develop legislation to align the statute with the current on-the-ground collection system and address the difficulties caused by outdated provisions, including the ones mentioned above, and the \$0.03 handling fee for small brewers and water bottlers that has not been implemented. Additionally, the Department recommends consolidating the varied rule-making provisions scattered throughout the statute into one rule-making paragraph.

The Department plans to propose legislation in **Q3 FY 19** to update the statute to reflect the evolution of program implementation which has resulted in provisions that are not used or are in limited use, as described above.

**6**

**Opportunities to Improve Program Design Should be Considered**

OPEGA recommends that the Legislature consider changes to better align the program design with legislative intent in the areas of program scope, deposit value, performance measurement, final disposition of redeemed materials, and maximizing commodity value. The report recommends that the Legislature seek input from DEP to ensure identification of all potential consequences of any program design changes under consideration.

DEP will provide input to the Legislature to assist with its exploration of potential statutory changes to better align the program design with legislative intent and likely outcomes if enacted.

**7**

**DEP Should Propose a Process for Addressing “Shorted Bags” that Defines an Appropriate Role and Authority for the Department**

Although most redemption centers are diligent about ensuring an accurate accounting of the number of redeemed containers in the bags they provide to the pick-up agents, there have been allegations of on-going poor practices by a few that drive up costs for IoDs. Current rules allow bag audits to be performed by “Initiators, Distributors, and third-party Contracted Agents,” and current statute provides District Court with the authority to withdraw a redemption center license.



Both provisions may be interpreted to restrict the DEP's authority to identify and address program abuse by redemption centers.

The Department plans to propose legislation in **Q3 FY 19** to establish operational standards to ensure redemption centers accurately represent the number of redeemable containers in each bag provided to pick up agents, and enforcement authorities to discourage and resolve program abuse by participants. As needed, the Department will begin rulemaking to implement statutory changes and adopt new operational standards for redemption centers following enactment of legislation, or during 3Q FY 19 if no legislation is needed.

8

**Intended Benefits of Commingling Should Be Clarified and Statute Updated to Maximize Impact**

Commingling agreements were conceived as a mechanism to streamline redemption center operations by reducing the number of sorts necessary to assign manufacturer responsibility for containers, with the concomitant benefit of helping control costs of redemption center operations. However, the proliferation of beverage manufacturers and the expansion of beverage choices for consumers over the past 40 years have dramatically increased the number of sorts performed by redemption centers, more than offsetting the initial efficiency benefits achieved.

OPEGA recommends that the Legislature, in consultation with DEP, re-consider and clarify the intended benefits of commingling and how it is intended to operate, and then to direct DEP to develop legislation as appropriate. Two options OPEGA puts forth for consideration are: 1) allow the establishment of non-qualified commingling groups of two or more manufacturers with additional measures to ensure a reasonable reduction in sorts, or 2) establish a catch-all commingling group to include all manufacturers not currently in commingling agreements.

The Department will evaluate options to minimize the number of sorts required by redemption centers and realize the benefits of decreased labor costs and storage space. The Department plans to propose legislation **in 3Q FY19** if needed.

## **Appendix A. Scope and Methods**

The scope for this review, as approved by the Government Oversight Committee, consisted of five questions. To answer these questions fully, OPEGA used the following data collection methods:

- document reviews including laws, rules, policies and related materials;
- staff and program participant interviews; and
- consideration of financial data from DEP, MRS, and BABLO and some voluntarily provided redemption data from private program participants.

### **Document Review**

OPEGA reviewed relevant documentation to understand the context and regulatory guidance for the redemption program. Specific materials reviewed include, but are not limited to:

- Maine Statutes;
- DEP Rules for the Beverage Container Law; and
- A 2012 DACF-prepared Guide to Selling Beverage Containers in Maine.

OPEGA also reviewed documents from the State and third parties related to the operation of the redemption program including, but not limited to:

- the State IoD and label registry;
- private party lists of active labels; and
- private party lists of current sorts that redemption centers can undertake.

### **Interviews**

OPEGA interviewed DEP, DACF, MRS, and BABLO staff to gain an understanding of current and historic practices related to the various components of the beverage container redemption program. Interviews were conducted with the following individuals:

- DEP Director of Product Management Programs;
- DEP Manager of Maine's Redemption Program;
- DACF former manager of the redemption program;
- MRS Tax Examiner formerly responsible for IoD returns;
- Director of BABLO; and
- Deputy Director of BABLO.

OPEGA also interviewed private parties who participate in the redemption program in a variety of roles including:

- Redemption center operators;
- Contracted pickup agents;
- Initiators of Deposit;
- Distributors; and
- Commingling groups.

## Data Analysis

OPEGA performed a limited assessment of both non-compliance with reporting requirements and IoDs registering with the incorrect license type:

- CY2016 non-commingled redemptions by IoD as reported to MRS by IoDs;
- CY2016 non-commingled redemptions by IoD as processed by CLYNK;
- CY2016 non-commingled redemptions by IoD as processed by TOMRA; and
- CY2016 gallons produced by small breweries or wineries as reported to BABLO.

## Appendix B. Table Overview of All Bottle Bill States

State	Year	Deposit	Fees	Beverages	Containers	Unredeemed deposits
CA*	1987	5¢ (<24oz), 10¢ (≥24oz)	Handling fee (state to recyclers): 1.046¢ per container; Processing fee (manufacturers to state): .012¢ - 8.939¢ per container sold, depending on material; Processing payments (state to redemption centers and curbside programs to cover materials with low scrap value): range \$97.61 - \$1,298.47 per ton.	Beer, malt, wine and distilled spirit coolers; all non-alcoholic beverages except milk. Excludes vegetable juices over 16oz.	Any container composed of aluminum, glass, plastic, or bi-metal; Exempts refillables.	Property of program, used for program administration, program payments (processing payments) and grants.
CT	1980	5¢	Handling fee: 1.5¢ for beer, 2¢ for other beverages.	Beer, malt, carbonated soft drinks, bottled water.	Any sealed bottle, can, jar or carton composed of glass, metal or plastic containing a beverage; excludes containers over 3 liters containing non-carbonated beverages and HDPE containers.	Returned to state.
HI*	2005	5¢	Handling fee (state to redemption centers): 2-4¢; Container fee (non-refundable fee on containers paid to state): 1¢.	Beer, malt, mixed spirits and wine; all non-alcoholic drinks, except dairy products.	Any container up to 68oz composed of aluminum, bi-metal, glass or plastic (PET and HDPE only).	Property of state; used for program administration.
IA	1979	5¢	Handling fee (distributor to redemption center): 1¢.	Beer, wine coolers, wine, liquor, carbonated soft drinks, mineral water.	Any sealed bottle, can, jar or carton containing a beverage composed of glass, metal or plastic.	Retained by distributor/bottlers.
ME	1978	15¢ (wine/liquor), 5¢ (others)	Handling fee (distributor to redemption center): 4¢ or 3.5¢ if part of comingling agreement.	All beverages except dairy products and unprocessed cider.	Any sealed container of four liters or less composed of glass, metal or plastic.	Property of state (when not part of a comingling agreement or exempt small manufacturer).
MA	1983	5¢	Redemption centers - 3.25¢, Retailers 2.25¢.	Beer, malt, carbonated soft drinks, mineral water.	Any sealable bottle, can, jar or carton composed of glass, metal, plastic or a combination. Excludes biodegradables.	Property of state general fund.
MI	1978	10¢	None.	Beer, wine coolers, canned cocktails, soft drinks, carbonated and mineral water.	Any airtight container under one gallon composed of metal, glass, paper or plastic.	75% to state for environmental programs, 25% to retailers.
NY	1982	5¢	Handling fee (distributor to redemption center): 3.5¢.	Beer, malt, wine products, carbonated soft drinks, soda water, and water not containing sugar.	Any sealed bottle, can or jar less than one gallon composed of glass, metal, aluminum, steel or plastic.	80% to the state general fund (\$15m allocated to Environmental Protection Fund), 20% retained by distributor (initiator).
OR	1972	10¢ (increased from 5¢ from April 1, 2017)	None.	From 2018, all beverages except wine, liquor, milk and milk substitutes.	Any sealed bottle, can or jar composed of glass, metal or plastic less than 3 liters.	Retained by distributor and bottlers.
VT	1973	15¢ (liquor), 5¢ (all others)	4¢ for brand sorted containers and 3.5¢ for comingled brands.	Beer, malt, mixed wine, liquor, carbonated soft drinks.	Any bottle, can, jar, or carton composed of glass, metal, paper, plastic, or a combination. Excludes biodegradables.	Retained by distributor and bottlers.

\* State controlled and run systems.

**Appendix C. Table Comparison of Maine's Program with Selected States**

State	Overview of program	Beverages included	Container material	Current Container sizes	Unredeemed deposits	Redemption rate and source	Label registration
<b>ME</b>	A program with high-level State oversight, implemented by privately owned businesses, including manufacturers, distributors, retailers, redemption centers, and pickup agents.	Water (all), beer/malt beverages, soda/nonalcoholic drinks (except local apple cider/blueberry juice) spirits, wine, hard cider, wine coolers.	Glass, metal, plastic.	4 liters or less.	Paid to the State (no designated use specified) if IoD is not part of a commingling group or an exempt group, otherwise retained by IoD.	Unknown.	Container labels must be registered & renewed annually or if any changes (fee applies).
<b>MA</b>	A program with a similar structure to Maine, with high-level State oversight and implemented by manufacturers, distributors, retailers, redemption centers and pickup agents.	Water (sparkling), beer/malt beverages, carbonated soft drinks.	Glass, metal, plastic.	Containers up to 2 gallons.	Paid to the State (no designated use specified).	57% (2017)/ State calculates based on sales and redemption figures reported by distributors.	Not required.
<b>VT</b>	A program with a similar structure to Maine, with high-level State oversight and implemented by manufacturers, distributors, retailers, redemption centers and pickup agents.	Beer/malt beverages, soft drinks/carbonated beverages, spirits, wine coolers.	Glass, metal, plastic, paper.	Non-liquor - all sizes. Liquor - more than 50ml.	Retained by distributors/manufacturers.	75% (2011) / estimated based on a report commissioned from an external agency.	Products must be registered prior to sale (unless distributed by the Department of Liquor Control).
<b>MI</b>	A program with high-level state oversight, but with the key distinction from Maine in that there are no stand-alone redemption centers. All redemption takes place at retailers.	Water (carbonated), beer/malt beverages, soft drinks /carbonated drinks, mixed wine or spirit drinks.	Glass, metal, plastic, paper.	1 gallon or less.	Paid to the State, with 75% earmarked for environmental programs and 25% paid to retailers.	94.7% (2012) / State calculates based on required reporting of dollar value of deposits originated and paid.	Not required.
<b>OR</b>	A program with high-level State oversight, implemented largely by a not-for-profit cooperative of beverage distributors/retailers. The cooperative manages the deposit flow, receives deposits from distributors and pays it out to retailers, picks up and processes returned containers and operates redemption centers.	From January 2018, all beverages except distilled liquor, wine, dairy or plant based milk and infant formula.	Glass, metal, plastic.	All ≤3 liters for water, beer and carbonated soft drinks. For beverages added from January 2018, sizes requiring deposits are between 4 ounces and 1.5 liters.	Retained by distributors - in practice, they are retained by the cooperative for distributor members and used to fund the cooperative and redemption centers.	64.31% (2016) / State calculates based on sales and redemption figures reported by cooperative and distributors.	Not required.
<b>CA</b>	A program that is actively run and administered by the state, including handling all program payments, deposits, and payouts, although the recycling centers where redemption takes place are privately run.	Water (all), beer/malt beverages, soft drinks, wine/distilled spirit coolers, sports drinks, fruit drinks (except for 100% juice ≥46oz), coffee/tea drinks, vegetable juice (≤16oz).	Glass, metal, plastic.	All, except that 100% fruit juice in containers of 46oz or more and vegetable juice in containers of more than 16oz are exempt.	Retained by the State controlled fund, with statute setting out how the funds should be spent on recycling related programs.	80% (2014) / State calculates based on required monthly reports on containers sold and weight of recycled containers by material.	Distributors and manufacturers are required to register, but not required to register brand labels.

Source: OPEGA research of other state programs.



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

May 17, 2018

Ms. Beth Ashcroft, Director  
Office of Program Evaluation and Government Accountability  
State of Maine Legislature  
82 State House Station  
Augusta, Maine 04333

**Re: OPEGA Report on Maine's Beverage Container Redemption Program**

Dear Ms. Ashcroft:


The Department of Environmental Protection ("DEP" or "the Department") greatly appreciates the thorough work performed by OPEGA staff in its development of this report. It is invaluable to have a comprehensive and cogent explanation of the participants and processes involved in ensuring beverage containers are recycled rather than a blight on Maine's landscape. The Department agrees with the findings and recommendations contained in this report, and is ready to do the work needed to address the recommendations.

As noted in the report, the Container Redemption Program has operated successfully in Maine for 40 years. During that time, some aspects of program implementation have evolved due to the experience of participants, and others have changed as a result of legislative action. DEP assumed responsibility for oversight of the program from the Department of Agriculture, Conservation and Forestry in November 2015. DACF staff were very helpful and gracious in sharing their long experience and insights with DEP to insure a smooth transition and consistent implementation of program requirements. Several of the issues identified in this OPEGA report have caused challenges historically for DACF and in the past 2½ years for DEP, and we look forward to developing solutions to improve system efficiencies.

Of the eight recommendations made in this report, six anticipate DEP action, either as the lead or in providing input as the Legislature formulates potential proposals to improve program performance and implementation. DEP will develop proposals, draft associated legislation (if any), and provide input as anticipated on the six recommendations that direct action by DEP. Attached you will find DEP's responses to these six recommendations for inclusion in the "Agency Response" section of the report.

Thank you again for your review of Maine's Container Redemption Program and for the opportunity to respond to your recommendations.

Sincerely,

  
Paul Mercer  
Commissioner

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