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This document is ***not*** the official version of these regulations. The regulations and the amendments printed in the ***Royal Gazette*** should be consulted to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the ***Table of Regulations***.

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office
Tel: (902) 368-4291
Email: legislation@gov.pe.ca

CHAPTER B-2.1

BEVERAGE CONTAINERS ACT

GENERAL REGULATIONS

Pursuant to section 33 of the *Beverage Containers Act* R.S.P.E.I. 1988, Cap. B-2.1, Council made the following regulations:

INTERPRETATION AND APPLICATION

Act, defined

1. In these regulations, "Act" means the *Beverage Containers Act* R.S.P.E.I. 1988, Cap. B-2.1. (EC274/08)

Exclusions

2. The following liquids are excluded from the definition of "beverage" in clause 1(1)(d) the Act:

(a) milk, including chocolate milk and milk products;

(b) milk substitutes, including soya milk and rice milk;

(c) concentrated drinks. (EC274/08)

REVOCATION OF APPROVALS

Revocation of approval of a type of beverage container

3. (1) Where the Minister revokes an approval of a type of beverage container under subsection 6(5) of the Act the Minister shall

(a) cause a written notice of the revocation, which includes the reasons therefore, to be provided to the distributor or, where applicable, to the agent of the distributor; and

(b) cause details of the approved type of beverage container to be removed from the Department's website.

Revocation effective on notice being given

(2) The revocation of an approval of a type of beverage container under subsection 6(5) of the Act does not take effect until the revocation has been served in accordance with these regulations on the distributor to whom the approval was issued. (EC274/08)

REGISTRATION OF DISTRIBUTORS

Registration of distributors

4. (1) The Minister may, on receipt of an application from a distributor for registration, register the distributor under subsection 9(3) of the Act if

(a) the application has been made in accordance with the requirements of subsection 9(2); and

(b) the distributor is registered as a distributor under the *Beverage Containers Act*, S.N.B. 1991, c. B-2.2 of the Province of New Brunswick.

Notice of registration

(2) On registering a distributor, the Minister shall give notice of the registration, in writing, to the distributor and shall include in the notice a copy of any term or condition that the Minister has imposed on the registration under subsection 9(4) of the Act.

Notice of imposition, amendment, substitution or revocation of term or condition after registration

(3) Where, at any time subsequent to the registration of a distributor, the Minister,

(a) under subsection 9(4) of the Act, imposes a term or condition on the registration of a distributor; or

(b) under subsection 9(5) of the Act,

(i) amends, substitutes or revokes any term or condition imposed on the registration of a distributor; or

(ii) imposes additional terms and conditions on the registration of a distributor,

the Minister shall give notice, in writing, of the imposition of the term or condition, or of the amendment, substitution or revocation of any term or condition, as the case may be, to the distributor and shall include in the notice a copy of any term or condition that has been imposed, amended or substituted by the Minister.

Imposition, amendment, substitution or revocation of term or condition effective on notice

(4) The imposition of a term or condition, or the amendment, substitution or revocation of a term or condition, under subsection 9(4) or (5) of the Act, on the registration of a distributor does not take effect until the notice required by subsection (3) has been served in accordance with these regulations on the distributor.

Notice of revocation or suspension of registration

(5) Where the Minister revokes or suspends the registration of a distributor under subsection 9(6) of the Act, the Minister shall give notice, in writing, of the revocation or suspension, as the case may be, and the reasons therefor to the distributor.

Revocation or suspension effective on notice being given

(6) The revocation or suspension of the registration of a distributor under subsection 9(6) of the Act does not take effect until the notice required by subsection (5) has been served in accordance with these regulations on the distributor. (EC274/08)

Requirements for security re distribution of refillable containers

5. (1) Where

(a) a distributor sells or intends to sell refillable beverage containers while registered; and

(b) the Minister, under subsection 9(4) or (5) of the Act, imposes a condition on the registration of a distributor that the distributor deliver a security to the Minister in respect of the sale of such refillable beverage containers,

the security shall have a face value of,

(c) if the distributor's empty refillable beverage containers are collected by an agent and the agent delivers the security on behalf of that distributor under subsections 6(1) and (2), $250,000; or

(d) if the distributor's empty refillable beverage containers are not collected by an agent, $20,000.

Requirements for security re distribution of recyclable containers

(2) Where

(a) a distributor sells or intends to sell recyclable beverage containers while registered; and

(b) the Minister, under subsection 9(4) or (5) of the Act, imposes a condition on the registration of a distributor that the distributor deliver a security to the Minister in respect of the sale of such recyclable beverage containers,

the security shall have a face value of

(c) if the distributor's empty recyclable beverage containers are collected by an agent and the agent delivers the security on behalf of that distributor under subsections 6(1) and (2), $250,000; or

(d) if the distributor's empty recyclable beverage containers are not collected by an agent, $20,000.

Form of security

(3) A security referred to in subsection (1) or (2) shall be in the form of

(a) a deposit of money;

(b) a certified cheque made payable to the Provincial Treasurer;

(c) a negotiable bond signed over to the Provincial Treasurer; or

(d) an irrevocable documentary credit or letter of credit from a bank or other lending institution acceptable to the Minister that is negotiable only by the Minister.

Term

(4) A security described in clause (3)(d) shall be for a term of not less than one year.

Duty to maintain or renew security

(5) The depositor of a security shall maintain the security, or renew the security as may be necessary, until the Minister determines that it is no longer required.

Idem

(6) A renewal of a security shall be delivered to the Minister not less than twenty-one days before the lapse, expiration or cancellation date of a security delivered under these regulations.

Delivery

(7) A security or a renewal of a security shall be deemed to be delivered to the Minister when the Minister has notified the depositor that the security is in accordance with these regulations and is acceptable to the Minister.

Return of security

(8) The Minister shall return a security to the depositor when the Minister determines that the security is no longer required. (EC274/08)

Delivery of security

6. (1) A natural person, partnership or corporation that is a distributor or a corporation that is an agent of two or more distributors may deliver the security required by the Minister under subsection 9(4) or (5) of the Act.

Amount where security is for two or more distributors

(2) The security delivered for two or more distributors, who sell or will be selling refillable beverage containers while registered, by a corporation that is an agent of the distributors shall be in the amount required under clause 5(1)(c) and the delivery of that amount shall fulfil the requirement for delivery of the security under that clause for all distributors of which the corporation is an agent.

Amount where security is for two or more distributors

(3) The security delivered for two or more distributors, who sell or will be selling recyclable beverage containers while registered, by a corporation that is an agent of the distributors shall be in the amount required under clause 5(2)(c) and the delivery of that amount shall fulfil the requirement for delivery of the security under that clause for all distributors of which the corporation is an agent.

Names of distributors for whom agent acts

(4) A corporation that is an agent of two or more distributors and that delivers the security on their behalf shall provide the Minister with an up-to-date list of the names of all distributors of which the corporation is an agent and with any other information reasonably requested by the Minister regarding those distributors and shall give the Minister written notice of any change to the list and the date of the change not less than thirty days before the change takes place.

Application of security to distributor leaving agent

(5) The security delivered by a corporation that is an agent for two or more distributors shall continue to apply to a distributor whose name is to be removed from the list referred to in subsection (4) until the expiry of thirty days after notice has been given to the Minister of the removal under that subsection.

Distributor to deliver new security to Minister on leaving agent

(6) If the name of a distributor is to be removed from a list of distributors, the distributor shall, before the name is removed, deliver to the Minister, where the Minister requires one, a substitute security with the face value required under subsection 5(1) or (2), as may be appropriate. (EC274/08)

Forfeiture of security re refillable beverage containers

7. (1) Where a distributor sells refillable beverage containers while registered, the security delivered to the Minister in relation to the distributor shall be forfeited if the distributor or the agent of the distributor fails to collect empty refillable beverage containers or to pay the refunds in accordance with the Act and these regulations within fourteen days after the distributor or the agent, as the case may be, is required to do so under the Act and these regulations.

Forfeiture of security re recyclable beverage containers

(2) Where a distributor sells recyclable beverage containers while registered, the security delivered to the Minister in relation to the distributor shall be forfeited if the distributor or the agent of the distributor fails to remit or pay deposits for the recyclable beverage containers to the Provincial Treasurer in accordance with the Act and these regulations within fourteen days after the distributor or the agent, as the case may be, is required to do so under the Act and these regulations.

Idem

(3) The security delivered by a corporation that is an agent of two or more distributors shall be forfeited to the extent of its full face value when the security of a distributor that is named on the corporation's list referred to in subsection 6(4) would be forfeited under these regulations.

Substitution of an amount for forfeited security

(4) Notwithstanding subsection (3), a corporation that is an agent of two or more distributors who sell refillable beverage containers may, with the consent of the Minister, substitute for the face value of a security forfeited under subsection (1) such amount as the Minister considers sufficient to make the payments or reimbursements listed in clauses (5)(a) and (b) in full in relation to the forfeiture of the distributor's security.

Distribution of money recovered on forfeiture of security

(5) Any money recovered on the forfeiture of a security under subsection (1), after deducting the cost of administering the security under subsection 9(8) of the Act, shall be distributed in the following order of priority:

(a) payment or reimbursement in full or, where the money is insufficient, on a *pro rata* basis, to the license holders for paid-out refunds and for deposits on bulking material that relate to the empty refillable beverage containers of the distributor to which the forfeiture relates and for which the license holders have not been paid or reimbursed;

(b) payment of the cost of transporting, recycling and otherwise handling the empty beverage containers after collection from the beverage container depots;

(c) payment of any balance remaining to the Provincial Treasurer, which shall be the property of the Government and shall be paid into the Operating Fund.

Substitution of an amount for forfeited security recyclable containers

(6) Notwithstanding subsection (3), a corporation that is an agent of two or more distributors who sell recyclable beverage containers may, with the consent of the Minister, substitute for the face value of a security forfeited under subsection (2) such amount as the Minister considers sufficient to make the payments referred to in subsection (7).

Distribution of money recovered on forfeiture of security re recyclable containers

(7) Any money recovered on the forfeiture of a security under subsection (2), after deducting the cost of administering the security under subsection 9(8) of the Act, shall be distributed in the following order of priority:

(a) payment or reimbursement in full to the Provincial Treasurer for the deposits for the recyclable beverage containers that have not been paid or remitted to the Provincial Treasurer;

(b) payment of any balance remaining to the registered distributor. (EC274/08)

INFORMATION REQUIRED ON BEVERAGE CONTAINERS

Information required to be printed or stamped on beverage containers

8. For the purposes of section 12 of the Act, every beverage in a beverage container that is sold by a distributor or a retailer shall have stamped or printed on the beverage container the wording "Return for Refund" or similar wording. (EC274/08)

LICENSES

Application fee

9. The fee payable to apply for a license, or to apply for the amendment of a license, under section 13 of the Act is $100 and shall be made payable to the Provincial Treasurer. (EC274/08)

Application for the issuance of a license

10. (1) A person who wishes to apply for a license under subsection 13(2) of the Act shall

(a) file with the Minister a completed application in a form acceptable to the Minister;

(b) pay the fee prescribed by section 9; and

(c) provide to the Minister

(i) such proof of the matters referred to in subsection (2) or (3) as the Minister may require, and

(ii) such other information as the Minister may require.

Requirements for issuance of a license

(2) The Minister may issue a license to the applicant under subsection 13(3) of the Act if the Minister is satisfied that

(a) the applicant has sufficient capital available to pay all refunds that could be requested by the public for empty beverage containers between start-up and the first possible reimbursement of refunds by a distributor or the Provincial Treasurer, and between subsequent reimbursements;

(b) the lot on which the applicant proposes to operate the beverage container depot

(i) is not less that 1.5 acres in area,

(ii) has areas for parking that are, at a minimum, 185 square metres in area, and have hard surface of pavement, concrete, gravel, or asphalt millings, and

(iii) has separate traffic lanes for customer vehicles and for transport trucks;

(c) there is a building on the lot referred to in clause (b) which meets the requirements of subsection (3); and

(d) the applicant should be authorized to operate a beverage container depot at the location proposed in the application having regard to the considerations set out in subsection 13(12) of the Act.

Building requirements

(3) The building on the lot at which the applicant for a license proposes to operate a beverage container depot shall

(a) be structurally sound;

(b) have a beverage container sorting area that

(i) has a floor area, at a minimum, of 46 square metres, and

(ii) is visible to customers;

(c) have an area for customer service;

(d) have a beverage container storage area that

(i) has a wooden or steel frame and a poured cement floor,

(ii) has a ceiling height, at a minimum, of 4.9 metres,

(iii) has a floor area, at a minimum, of 111 square metres,

(iv) is accessible to vehicles that are loading and unloading empty beverage containers, and

(v) is constructed in such a manner that it will keep all empty beverage containers stored therein dry and clean; and

(e) has a total floor area, at a minimum, of 232 square metres.

Exception re depots existing on commencement of Act

(4) The Minister may, under subsection 13(3) of the Act, issue a license to an applicant notwithstanding that one or more of the requirements set out in clauses (2)(a) to (c) and subsection (3) are not met by the applicant, or the lot, or the building on the lot, at which the applicant proposes to operate a beverage container depot, where

(a) the applicant is a person who was deemed to be a license holder under section 34 of the Act on the day that section came into force; and

(b) the Minister is satisfied that the applicant should be authorized to operate a beverage container depot at the location proposed in the application having regard to the considerations set out in subsection 13(12) of the Act.

Refusal to issue license

(5) The Minister may refuse to issue a license under subsection 13(6) of the Act where

(a) the Minister is not satisfied

(i) that the applicant meets the requirements of clause (2)(a),

(ii) that the lot on which the applicant proposes to operate the beverage container depot meets the requirements of clause (2)(b),

(iii) that the building on the lot referred to in subclause (ii) meets the requirements of clause (2)(c) and subsection (3), or

(iv) that the applicant should be authorized to operate a beverage container depot at the location proposed in the application having regard to the considerations set out in subsection 13(12) of the Act; or

(b) the applicant has previously been issued a license or deemed to have been issued a license under the Act and the license holder, or an agent of the license holder, violated or failed to comply with a provision of the Act or these regulations.

Form

(6) A license shall be issued on a form provided by the Minister.

Amendment at location beverage container depot on license

(7) A license holder who wishes to apply, under subsection 13(2) of the Act, for the amendment of a license for the purpose of authorizing the license holder to operate the beverage container depot at a new location, shall

(a) file with the Minister a completed application in a form acceptable to the Minister;

(b) pay the fee prescribed by section 9; and

(c) provide to the Minister

(i) such proof of the matters referred to in clauses (2)(b) to (d) or in subsection (3) as the Minister may require, and

(ii) such other information as the Minister may require.

Idem

(8) The Minister may, under subsection 13(3) of the Act, amend the location specified on a license if the Minister is satisfied that the requirements of clauses (2)(b) to (d) and subsection (3) are met in respect of the new location. (EC274/08)

Terms and conditions

11. (1) Where, at any time subsequent to the issuance of a license, the Minister,

(a) under clause 13(3)(b) of the Act, imposes a term or condition on the license; or

(b) under subsection 13(4) of the Act, amends, substitutes, or repeals any term or condition imposed on the license,

the Minister shall give notice, in writing, of the imposition of the term or condition, or of the amendment, substitution, or repeal of any term or condition, as the case may be, to the license holder and shall include in the notice a copy of any term or condition that has been imposed, amended or substituted.

Imposition, amendment, substitution or repeal of term or condition effective on notice

(2) The imposition of a term or condition, or the amendment, substitution or repeal of a term or condition, under clause 13(3)(b) or subsection 13(4) of the Act, on the license does not take effect until the notice required by subsection (1) has been served in accordance with these regulations on the license holder. (EC274/08)

12. (1) Where the Minister suspends or revokes a license under subsection 13(17) of the Act, the Minister shall give notice, in writing, of the suspension or revocation, as the case may be, and the reasons therefore to the license holder.

Suspension or revocation of a license

(2) The suspension or revocation of a license issued under subsection 13(17) of the Act does not take effect until the notice required by subsection (1) has been served in accordance with these regulations on the license holder. (EC274/08)

Suspension or revocation effective on notice

OPERATION OF BEVERAGE CONTAINER DEPOTS

13. (1) A license holder, and the operator of the beverage container depot operated under the license, shall ensure

Operation of beverage container depot, requirements

(a) that the beverage container depot is kept clean and that broken glass, discarded cardboard and plastic bags and other refuse and debris are collected and properly disposed of;

(b) that each empty beverage container collected from the beverage container depot by a distributor or an agent of the distributor

(i) has had its removable cap removed, if the beverage container is a plastic bottle or a plastic container,

(ii) has markings that identify the distributor or person who filled the container and that are readable or readable by a bar code scanner or reader, and

(iii) has no foreign material or free flowing liquid inside the container;

(c) that there is no foreign material in the bulking container in which any empty beverage container is collected from the beverage container depot by a distributor or an agent of the distributor; and

(d) that all empty beverage containers and items necessary for bulking the containers are stored indoors.

(2) The holder of a license, and the operator of the beverage container depot operated under the license, shall ensure

Sorting of containers

(a) that empty refillable beverage containers that are collected from the beverage container depot by an agent of two or more distributors are sorted according to the distributor;

(b) that empty beverage containers that are collected by distributors themselves are sorted according to the distributor that distributed them; and

(c) that empty recyclable beverage containers that are collected by the agent of two or more distributors are sorted according to colour and composition into not more than 20 different sorts. (EC274/08)

COLLECTION BY REGISTERED DISTRIBUTORS

Registered distributor to supply bulking containers, shells and pallets

14. (1) A registered distributor or, where applicable, an agent of the registered distributor shall provide the operators of beverage container depots with all bulking containers, shells, pallets and other items necessary for bulking empty refillable beverage containers sold by the registered distributor, and may charge the operators of beverage container depots a fully refundable deposit for each such reusable item.

Period of time for collection

(2) For the purposes of subsection 18(1) of the Act, the period of time within which a registered distributor or, where applicable, an agent of the registered distributor shall collect empty refillable beverage containers from a beverage container depot following a request is seven business days.

Amount of containers that requires collection

(3) For the purposes of subsection 18(2) of the Act, a registered distributor, or where applicable, an agent of the registered distributor is required to collect empty refillable beverage containers sold by the registered distributor from a license holder, or agent of the license holder, where the license holder or agent of the license holder has possession of at least 10,000 such containers.

Period of time for payment of refund

(4) For the purposes of subsection 18(4) of the Act, the period of time within which a registered distributor or, where applicable, an agent of the registered distributor shall pay the refund to the license holder is seven business days commencing on the day on which the empty beverage containers to which the refund relate are collected by the registered distributor, or agent, from the beverage container depot operated by the license holder. (EC274/08)

COLLECTION BY THE BEVERAGE CONTAINER COLLECTOR

Collector to supply bulking containers, shells and pallets

15. (1) The beverage container collector shall provide the operators of beverage container depots with all bulking containers, shells, pallets and other items necessary for bulking empty recyclable beverage containers sold by registered distributors, and may, with the written consent of the Minister, charge the operators of beverage container depots a fully refundable deposit for each such reusable item.

Period of time for collection

(2) For the purposes of subsection 20(1) of the Act, the period of time within which the beverage container collector shall collect empty recyclable beverage containers from a beverage container depot following a request is seven business days.

Amount of containers that requires collection

(3) For the purposes of subsection 20(2) of the Act, the beverage container collector is required to collect empty recyclable beverage containers from a license holder, or the agent of the license holder, where

the license holder or agent of the license holder has possession of at least 10,000 such containers.

Period of time for payment of refund

(4) For the purposes of section 21 of the Act, the Minister shall ensure that the license holder is paid the refund and handling fee within seven business days commencing on the day on which the empty beverage containers to which the refund and handling fee relate are collected by the beverage container collector from the beverage container depot operated by the license holder.

Handling fee

(5) For the purposes of section 21 of the Act, the amount of the handling fee for a beverage container depot to handle beverage containers approved under the Act is $0.036 per container. (EC274/08)

SERVICE OF NOTICES

When notice sufficiently served

16. (1) Any notice required to be given by the Minister under subsection 4(3) or (5), subsection 11(1) or subsection 12(1) is deemed to be sufficiently served

(a) upon a copy of the notice being personally served on the person to whom it is directed;

(b) upon a copy of the notice being sent by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt being received; or

(c) five days after a copy of the notice is sent by mail addressed to the person to whom it is directed at the last known address for that person.

Service on director or officer of corporation

(2) Where the person to be served with a notice is a corporation, service of the notice on a director, officer or recognized agent of the corporation in accordance with subsection (1) is deemed to be service of the notice on the corporation for the purposes of this Act.

Order for substituted service

(3) Where it is impractical for any reason to serve a notice in a manner referred to in subsection (1), an *ex parte* application may be made to a judge of the Supreme Court who may make an order for substituted service providing for such steps to be taken to bring the matter to the attention of the person to be served. (EC274/08)

SALE OF CONTAINERS WITH CONNECTING DEVICES

Restriction

17. No registered distributor shall sell a beverage in beverage containers that are

(a) connected by plastic rings; or

(b) connected by a connecting device, other than plastic rings,

unless the plastic rings or other connecting device is biodegradable or photodegradable. (EC274/08)