



# CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION

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## **Guidance Statement Regarding Product Returns from Retailers to Manufacturers, Shippers, and Wholesalers**

This statement addresses when a retailer is allowed to return an alcoholic beverage product to a manufacturer, shipper, or wholesaler. Generally, returns are prohibited except under specific circumstances and must usually be approved by the Department of Consumer Protection (“Department”). During the COVID-19 pandemic, the Department relaxed its review of product returns to assist retailers and allowed a greater number of returns. While retailers appreciated greater flexibility to return alcoholic beverage products, returns are often at the expense of wholesalers. It appears that some retailers began utilizing the relaxed review as a means of inventory control and as a tool to pit wholesalers against each other for business. As the Department transitioned out of pandemic procedures, it became apparent that guidance on returns is necessary to reduce brewing conflict between the wholesaler tier and retail tier.

### I. Current Law

As noted, return of alcoholic beverages from a retailer to a manufacturer, shipper, or wholesaler are generally not allowed unless the return meets certain criteria. According to current Connecticut regulations, returns of alcoholic beverages are allowed when:

- The merchandise or container is damaged, contaminated, or tainted at the time of delivery;
- The Department approves the return for good cause shown;
- A temporary permit expires, provided the return is within thirty days of its expiration; and
- Court order requires.

*See* Conn. State Regs. §§ 30-6-A40(c) & 30-6-B7. The Department has previously issued guidance determining what constitutes “good cause” for a return: mis-pick in the warehouse, incorrect vintage, salesman error, customer error, recall from manufacturer, corkage leak, damaged labels, and product out-of-code/expired. The Department also historically has allowed all returns made within five days of delivery; the short timeframe indicates a true order or delivery error occurred, and accounts for potential increased returns when retailers place orders at the immediate end of the month, but lower prices are posted for the upcoming month.

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Federal law additionally controls the return of alcoholic beverages to manufacturers, shippers, and wholesalers. Consignment sales, namely allowing a manufacturer, shipper, or wholesaler to sell a product with the privilege of return, are strictly prohibited for alcoholic beverages. *See* 27 U.S. Code § 205 (d). Returns must therefore be carefully tailored to avoid crossing into consignment sale situations. Although manufacturers, shippers, and wholesalers are not obligated to accept the return of any product, *see* 27 § C.F.R.11.31(b); federal law does allow them to accept returns for “ordinary and usual commercial reasons,” such as defective products, error in delivery, products that cannot be lawfully sold (e.g. recall), termination of business, termination of brand franchise, change in product (e.g. formula, proof, label or container), discontinued products, and seasonal shutdown. 27 C.F.R. §§ 11.31- 11.39. However, it is not an “ordinary and usual commercial reason” to accept a return of a product because it is overstocked, slow-moving, or seasonal. *See* 27 C.F.R. §§ 11.31- 11.39.

Returns of malt beverages due to freshness and expiry require additional considerations. The Alcohol and Tobacco Tax and Trade Bureau (“TTB”) explains returns for freshness can serve as “a subterfuge for disposing of slow-moving products,” which is not an ordinary and usual commercial reason. *See* TTB Ruling 2017-2. The TTB thus issued additional guidance concerning the return of malt beverages for freshness and when such returns are for ordinary and usual commercial reasons: (1) the manufacturer has policies and procedures in place that specify when a retailer must pull a product; (2) these policies are readily verifiable and consistently followed by the manufacturer; (3) the container is marked with the freshness date; and (4) the product pulled for freshness cannot re-enter the retail market. *Id.*

## II. Current Returns in Connecticut

When requesting the Department’s approval to accept a return, the Department has consistently required the manufacturer, shipper, or wholesaler to provide the following information: the retailer, the product needing return, the date the product was delivered, and the reason for the return. The Department receives and approves such requests daily.

Beginning during COVID-19, the Department began approving virtually all returns in the immediate aftermath of the pandemic and then slowly transitioned to approving all returns except those where the delivery occurred more than a year prior. Now, however, the Department is concerned returns are being utilized as a form of inventory control for overstocked, slow-moving, and seasonal items, thereby creating consignment-type situations. A review of the submitted reports demonstrates that some retailers are requesting returns under the following questionable circumstances: for mis-picks and order entry errors more than a month after delivery; when breakage occurs months after delivery; when products turn out-of-code more than six months after delivery; and when seasonal items have been delivered nine to twelve months prior. These types of returns indicate that a retailer is not exercising adequate inventory control over their own products.

The Department has also heard from concerned wholesalers about returns. Generally, unless the return is the result of a manufacturer recall or manufacturer-required out-of-code policy, the wholesaler absorbs the cost of the return. Several wholesalers have expressed frustration that, if they refuse to accept some of the questionable returns outlined above, retailers are threatening to switch their business to the wholesaler’s competitor. Wholesalers are thus feeling undue pressure to accept questionable returns at their own expense.

### III. Revised Guidance on Returns

The Department agrees with wholesalers that not all the returns presently submitted should be allowed. On the other hand, the Department recognizes that retailers have ordinary and usual commercial reasons to request returns. However, the Department acknowledges that confusion around returns presently exists due to the relaxation of return policy during the COVID-19 pandemic. For that reason, the Department offers the following guidance for what it will be considered “good cause” for a return under Connecticut Regulations §§ 30-6-A40(c) & 30-6-B7:

- The item is damaged, contaminated, or tainted at the time of delivery and noted to the wholesaler at the time of delivery;
- Any return requested within five days of delivery;
- Customer order error within two weeks of delivery;
- Warehouse mis-pick, incorrect vintage, or salesman error within two weeks of delivery;
- Breakage, corkage leak, or damaged labels within one month of delivery;
- Product out-of-code/expired within three months of delivery;
- Manufacturer recall regardless of date of delivery;
- Termination of business or closure of seasonable business within one month of closure; and
- Other situations where the retailer can demonstrate an ordinary and usual commercial reason for the return.

The Department will begin utilizing the above guidance to review returns **effective January 1, 2024**. All return requests submitted to the Department beginning that date should comply with the above-issued guidance or the request will be denied. Note that the request must only be made to the Department within the time-frames listed above; once approved, the wholesaler may retrieve the return at any point (e.g., a return for customer order error must be made to the Department within two weeks of delivery, but the wholesaler may retrieve the item four weeks from delivery). Wholesalers need not submit returns falling in the first two categories (damage at delivery and returns within five days) to the Department for individual approval; returns for either of those two reasons are deemed approved.

The Department notes, however, that returns are always at the discretion of the wholesaler. A wholesaler may refuse a return, even if it falls within one of the categories outlined above. The Department does caution wholesalers that any internal return policies should be followed consistently for all retailers they service. Selectively allowing returns from one retailer versus another could be viewed as an improper inducement or a consignment sale.