**Section 100.245 Consignment Sales Prohibited; Bona Fide and Non-Bona Fide Returns**

a) It is unlawful for a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor to sell, offer for sale, or contract to sell to any retailer, or for any such retailer to purchase, offer to purchase, or contract to purchase any products:

1) on consignment or conditional sale, pursuant to which the retailer has no obligation to pay for the product until sold;

2) with the privilege of return;

3) on any basis other than a bona fide sale; or

4) if any part of the sale involves, directly or indirectly, the acquisition by the retailer of other products from a manufacturer, non-resident dealer, foreign importer, importing distributor or distributor, or the agreement to acquire other products from the manufacturer, non-resident dealer, foreign importer, importing distributor or distributor.

b) Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

c) Unless there is a bona fide business reason for replacement of damaged or defective alcoholic liquor product when delivered, the product may not be replaced free of charge to a retailer. Replacement of alcoholic liquor damaged while in a trade buyer's possession constitutes the providing of something "of value" and a violation of Sections 6-4, 6-5 and 6-6 of the Act. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor is under no obligation to accept the return of products for the reasons stated in subsections (e)(1) through (8).

1) A manufacturer with the privilege of self-distribution, importing distributor or distributor may not accept the return of alcoholic liquor products as "breakage" if the product was damaged after delivery and while in the possession of the retailer. The self-distributing manufacturer, importing distributor or distributor may replace damaged cartons or packaging carrying containers of alcoholic liquor at any time.

2) Under no circumstances may alcoholic liquor products or other compensation be furnished to a retailer for product breakage that occurs as a result of handling by the retailer or its agents, employees or customers.

3) If the alcoholic liquor product has been damaged prior to or at the time of actual delivery, the product may only be exchanged for an equal quantity of identical product or returned for credit. If identical product is unavailable, exchange will be permitted for similar type product.

4) If the alcoholic liquor product has been damaged prior to or at the time of actual delivery, the product may be exchanged no later than 15 days after delivery under the following conditions:

A) If pre-delivery damage is visible at the time of delivery, the retailer must identify the damaged product immediately.

B) If the damage is latent and not visible at the time of delivery, the retailer must notify the manufacturer with self-distribution privileges, importing distributor or distributor of the pre-delivery damage within 15 days after delivery, or date of invoice, whichever is later.

d) It is unlawful to sell, offer to sell, or contract to sell alcoholic liquor products with the privilege of return for any reason, other than those considered to be "ordinary and usual commercial reasons", arising after the product has been sold. A manufacturer, non-resident dealer, foreign importer, importing distributor or distributor is under no obligation to accept a return or make an exchange for any product. A manufacturer with self-distribution privileges, non-resident dealer, foreign importer, importing distributor or distributor that elects to make an authorized exchange of product or return of product for cash or credit does so at its sole discretion and must maintain proper books and records of the transaction, in accordance with Section 100.130.

e) Ordinary and usual commercial reasons for the return of alcoholic liquor products are limited to:

1) Defective Products. Products that are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products, or credit against outstanding indebtedness.

2) Error in Products Delivered. Any discrepancy between products ordered and products delivered may be corrected, within 15 days after the date of delivery or date of invoice, whichever is later, by exchange of the products delivered for those that were ordered or by a return for credit against outstanding indebtedness.

3) Products that May No Longer be Lawfully Sold. Products that may no longer be lawfully sold may be returned for credit against outstanding indebtedness. This would include situations in which, due to a change in regulation or administrative procedure over which a retailer has no control, a particular size or brand is no longer permitted to be sold.

4) Termination of Business. Products on hand at the time a foreign importer, importing distributor, distributor or retailer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown.

5) Termination of Franchise. When a manufacturer, non-resident dealer, or foreign importer has sold products for cash or credit to one of its importing distributors or distributors and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

6) Change in Product. A retailer's inventory of a product that has been changed in formula, proof, label or container may be exchanged for equal quantities of the new version of that product.

7) Discontinued Products. When a manufacturer, non-resident dealer, foreign importer or importing distributor discontinues the production or importation of a product, a distributor or retailer, as the case may be, may return its inventory of that product for cash or credit against outstanding indebtedness.

8) Seasonal Dealers. Manufacturers, non-resident dealers, foreign importers, importing distributors or distributors may accept the return of product from retailers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or credit against outstanding indebtedness.

f) Without limitation, the following are specifically not considered ordinary and commercial reasons to justify a return of alcoholic liquor product:

1) Overstocked and Slow Moving Alcoholic Liquor Products. The return or exchange of a product because it is overstocked or slow moving does not constitute a return for "ordinary and usual commercial reasons".

2) Seasonal Alcoholic Liquor Products. The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for "ordinary and usual commercial reasons". Nothing in this subsection (f) shall prohibit the exchange of deteriorated product that includes product near or beyond the manufacturer's expiration or "code" date. It is a violation of this subsection (f) and Sections 6-4, 6-5 and 6-6 of the Act for a retailer to hold on to deteriorated product in order for it to be exchanged or returned as "out of code".

(Source: Added at 39 Ill. Reg. 10386, effective July 10, 2015)