

Environmental Protection Regulation, Chapter 10, Deposit For Beverage Containers

22.10.1522.1 SCOPE_ § 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 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.

~~For the purpose of this regulation, beer or other malt beverages and mineral waters, soda water and carbonated soft drinks in liquid form and intended for human consumption shall be subject to the requirement that a deposit of not less than five cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to him upon return of the beverage container. For the purpose of this regulation, "sold at the retail level" shall mean any and all transactions 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, except as provided herein.~~

~~A container is defined as a vessel composed of glass, metal, paper, plastic, or any combination of those materials, not made of biodegradable material, or of any other materials capable of containing a beverage at the time of sale to the consumer.~~

§ 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 containers holding beverage containers, including gaylords, shells, boxes, bags, or the contents of a reverse vending machine, and presented for redemption to determine whether and how many foreign containers are within the bags.

"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 redeemer 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.

"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:

- (1) A retailer that sells containers;
- (2) a store or other location where any person may, during normal business hours, redeem the amount of the deposit for any empty labeled container labeled;

- (3) A reverse vending machine; and
- (4) A redemption center certified pursuant to § 10-106.

"Refillable" means a beverage container which can be refilled at least five times.

"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, except as provided herein.

§ 10-103. Prohibitions.

- (a) No distributor shall sell or offer for sale in this state a brand of beverage in a beverage container labeled as provided in § 10-104 of this section if that distributor sells that beverage container containing that brand in a state that does not have a deposit-redemption system similar to the one established by this chapter and that is adjacent to this state. A distributor that violates this subsection is prohibited from selling or offering those beverages for sale in this state until the violation is corrected.
- (b) No person shall knowingly attempt to redeem a container to a retailer or a redemption center for deposit return if that container not labeled in accordance with § 10-104.
- (c) No distributor or manufacturer shall sell a beverage container in the state of Vermont without the manufacturer registering the beverage container with the agency of natural resources prior to sale, unless distributed by the department of liquor control.

22.10.1522.2 LABELLING § 10-104. Labeling.

- (a) Each A container, subject to this regulation 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. Such The label shall be placed ~~emplaced~~ 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. ~~A sample copy of any label, required under this subsection, shall be filed with the Secretary of Natural Resources and,~~

~~in the case of containers of beer or other malt beverages, a concurrent filing shall be made with the Department of Liquor Control.~~

~~(b) The labeling requirements of this section shall not apply to beverage containers which are certified by the Secretary of Natural Resources as being capable of being refilled at least five times. This certification shall not preclude a manufacturer from labeling such refillable beverage containers, in the manner specified by Section 22.10.1522.2(a) of these regulations, upon filing of a copy of the label to be used as therein required. If, however, a manufacturer elects to so label such refillable beverage containers, such labeling shall be required on all such containers sold by him in this State.~~

~~(c) — In the event that a beverage containers required to be labelled under Section 22.10.1522.2(a), or labelled by the manufacturer at this election under Section 22.10.1522.2(b), are received by a distributor without containing the required, or elected, label, the distributor, with the prior approval of the Department of Liquor Control, may merchandise such beverage containers in establishments licensed by the Department of Liquor Control for consumption, provided however that all such beverage container shall contain an applied label approved by the Department of Liquor Control and the Secretary of Natural Resources.~~

~~(d) 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.~~

~~(e) — Subsections (a) and (b) of this Section shall take effect on September 1, 1975.~~

~~22.10.1522.3 REDEMPTION OF CONTAINER; RETURN OF DEPOSIT § 10-105.
Redemption.~~

~~(a) Any purchaser of a container, labeled and upon which he has paid a deposit has been paid, shall be entitled to redeem his deposit upon return of a the container to a retail store, or to at a redemption center established in accordance with 10 V.S.A., Section 1521(7) and/or 10 V.S.A., Section 1523.~~

~~(a)(b) Except as provided in subsections (d) and (e) of this section 10 V.S.A., Section 1523(b) and 22.10.1522.4(b) and (c) of these regulations:~~

~~(1) a retailer a redemption center shall not refuse to accept from any person any empty beverage containers of the kind, size and brand sold by the redemption center retailer, or refuse to pay to that person the deposit established for that container pursuant to refund value of a beverage container as established by 10 V.S.A. §, Section 1522.~~

~~(c)(2) a manufacturer or distributor may not refuse to pick up accept from a retailer, or a person operating a redemption center, any empty container~~

~~beverage containers of the kind, size and brand sold by the manufacturer or distributor, or refuse to pay the retailer, or a person operating a redemption center, the deposit and handling fee refund value of the a beverage container as established by 10 V.S.A. §, Section 1522.~~

- ~~(b)(d)~~ A retailer, with the prior approval of the Secretary, may refuse to redeem beverage containers if a certified redemption center operates within a 10 mile radius of the redemption center, or centers, is established, under Section 22.10.1522.4(b) and (c) of these regulations, which serves the public need.
- ~~(e)(e)~~ A retailer, a person operating a redemption center, or a distributor, may refuse to redeem beverage containers which are not clean or which are broken and shall refuse containers not labeled in accordance with § 10-104.

~~22.10.1522.4 REDEMPTION CENTERS § 10-106. Redemption Center Certification~~

- (a) Any person ~~or retailer~~ may establish a certified redemption center for the redemption of deposits on beverage containers, ~~with the prior agreement of affected parties.~~
- (b) ~~A retailer, or group of retailers, may petition the Secretary of Natural Resources for the establishment~~ 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 names and addresses of the retailer or retailers to be served by the redemption center.
 - ~~(2)~~ the proposed location of the redemption center or availability of structural space to accommodate the redemption center.
 - ~~(3)~~(2) the name, mailing address, and other contact information of the person or company that will operate the redemption center names and addresses of any person or persons who will operate the redemption center, and a signed statement to that effect, signed by the person or persons so designated, that he 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 comingling agreements.
 - ~~(4)~~ the names and addresses of all manufacturers and distributors to be affected by the establishment of the redemption center.
- (c) The Secretary shall provide notice to the public by posting notice on the agency website for not less than 15 days. , ~~upon due notice to the public and other~~

~~affected parties, hold a Public Hearing upon the petition. After investigation and Hearing, the Secretary, after determination of need and service to be provided the establishment of a redemption center, shall issue his order authorizing the distributors or retailers affected and servicing the community or area involved to establish a redemption center or alternate method of redemption, or shall deny if found adverse to the public need.~~

~~———— In determining whether the public need is served, the Secretary shall give due consideration to the convenience provided to the public, to the retailers, and to the manufacturers or distributors to be served by the redemption center. The Secretary shall likewise consider all potential effect upon services to be provided to elderly, disabled or indigent persons, as well as any increased cost or inconvenience to manufacturers or distributors, or to the general public.~~

(d)

~~———— For the purpose of this Regulation the following words and phrases mean:~~

~~———— "Shells" mean the standard trade package of cardboard, wood, plastic or other material, designed for the packaging, carrying or transportation of 6 or more 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.~~

~~———— "Approximate sized containers" mean a container of cardboard or other material with length, width or height dimensions, any of which are not over one-sixth greater or one-sixth lesser than the equivalent dimensions of shells.~~

~~(e) — Each retailer who, by written affirmation, signifies his participation in the use of the services and facilities provided by a redemption center, shall deliver all shells obtained by him, in the transaction of covered beverage sales, to the redemption center.~~

~~(f) — Manufacturers or distributors shall redeem all beverage containers packaged in shells or approximate sized containers.~~

~~———— Manufacturers or distributors may refuse to redeem beverage containers not packaged in shells or approximate sized containers where the transportation of beverage containers in other carrying cases would constitute a safety hazards or the breakage of beverage containers in transportation or storage is likely to occur. However, in the case where a manufacturer or distributor refuses to provide shells or carrying containers acceptable to the manufacturer or distributor for the use of the redemption center in packaging beverage containers on a revolving deposit basis, the manufacturer or distributor shall accept beverage containers in such carrying cases of cardboard, wood, plastic or paper, including bags, as are available to the redemption center, packaged in the same quantity as would be the case in shells.~~

~~22.10.1522.5 REIMBURSEMENT OF RETAILERS AND REDEMPTION CENTERS~~

~~A retailer, or a person operating a redemption center, who redeems beverage containers shall be reimbursed by the manufacturer or distributor of such beverage containers in an amount which is at least twenty percent of the amount of the deposit returned to the consumer. The minimum amount of reimbursement shall be three cents per container.~~

~~This regulation shall not apply in the case of kegs, half kegs, quarter kegs, or pony kegs, and no additional payment in excess of the actual redemption of the deposit shall be required.~~

~~22.10.1522.6 POSTING §10-107. Posting of hours for redemption.~~

~~(a) — Retailers may establish hours for the redemption of beverage 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 obtained from the Secretary of Natural Resources.~~

~~(b) — A copy of these regulations shall be conspicuously posted in all establishments where beer or other malt beverages and mineral waters, soda water and carbonated soft drinks, in liquid form and intended for human consumption, are sold to the consumer at the retail level.~~

~~22.10.1522.7 DISCONTINUANCE OF BRANDS § 10-108. Discontinuance of beverage brands.~~

~~A retailer or a distributor who discontinues the sale of a beverage brand of beer or other malt beverage, mineral water, soda water or carbonated soft drink, shall redeem the deposit and handling fee on the container sold by the distributor brand, type and size of beverage container as were sold by him prior to the discontinuance of the sale of that beverage brand for a period of sixty 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.~~

~~22.10.1522.8 CERTIFICATION OF REFILLABLE BEVERAGE CONTAINERS~~

~~A manufacturer or a distributor shall submit a request required for certification, to the Secretary of Natural Resources, for determination and certification that a beverage container can be refilled at least five times.~~

~~(a) — The request for certification shall be accompanied by:~~

~~—— (1) — a description of the container, including; the container size, color, physical measurements, and any descriptive or trade name.~~

~~———— (2) — a listing of the brands, or beverages, to be sold at retail in the beverage container upon which certification is being requested.~~

~~———— (3) — a certification from the container manufacturer that the beverage container can be refilled at least five times, or from the manufacturer or bottler that he has tested the container and has found that it can be refilled at least five times; or~~

~~———— (4) — a copy of any certification or approval issued by the United States Food and Drug Administration, or any other agency of the federal government; or any agency of this or any other State; or of any nationally recognized testing laboratory or certification body.~~

~~———— (5) — such additional information as the Secretary shall require for the purpose of issuing this certification, after review of the request for certification.~~

~~(b) — Upon review of the request for certification, and the materials submitted therewith, the Secretary shall issue his certification that the beverage container can be refilled at least five times, or shall deny such certification.~~

~~(c) — Upon the granting of certification by the Secretary, the manufacturer or distributor shall file with the Secretary, and in the case of beverage containers for beer or other malt beverages, a concurrent filing with the Department of Liquor Control, a letter of intent to use such certified container, and a statement as to whether or not such containers will contain labels under the provisions of 22.10.1522.2(b) of these regulation.~~

~~(d) — A manufacturer or distributor aggrieved by an adverse determination by the Secretary may, at any time, request a Hearing upon the matter, as a contested case, under the provisions of Title 3 V.S.A., Chapter 25.~~

~~(e) — A request for certification shall not be required in the case of legally refillable containers utilized by manufacturers or distributors of mineral waters, soda water and carbonated soft drinks certified by the Secretary prior to July 1, 1975.~~

§ 10-109. Comingling.

(a) This section establishes minimum criteria for any group of beverage brands who wish to commingle containers 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 comingling agreement shall contain, at a minimum, the following criteria:

- (1) The agreement shall pick up commingled beverage containers from at least 30 percent of the beverage containers redeemed in the state of Vermont or from 30 percent of the beverage manufacturers in the state; or
- (2) The agreement shall require pick up comingled containers from all certified redemption centers with a redemption volume greater than 250,000 containers per year. The agreement may specify other redeemers 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 will provide gaylords and shells, upon request of the redemption center, for use in redemption and shall credit for 50 percent of the costs of bags used for redemption.
- (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) If the agency believes that the manufacturer or distributors who are parties to an approved commingling agreement are not in conformance with the minimum criteria contained in § 4 of this procedure, 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 redemption center 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 redemption center.

(d) It shall be a violation of this section to have more than two percent foreign containers within the bags 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 redemption center:

(1) On the first offense, a warning to the 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 bags audited applied to all other bags 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 (40 containers) and the redemption center wished to redeem a total of 8000 containers at that pick up the penalty would be assessed on 160 containers.

(3) On the third offense, a penalty based upon the percentage of foreign containers found in the bags audited applied to all other bags 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 bags audited applied to all other bags 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 redemption center under subsection (g) of this section.
- (g) An auditor shall provide notice in writing to a 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 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 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.