



Advisory Opinion 21-01: Allowable Returns to Beer Wholesalers

I. Background

The following questions were posed to the Indiana Alcohol and Tobacco Commission:

1. Consistent with TTB Ruling 2017-2, whether and to what extent the ATC allows Indiana beer wholesalers to replace or provide refunds or credits to the original retail purchaser for product that is removed from the retailer's shelf because it is stale or outdated?
2. Whether and to what extent the ATC allows Indiana beer wholesalers to replace or provide refunds or credits to retailers for any of the reasons described in 27 C.F.R §§ 11.32 to 11.39?
3. Whether and to what extent the ATC allows Indiana beer wholesalers to provide replacements, returns, or credits for breakage at the retail location when not caused by the wholesaler?
4. Whether and to what extent the ATC allows Indiana beer wholesalers to provide replacements, returns or credits for items that have been "dropped" from a store's set?¹

II. Applicable Indiana Laws

Indiana Code 7.1-5-5-7 allows wholesalers to remove stale or outdated product from retailer shelves and to sell that product to other retailers at a reduced price, "if the beer or flavored malt beverage is a brand or package the beer wholesaler has discontinued; or will expire in not more than twenty (20) days for packaged beer or packaged flavored malt beverage; and ten (10) days for draft beer or draft flavored malt beverage.

The special discount "only applies to beer or flavored malt beverage that will expire and be subject to removal from retailer or dealer shelves in accordance with the primary source of supply's coding data clearing identified on the container." IC 7.1-5-5-7(e).

Additionally, IC 7.1-5-10-12(b) states, "[a] permittee may credit to a purchaser the actual price charged for a package or an original container returned by the original purchaser as a credit on a sale and refund to a purchaser the amount paid by the

¹ Requestor gives the following as background information on question 4: "Approximately twice a year, many off-premises retailers 'reset' the assortment of alcoholic beverage products they carry. This is often referred to as a 'cooler or shelf reset.' This is done because retailers want to ensure that they have the best assortment possible on their shelves. During these resets, slow moving items are removed from the 'set' by wholesalers and new or faster moving items are either added or allocated additional space at the premises."



purchaser for a container, or as a deposit on a container, if it is returned to the permittee.”

III. Applicable Federal Laws

With various exceptions, federal law prohibits the sales of alcohol be a wholesaler to a retailer with the understanding that the wholesaler will replace product or credit a retailer for past purchases. 27 C.F.R. §§ 11.11, 11.21.

27 C.F.R. §§ 11.32 to 11.39 allows refunds, credits, and returns for the following reasons:

- Defective products, 27 C.F.R. § 11.32
- Error in products delivered, 27 C.F.R. § 11.33
- Products which may no longer be lawfully sold, 27 C.F.R. § 11.34
- Termination of business, 27 C.F.R. § 11.35
- Termination of franchise, 27 C.F.R. § 11.36
- Change in product, 27 C.F.R. § 11.37
- Discontinued products, 27 C.F.R. § 11.38
- Seasonal dealers, 27 C.F.R. § 11.39

On September 29, 2017 the TTB issued Ruling 2017-2² addressing freshness dating and allowable returns of malt beverage products under the FAA Act. The ruling provided exceptions for returning or replacing stale or outdated product. Ruling 2017-2 states:

TTB will consider the return of malt beverages for cash or credit against outstanding indebtedness or exchange of such malt beverages for freshness reasons as a return by a trade buyer for ordinary or commercial reasons under 27 CFR 11.32:

- The brewer has policies and procedures in place that specify the date the retailer must pull the product;
- Such brewer’s freshness return/exchange policies and procedures are readily verifiable and consistently followed by the brewer;
- The container has identifying markings that correspond with this date; and
- The malt beverage product pulled by the trade buyer may not re-enter the retail marketplace.

IV. Analysis and Conclusion

There is no statute within Title 7.1 that specifically addresses requestor’s questions related to allowable returns to wholesalers for credit. Title 7.1 clearly allows wholesalers to remove stale or outdated product from retailers’ shelves and to sell the product to another retailer at a reduced cost. However, that statute is silent as to whether or not a

² <https://www.ttb.gov/images/pdfs/rulings/2017-2.html>



wholesaler can provide refunds, replacements or credits to the original retail purchaser for the removed product.

IC 7.1-5-5-7 is also silent as to whether or not wholesalers can replace or refund product for any of the reasons and scenarios listed in 27 C.F.R. §11.32 to 11.39.

Because there is no statute in Title 7.1 that specifically addresses the requestor's first two questions, we will defer to federal laws and guidance on whether or not beer wholesalers can replace or provide refunds or credits to the original retail purchase for product removed from a retailer's shelf because it is stale or outdated or for any of the reasons listed in 27 C.F.R §11.32 to 11.39.

As for questions three and four of the request, there are not any Indiana laws or TTB regulations expressly authorizing beer wholesalers to replace or provide credits for breakage at a retailer's premises not caused by the wholesaler or dropped items during resets (with the assumption that the "dropped" product has not been discontinued under 27 C.F.R. §11.38). For that reason, it is the position of the Indiana Alcohol and Tobacco Commission that such scenarios are not permissible under state or federal law.

DISCLAIMER: Opinions expressed in this advisory opinion are fact-sensitive and based on the 2020 Indiana Code. Every advisory opinion issued by the Indiana Alcohol and Tobacco Commission is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Commission or the public.