

Environmental Protection Regulation
Chapter 10
Deposit For Beverage Containers

§ 10-101. Authority and applicability

- (a) These rules are adopted under the Secretary's authority pursuant to 3 V.S.A. Chapter 25 and 10 V.S.A. Chapter 53.
- (b) These rules apply to:
 - (1) A person manufacturing or distributing a container;
 - (2) A person selling a container at the retail level or operating a business for the purpose of redeeming a container; and
 - (3) A person returning a beverage container to collect the deposit on a container.
- (c) These rules do not apply to beer or other malt beverages contained in kegs, half-kegs, quarter-kegs, or pony-kegs provided that a deposit on the keg is charged to the consumer for the use of the keg and refunded to the consumer upon return of the keg to the retailer.

§ 10-102. Definitions.

As used in this Subchapter, the following terms have the following meaning:

“Auditor” means a person authorized by a manufacturer or distributor to inspect receptacles holding beverage containers that are presented for redemption, including gaylords, shells, boxes, bags, or the contents of a reverse vending machine, to determine the number of containers and whether and how many foreign containers are within the receptacles.

“Bags” means a flexible container used for holding, storing, or containing containers.

“Beverage” means beer or other malt beverages and mineral waters, mixed wine drink, liquor, soda water, and carbonated soft drinks in liquid form and intended for human consumption.

“Certified redemption center” means a redemption center certified by the Secretary pursuant to § 10-106.

“Commingling” means the sorting of beverage containers at a redemption center by material type rather than by beverage brand in accordance with the requirements of an approved commingling agreement.

"Container" means the individual, separate, bottle, can, jar or carton primarily composed of glass, metal, plastic or any combination of those materials containing a beverage.

"Distributor" means every person who engages in the sale of consumer products in containers to a dealer in this state. The term distributor includes manufacturers. Any dealer, manufacturer, or retailer who sells, at the retail level, containers without having purchased them from a person otherwise classified as a distributor, shall be a distributor.

"Foreign container" means a container which is not labeled in accordance with the requirements of 10 V.S.A. § 1524.

"Gaylord" means a large receptacle for storing and transporting empty containers.

"Liquor" means spirits as defined in 7 V.S.A. § 2.

"Manufacturer" means every person bottling, canning, packing or otherwise filling containers for sale.

"Mixed wine drink" means a beverage which:

- (1) contains wine and more than 15 percent plain, carbonated or sparkling water;
- (2) contains added natural or artificial blended material, such as fruit juices, flavors, flavoring, adjuncts, coloring or preservatives and which contains not more than 16 percent alcohol by volume; or
- (3) other similar product marketed as a wine cooler.

"Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.

"Recycling" means the process of sorting, cleansing, treating and reconstituting waste and other discarded materials for the purpose of reusing the materials in the same or altered form.

"Redemption center" means a store or other location where any person may, during normal business hours, redeem the amount of the deposit for any empty beverage container labeled.

"Retailer" means a store or other licensed entity where containers are sold at the retail level for off-premise consumption.

"Reverse vending machine" means an automated mechanical device that accepts containers directly from the consumer, accounts for each container processed, and issues

a cash refund or redeemable credit voucher for not less than the redemption value of the container to the consumer. A reverse vending machine shall also sort and process containers mechanically. The entire process shall be enclosed within the machine.

"Secretary" means the secretary of the agency of natural resources.

"Shells" mean the standard trade package of cardboard, wood, plastic or other material, designed for the packaging, carrying or transportation of 6 or more glass beverage containers of 64 ounce or greater liquid capacity; 12 or more beverage containers of 28 ounce or greater, but less than 64 ounce, liquid capacity; or 24 or more beverage containers of less than 28 ounce capacity.

"Sold at the retail level" means any and all transactions in Vermont where the consumer takes physical possession of the beverage container for consumption other than at the place of sale, and shall not apply to beverages for sale and consumption upon the premises of establishments licensed for that purpose.

§ 10-103. Prohibitions.

- (a) No distributor shall sell or offer for sale in this state a container not labeled as provided in § 10-104 of this section.
- (b) No person shall knowingly attempt to redeem a container to a retailer or redemption center for a deposit return if that container is not labeled in accordance with § 10-104.
- (c) No distributor or manufacturer shall sell a container in the state of Vermont without the manufacturer registering the container with the agency of natural resources prior to sale, unless distributed by the department of liquor control.

§ 10-104. Labeling.

- (a) A container shall contain a label specifying, in letters of not less than one-eighth inch type size, the word "Vermont" or "VT" and the refund value of the container. The label shall be placed upon the container by embossing or imprinting of the normal product label or, in the case of a metal beverage container, on the top of the container.
- (b) The labeling requirements of this regulation shall not apply to beer or other malt beverages contained in kegs, half-kegs, quarter-kegs, or pony-kegs provided that a deposit on the container is charged to the consumer for the use thereof and refunded to him upon return to the seller.

§ 10-105. Redemption.

- (a) Any purchaser of a container, labeled in accordance with § 10-104 and upon which a deposit has been paid, shall be entitled to redeem the container to a redemption center or a retailer.
- (b) Except as provided in subsections (d) and (e) of this section:
 - (1) a retailer shall not refuse to accept from any person any empty containers of the kind, size and brand sold by the retailer, or refuse to pay to that person the deposit established for that container pursuant to 10 V.S.A. § 1522; and
 - (2) a redemption center or certified redemption center shall not refuse to accept from any person any empty container labeled in accordance with § 10-104 or refuse to pay to that person the deposit established for that container pursuant to 10 V.S.A. § 1522.
- (c) a manufacturer or distributor may not refuse to pick up from a retailer or redemption center, any empty container of the kind, size and brand sold by the manufacturer or distributor, or refuse to pay the retailer or redemption center, the deposit and handling fee of the container as established by 10 V.S.A. § 1522.
- (d) A retailer, with the prior approval of the Secretary, may refuse to redeem beverage containers if a certified redemption center operates within a five mile radius of the retailer.
- (e) A retailer, redemption center, or a distributor, may refuse to redeem containers which are not clean or which are broken and shall refuse containers which show evidence of being previously redeemed or which are not labeled in accordance with § 10-104.
- (f) Manufacturers or distributors may refuse to redeem containers not packaged in bags, shells or gaylords or where the transportation of beverage containers in other receptacles would constitute a safety hazard or the receptacles present a substantially increased risk of container breakage.

§ 10-106. Redemption Center Certification

- (a) Any person may establish a certified redemption center for the redemption of deposits on containers.
- (b) A person may apply to the Secretary for the certification of a redemption center on a form provided by the Secretary. At a minimum the application shall include the following:

- (1) the proposed location of the redemption center or availability of structural space to accommodate the redemption center.
 - (2) the name, mailing address, and other contact information of the person or company that will operate the redemption center.
 - (3) for redemption centers estimating a throughput of more than 250,000 containers per year, a statement that the facility will participate in approved commingling agreements.
- (c) The Secretary shall provide notice to the public by posting notice on the agency website for not less than 15 days.

§10-107. Posting of hours for redemption.

A retailer or redemption center may establish hours for the redemption of container deposits, provided containers shall be redeemed during no fewer than 40 hours per week during the regular operating hours of the establishment, and that notice thereof is afforded the public upon a conspicuously placed poster.

§ 10-108. Discontinuance of beverage brands.

A distributor who discontinues sales from a manufacturer, shall redeem the deposit and handling fee on the container sold by the distributor prior to the discontinuance of the sales from that manufacturer for a period of ninety days following the date of cessation of sales to the public; or, in the case of the transfer of distributorship, for a period as approved by the Department of Liquor Control.

§ 10-109. Commingling.

- (a) This section establishes minimum criteria for any group of beverage brands who wish to commingle containers to qualify for a handling fee of \$0.035 pursuant to 10 V.S.A. § 1522(b). For purposes of this rule and determination of the handling fee pursuant to 10 V.S.A. § 1522(b), liquor bottles redeemed by the department of liquor control are deemed to be commingled and have a handling fee of \$0.035 per container.
- (b) Any commingling agreement shall contain, at a minimum, the following criteria:
 - (1) The agreement shall include pick up of commingled beverage containers from at least 30 percent of the beverage containers redeemed in the state of Vermont.
 - (2) The agreement shall require the pick up of commingled containers from all certified redemption centers with a redemption volume greater than

250,000 containers per year. The agreement may specify other redemption centers who are eligible to participate in the agreement.

- (3) The agreement shall clearly define criteria for beverage brands to enter into an approved commingling agreement and there shall not be unreasonable barriers put into place on any beverage brand entering the commingling agreement.
 - (4) The agreement shall clearly define criteria for a beverage brand to exit a commingling agreement and there shall not be unreasonable barriers placed on a beverage brand to exit a commingling agreement.
 - (5) The agreement shall specify that the manufacturers or distributors participating in the agreement shall:
 - (A) provide shells, upon request of a redemption center, for use in redemption;
 - (B) credit a redemption center for 50 percent of the costs of the bags used for redemption; and
 - (C) provide gaylords or shells to those redemption centers participating in the agreement.
 - (6) The agreement shall specify that the manufacturer, distributor, or any third party pick-up agent acting on their behalf, pick up beverage containers at a frequency of not less than once per week or as otherwise agreed upon by the redemption center and manufacturer, distributor, or pick up agent.
 - (7) The agreement shall specify a method for determining the number of containers redeemed. This method shall be one of the following:
 - (A) The number of containers redeemed shall be based upon a count of 10 percent of the containers presented for redemption by the redemption center;
 - (B) The number of containers the redemption center certifies as being presented for redemption; or
 - (C) Another method approved by the Secretary as a part of the commingling agreement.
 - (8) The agreement, or a cover letter to the agreement, shall identify a name, address, and telephone number for a point of contact for questions on this agreement and to respond to complaints that the terms of the agreement are not being conformed to.
- (c) A commingling agreement shall be submitted to the Secretary prior to its implementation for review and approval.

- (d) If the agency believes that the manufacturers or distributors who are parties to an approved commingling agreement are not in conformance with the minimum criteria contained in this section, the secretary shall notify the agreement point of contact of the alleged non-compliance. The manufacturers or distributors shall have 30 days to correct the noncompliance or provide information demonstrating that the allegation of noncompliance was in error. Continued noncompliance shall be grounds to revoke the approval of a commingling agreement.

§ 10-110. Foreign Container Auditing.

- (a) Audits shall only be conducted on containers presented by the retailers and redemption centers as ready for redemption.
- (b) A request by an auditor to conduct an audit on premises shall not be unreasonably refused. If the on premises audit is unreasonably refused, the audit may be done off premises.
- (c) Audits shall be conducted on at least 1000 containers at a retailer or redemption center. The contents of a reverse vending machine may be audited.
- (d) It shall be a violation of this section to have more than two percent foreign containers within the bags, gaylords, shells or other receptacles used to hold empty containers, or in the contents of a reverse vending machine, which are audited.
- (e) A manufacturer or distributor, or their representative, may withhold the deposit and handling fee on any foreign container discovered during an audit. In addition to this penalty, the following may be assessed against a retailer or redemption center:
 - (1) On the first offense, a warning to the retailer or redemption center which includes a statement of their obligations under state law and a warning of the potential future penalties that may be assessed against them for foreign containers.
 - (2) On the second offense, a penalty based upon the percentage of foreign containers found in the audit applied to all containers to be picked up by the manufacturer or distributor, or their representative at that pick up. For example, if 2000 containers were audited and four percent of those cans were foreign containers (80 containers) and the retailer or redemption center wished to redeem a total of 8000 containers at that pick up the penalty would be assessed on 320 containers.
 - (3) On the third offense, a penalty based upon the percentage of foreign containers found in the audit applied to all containers to be picked up by

the manufacturer or distributor, or their representative for the next 30 days.

- (4) On the fourth offense, and each offense thereafter, a penalty based upon the percentage of foreign containers found in the audit applied to all containers to be picked up by the manufacturer or distributor, or their representative, for the next 60 days.
- (f) Violations of the foreign container provisions of this procedure may be used to consider the cumulative penalties for a period of one year from the date that written notice was sent to the retailer or redemption center under subsection (g) of this section.
- (g) An auditor shall provide notice in writing to a retailer or redemption center of a violation of this foreign container procedure. This notice shall be sent certified mail. This notice shall contain, at a minimum, the date of the audit, the person present representing the auditor, the person present representing the retailer or redemption center, the number of foreign containers found in the course of the audit, the penalty to be assessed under subsection (e) of this section, and the following statement:

“You have 30 days from your receipt of this notice to grieve the violation of the foreign container policy to the state of Vermont. Any grievance shall provide the copy of the written notice and briefly describe the basis for the grievance. The grievance shall be sent to the auditor who provided the written notice and to the following address:

Department of Environmental Conservation
Waste Management Division
103 S. Main Street, West Office Building
Waterbury, Vermont 05671-0404

- (h) Grievances under this procedure shall be informal proceedings and shall not be considered formal evidentiary hearings.
- (i) It shall be the burden of the auditor to clearly demonstrate that there was a violation of the foreign container policy.
- (j) Decisions of the secretary shall be in writing and provided to both parties.