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Environmental Protection Act

R.R.O. 1990, REGULATION 340

CONTAINERS

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This is the English version of a bilingual regulation.

**1.**In this Regulation,

“administrative region” means an administrative region of the Ministry as shown on a map produced by the Ministry, as revised November, 1974, designated as Map 2001-4 and filed in the office of the Assistant Deputy Minister of the Ministry, Regional Operations Division; (“région administrative”)

“auditor” means the person appointed by the Minister as the auditor for purposes of this Regulation; (“vérificateur”)

“brand of carbonated soft drink” means a carbonated soft drink or carbonated soft drinks designated as a brand of carbonated soft drink in a notice filed under subsection 3 (1) or by the Minister under subsection 3 (8); (“marque de boisson gazeuse”)

“brand owner” means a person who has filed a notice with the Ministry under subsection 3 (1); (“propriétaire de marque”)

“brand user” means a person designated as such or who first acquires ownership in Ontario of a carbonated soft drink that is not put in its retail container in Ontario; (“usager de marque”)

“capacity”, when used with respect to a container for carbonated soft drink, means the volume of carbonated soft drink the container is represented to hold when carbonated soft drink is sold at retail in the container; (“capacité”)

“carbonated soft drink” includes unflavoured soda or seltzer water and any carbonated beverage containing alcohol other than liquor with respect to which a licence or permit is required under section 5 of the Liquor Licence Act; (“boisson gazeuse”)

“import sale” means the sale of a carbonated soft drink placed in the container in which it is retailed in a country other than Canada or the United States of America and of which less than 250,000 litres are sold at retail in Ontario in every twelve month period ending on the last day of each month; (“vente d’importation”)

“multi-material” means three or more materials, of which one is used newspapers, that can be recycled; (“matériaux multiples”)

“non alcoholic beer and wine” means a beverage that would be a malt liquor within the meaning of the Food and Drug Regulations made under the Food and Drugs Act (Canada) or wine within the meaning of the said Regulations except that the beverage contains less than the proportion of alcohol required under the said Regulations; (“bière et vin non alcoolisés”)

“recycling advisory committee” means the advisory committee of that name established by the Minister under the Act for the purposes of this Regulation; (“comité consultatif du recyclage”)

“recycling rate” means the rate at which non-refillable containers or non-refillable containers of a particular type are being recycled; (“taux de recyclage”)

“refillable container” means a container classified as a refillable container under Regulation 357 of the Revised Regulations of Ontario, 1990; (“contenant réutilisable”)

“sales area” means an area of the province designated under subsection 3 (7) or (8) as the area in which a particular brand user,

(a) distributes or intends to distribute the carbonated soft drink,

(b) maintains separate warehousing or manufacturing facilities from which the carbonated soft drink is or will be distributed in that area, and

(c) normally maintains separate sales records,

or, where no such designation has been made, means an administrative region of the Ministry; (“territoire de vente”)

“spring water” means mineral or spring water within the meaning of the Food and Drug Regulations made under the Food and Drugs Act (Canada); (“eau de source”)

“steel can” means a metal can of which the sides and one end are made of steel. (“canette en acier”) R.R.O. 1990, Reg. 340, s. 1.

**2.**(1)  Cylindrical metal cans are classified as metal can containers. R.R.O. 1990, Reg. 340, s. 2 (1).

(2)  Containers for carbonated soft drink that are not refillable containers are classified as non-refillable containers. R.R.O. 1990, Reg. 340, s. 2 (2).

(3)  Non-refillable containers that as a type of container are recycled and that as used containers are collected in widespread multi-material recycling projects and for which there is a market in Ontario are classified as recyclable containers. R.R.O. 1990, Reg. 340, s. 2 (3).

**3.**(1)  Every brand owner of a carbonated soft drink who files a notice with the Director designating a specified carbonated soft drink as a brand of carbonated soft drink of which he, she or it is the brand owner and meets the requirements set out in section 7 is classified. R.R.O. 1990, Reg. 340, s. 3 (1).

(2)  The notice referred to in subsection (1) may include reference to carbonated soft drinks of more than one flavour or that are sold under more than one name. R.R.O. 1990, Reg. 340, s. 3 (2).

(3)  In every notice filed under subsection (1), a person shall be designated as a brand user with respect to each sales area. R.R.O. 1990, Reg. 340, s. 3 (3).

(4)  Every brand user is classified,

(a) who is not designated as a brand user and who files the notice referred to in subsection (1) and meets the requirements set out in section 7; or

(b) who is designated under subsection (3) by a brand owner who meets the requirements set out in section 7. R.R.O. 1990, Reg. 340, s. 3 (4).

(5)  Every person classified under subsection (1) or (4) who does not stock, display, offer for sale or sell carbonated soft drinks in a non-refillable container other than a recyclable container is exempt from subsection 3 (1) of Regulation 357 of the Revised Regulations of Ontario, 1990. R.R.O. 1990, Reg. 340, s. 3 (5).

(6)  Section 3 of Regulation 357 of the Revised Regulations of Ontario, 1990 does not apply to prohibit the stocking, displaying, offering for sale or selling of carbonated soft drinks in recyclable containers that were originally sold by a person classified under subsection (1) or (4). R.R.O. 1990, Reg. 340, s. 3 (6).

(7)  Any brand owner or, where there is no brand owner, brand user for a brand of carbonated soft drink may designate sales areas. R.R.O. 1990, Reg. 340, s. 3 (7).

(8)  Any sales area designated may be redesignated by the Minister. R.R.O. 1990, Reg. 340, s. 3 (8).

(9)  Any brand of carbonated soft drink designated may be redesignated by the Minister. R.R.O. 1990, Reg. 340, s. 3 (9).

**4.**(1)  In this section,

“small manufacturer” means a manufacturer of carbonated soft drink who manufactures less than 250,000 litres of carbonated soft drinks a year and has filed a notice under subsection 3 (1). R.R.O. 1990, Reg. 340, s. 4 (1).

(2)  For the purpose of subsection (1), in determining the volume of drink, all drinks of the same brand as manufactured by that manufacturer, whether actually manufactured by the manufacturer or not, shall be included in the calculation. R.R.O. 1990, Reg. 340, s. 4 (2).

(3)  Subsection (2) does not apply to drinks exported out of Ontario before their sale by retail or manufactured outside of Ontario and not imported into Ontario. R.R.O. 1990, Reg. 340, s. 4 (3).

(4)  Containers for carbonated soft drink manufactured by a small manufacturer are exempt from the application of section 3 of Regulation 357 of the Revised Regulations of Ontario, 1990 and sections 6 to 8 of this Regulation. R.R.O. 1990, Reg. 340, s. 4 (4).

(5)  Every small manufacturer filing a notice under subsection 3 (1) shall, in the notice, set out the quantity of carbonated soft drink sold by the manufacturer. R.R.O. 1990, Reg. 340, s. 4 (5).

(6)  Every small manufacturer shall file, within twenty days after each calendar quarter, a return with the Director showing the quantity of carbonated soft drink manufactured by that manufacturer, applying subsections (2) and (3), in the twelve months ending on the last day of that quarter. R.R.O. 1990, Reg. 340, s. 4 (6).

(7)  Small manufacturers whose carbonated soft drinks are sold in Ontario only by way of an import sale are exempt from subsections (5) and (6) and the containers of carbonated soft drink of those manufacturers are exempt from section 9. R.R.O. 1990, Reg. 340, s. 4 (7).

**5.**(1)  Containers of non-alcoholic beer and wine and unflavoured spring water are exempt from the application of section 3 of Regulation 357 of the Revised Regulations of Ontario, 1990 and from sections 6 to 9 of this Regulation. R.R.O. 1990, Reg. 340, s. 5 (1).

(2)  The following containers for carbonated soft drinks are exempt from the application of section 3 of Regulation 357 of the Revised Regulations of Ontario, 1990 and from sections 6 to 9 of this Regulation:

1. Containers designed to contain other containers in which carbonated soft drinks may be sold separately.

2. Containers not intended to contain carbonated soft drink under pressure.

3. Containers,

i. designed to contain a product in bulk,

ii. intended to be used in connection with carbonated soft drink dispensing machines,

iii. accepted for reuse as containers for carbonated soft drinks by distributors, processors or manufacturers of carbonated soft drinks, and

iv. not of a type customarily transferred to purchasers by retail of the carbonated soft drinks contained therein.

4. Containers intended for use in the sale by retail of carbonated soft drinks outside Ontario.

5. Refillable containers manufactured before the 1st day of April, 1978.

6. Refillable containers with a capacity between 500 and 851 millilitres that are used for a brand of carbonated soft drink that was not sold in non-refillable containers before the 29th day of November, 1985 and has not been sold in containers with a different capacity over 500 millilitres, other than a single capacity, during 1984. R.R.O. 1990, Reg. 340, s. 5 (2).

**6.**(1)  No person shall advertise or display a brand of carbonated soft drink in a non-refillable container in an off-premises advertisement unless it is also advertised or displayed in a refillable container in the same off-premises advertisement. R.R.O. 1990, Reg. 340, s. 6 (1).

(2)  To meet the requirement of subsection (1), an advertisement for a carbonated soft drink in a refillable container that is,

(a) a printed advertisement, shall occupy an area not less than the area used to advertise the drink in a non-refillable container; or

(b) not a printed advertisement, shall receive at least equal time to the time allotted to advertising the drink in a non-refillable container. R.R.O. 1990, Reg. 340, s. 6 (2).

(3)  Clause (2) (b) does not apply to a television advertisement prepared for broadcast outside of Ontario but used in Ontario if the advertisement is immediately followed by an announcement that the drink is available in refillable containers. R.R.O. 1990, Reg. 340, s. 6 (3).

(4)  Subsection (1) does not apply to an advertisement or display in conjunction with mobile industrial canteen sales or vending machine sales. R.R.O. 1990, Reg. 340, s. 6 (4).

(5)  No person shall indicate in an off-premises advertisement the price of a carbonated soft drink in a non-refillable container without indicating in the same advertisement the price of the carbonated soft drink in a refillable container. R.R.O. 1990, Reg. 340, s. 6 (5).

(6)  Every person indicating the price of a carbonated soft drink in an off-premises advertisement shall indicate the price for 100 millilitres of the drink. R.R.O. 1990, Reg. 340, s. 6 (6).

(7)  The price referred to in subsection (6) shall not include any amount on account of a deposit for a refillable container. R.R.O. 1990, Reg. 340, s. 6 (7).

(8)  Subsection (6) does not apply to prevent indicating the price in a manner other than as set out in subsection (6) in the same advertisement or indicating the amount of a deposit. R.R.O. 1990, Reg. 340, s. 6 (8).

(9)  Subsection (6) does not apply where the advertisement is for carbonated soft drinks to be sold by way of on-premises sales, vending machine sales or mobile industrial canteen sales. R.R.O. 1990, Reg. 340, s. 6 (9).

(10)  In this section,

“mobile industrial canteen sales” means sales of carbonated soft drinks in non-refillable containers other than glass bottles made,

(a) from,

(i) a commercial motor vehicle having no more than two axles, other than a bus, or

(ii) a push-cart in a building,

(b) at the same time as other ready-to-eat food is offered for sale from the vehicle or push-cart referred to in clause (a),

(c) at an industrial, commercial, construction or other similar site,

(d) to persons who are employed at a site referred to in clause (c), and

(e) intended for consumption at the site; (“vente à partir d’une cantine mobile industrielle”)

“on-premises sale” means the sale, offering for sale or display of a beverage intended for consumption on the premises on which it is sold; (“vente sur place”)

“vending machine sales” means the sale of individual containers of carbonated soft drink from a coin or token operated vending machine. (“vente dans un distributeur automatique”) R.R.O. 1990, Reg. 340, s. 6 (10).

**7.**(1)  Every brand owner and every brand user filing a notice under section 3 shall file with the auditor monthly returns indicating all carbonated soft drinks for each brand that the owner or user is the brand owner or brand user of and in what types and sizes of containers they are sold and indicating the per cent, on an annual basis, by volume, of each brand of the carbonated soft drinks of which the owner or user is the brand owner or brand user that is sold in each sales area that he, she or it has in refillable containers. R.R.O. 1990, Reg. 340, s. 7 (1).

(2)  The per cent referred to in subsection (1) shall be at least forty. R.R.O. 1990, Reg. 340, s. 7 (2).

(3)  The per cent is calculated on the basis of the twelve months immediately preceding the return. R.R.O. 1990, Reg. 340, s. 7 (3).

(4)  No monthly return shall show a monthly sales volume in refillable containers that is less than 30 per cent of the volume sold. R.R.O. 1990, Reg. 340, s. 7 (4).

(5)  The returns referred to in subsection (1) are due within thirty days after each monthly period being reported. R.R.O. 1990, Reg. 340, s. 7 (5).

(6)  No brand user or brand owner shall sell carbonated soft drink in recyclable containers to a person who resells carbonated soft drinks or who transfers carbonated soft drinks between sales areas other than as brand users of that carbonated soft drink without obtaining verifiable distribution information from that person for purposes of reporting retail distribution by sales area. R.R.O. 1990, Reg. 340, s. 7 (6).

(7)  No person who is not a brand owner or brand user shall stock, display, offer for sale or sell carbonated soft drinks in recyclable containers unless that person provides the distribution information referred to in subsection (6) to the last brand owner or brand user who owned the carbonated soft drink within twenty days after that person received the drinks. R.R.O. 1990, Reg. 340, s. 7 (7).

**8.**(1)  The requirement in section 7 that 40 per cent of the volume of carbonated soft drinks be sold in refillable containers shall vary in accordance with the Table so that when the recycling rate, as determined by the recycling advisory committee, is at a recycling target set out in Column 1 of the Table for each administrative region, the percentage of the carbonated soft drinks required to be sold in refillable containers shall be that set out in Column 2 of the Table opposite the determined recycling target and the 30 per cent requirement in section 7 shall be adjusted proportionately.

Table

|  |  |
| --- | --- |
| Column 1  Recycling Target | Column 2  Minimum Refillable Sales |
| Less than 50 per cent, 9 out of the previous 12 months | 40 per cent |
| 50 per cent, 9 out of the previous 12 months | 35 per cent |
| 60 per cent, 9 out of the previous 12 months | 30 per cent |

R.R.O. 1990, Reg. 340, s. 8 (1).

(2)  No person shall sell carbonated soft drinks in a non-refillable container that contains a material that is recycled at a recycling rate that is less than 50 per cent for each administrative region after, where the material is first used for a non-refillable container under this Regulation, the day falling eighteen months after the container is first used. R.R.O. 1990, Reg. 340, s. 8 (2).

(3)  Despite subsection (2), carbonated soft drinks in recyclable containers may be sold if the containers are subject to a deposit charge. R.R.O. 1990, Reg. 340, s. 8 (3).

(4)  Where a deposit is charged in the sale of a carbonated soft drink in a recyclable container, sections 4, 5, 6 and 7 of Regulation 357 of the Revised Regulations of Ontario, 1990 apply as though the recyclable container was a refillable container. R.R.O. 1990, Reg. 340, s. 8 (4).

**9.**(1)  Recyclable containers having clearly marked thereon “RECYCLABLE” are classified. R.R.O. 1990, Reg. 340, s. 9 (1).

(2)  Recyclable containers not classified under subsection (1) are classified. R.R.O. 1990, Reg. 340, s. 9 (2).

(3)  No person shall sell or offer for sale carbonated soft drink in a container classified under subsection (2) where the container is manufactured later than the 29th day of May, 1986. R.R.O. 1990, Reg. 340, s. 9 (3).

**10.**No person shall sell or offer for sale beer as defined in the Liquor Licence Act or a carbonated soft drink in a cylindrical metal can that has an opening device that is detachable in ordinary use. R.R.O. 1990, Reg. 340, s. 10.

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