



COLORADO

Department of Revenue

Enforcement Division – Liquor & Tobacco

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Bulletin: 20-05

Re: ONE TIME PICK-UP “90-DAY” RETURN OF MALT AND FERMENTED MALT BEVERAGES

April 23, 2020

This Industry-Wide Bulletin is in response to multiple industry requests for regulatory relief during this public health and safety pandemic to allow pick-up of out of date/coded malt liquor and fermented malt beverages products. The Division realizes the COVID-19 pandemic came at a time when many on-premises and off-premises accounts were preparing for Saint Patrick’s Day and March Madness resulting in a larger amount of malt and fermented malt beverages out of freshness standard, and then the stay at home order compounded this problem for manufacturers and wholesalers to pick up the outdated/coded product when retail premises closed. There is also an additional concern that even after the stay at home order is lifted the patrons of these retail establishments may still be very cautious about gathering in increased numbers due to the COVID-19 pandemic, leaving the retail establishments not wanting to replace all of their previous order(s) of malt or fermented malt beverage product(s). The Division has carefully considered the public health, safety, and welfare and unfair trade practices and competition as it applies to consignment sales and lawful product returns in providing this temporary relief. The Liquor Enforcement Division (LED) is issuing this Bulletin regarding out of date/coded beer product throughout the state since March 16, 2020:

The Liquor Enforcement Division will allow manufacturers and wholesalers the ability for a one time pick-up once Public Health Order 20-24 Implementing Stay at Home Requirements (PHO 20-24) expires or is lifted. The one time pick-up will provide manufacturers and wholesalers 90-days to pick up any sealed packages and untapped keg products that sold into the account, or have an out of freshness date between February 16, 2020, (thirty-days prior to March 16, 2020, when Public Health Order 20-22 Closing Bars, Restaurants, Theaters, Gymnasiums and Casinos Statewide was entered), and the expiration or rescission of PHO 20-24.

Manufacturers and wholesalers will provide the retailer with an invoice listing the product(s) and designate the invoice as “**COVID-19 pick-up**”.

Manufacturers and wholesalers are not required to accept returns and can still adhere to their distribution agreements already in place prior to this public health emergency. A retailer is prohibited from requiring a manufacturer or wholesaler to accept a return and pick-up outdated product, as allowed pursuant to this bulletin, as an express or implied condition of future purchases between the retailer and manufacturer or wholesaler.

Manufacturers and wholesalers may not require retailers to purchase specific products or quantities of products in the future as a condition to the acceptance of a return of alcoholic beverages.

This authorization does not allow manufacturers or wholesalers to provide any other things of value to retailers.

If the retailer is going to remain closed for business and the manufacturer or wholesaler has the ability to pick up out of date products, they will provide the retailer with an invoice listing product for future replacement and designate the invoice as “**COVID-19 pick-up**” for future replacement once the business reopens to the public. The retailer will need to give the manufacturer or wholesaler three-weeks advance notice so the coordinated planning, delivery schedule, and replacement of the identical type and brand can be delivered to the retail licensee. This notice may be shortened in duration as long as both parties, manufacturer and retailer or wholesaler and retailer, agree to the earlier delivery dates. If the manufacturer or wholesaler cannot replace the retailer licensee with the identical product, the manufacturer or wholesaler may instead substitute a product that is equal to or lesser in value than the original purchase price within their portfolio.

The Division reserves the right to withdraw this relief at any time. The Division will provide three-days notices of relief measures being withdrawn. If the Division determines that any licensee is found to be abusing the relief provided by this bulletin or that the licensee’s actions jeopardize public health, safety, or welfare, the Division may remove this relief as to that licensee at that time.

As a reminder Regulation 47-322(F)(3)(g) Consignment Sales and Lawful Product Returns, permits those retailers who are only open for business a portion of the year due solely to seasonal influences, or for venues that operate only during scheduled events, a wholesaler may remove and grant credit for those products that are likely to spoil or violate a manufacturer's freshness standards.

We recommend all licensees to sign up on our email subscriptions via <https://www.colorado.gov/pacific/enforcement/liquor-enforcement-division-email-subscription>.

If you have any questions about this bulletin, please contact the LED by sending an email to dor_led@state.co.us.

Best Regards,

Colorado Liquor Enforcement Division