



**State of Arizona
Department of Liquor Licenses and Control**

Industry Advisory

January 14, 2011

BREAKAGE

The Department of Liquor Licenses and Control (the Department of Liquor) has received several inquiries regarding "breakage". Please be aware that the Department of Liquor follows federal statutes (27 U.S.C. § 205) and the Code of Federal Regulations (27 CFR 11.32 through 11.39). For your convenience, the following pages include the relevant federal statutes, and a link to a continually updated website.

Yours truly,

Alan Everett,
Director

Attachment

(pages 2 - 3)

Federal statutes and code of federal regulation regarding "breakage":

Title 27: Alcohol, Tobacco and Firearms

[PART 11—CONSIGNMENT SALES](#)

[Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages](#)

[Exchanges and Returns for Ordinary and Commercial Reasons, and for Reasons Not Considered Ordinary and Usual](#)

Continuously Updated Website address:

<http://ecfr.gpoaccess.gov/cgi/t/text/text->

[idx?c=ecfr;sid=6c296663169085f462544bb86886db70;rgn=div5;view=text;node=27%3](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=6c296663169085f462544bb86886db70;rgn=div5;view=text;node=27%3)

[A1.0.1.1.9;idno=27;cc=ecfr#27:1.0.1.1.9.4.43](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=6c296663169085f462544bb86886db70;rgn=div5;view=text;node=27%3A1.0.1.1.9;idno=27;cc=ecfr#27:1.0.1.1.9.4.43)



e-CFR Data is current as of December 23, 2010

Title 27: Alcohol, Tobacco and Firearms

PART 11—CONSIGNMENT SALES

Exchanges and Returns for Ordinary and Usual Commercial Reasons

§ 11.32 Defective products.

Products which 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 may be returned for cash or credit against outstanding indebtedness.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

§ 11.33 Error in products delivered.

Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

§ 11.34 Products which may no longer be lawfully sold.

Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

§ 11.35 Termination of business.

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see §11.39).

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

§ 11.36 Termination of franchise.

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

§ 11.37 Change in product.

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to §11.46) may be exchanged for equal quantities of the new version of that product.

§ 11.38 Discontinued products.

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

§ 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers 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 for credit against outstanding indebtedness.

Exchanges and Returns for Reasons Not Considered Ordinary and Usual

§ 11.45 Overstocked and slow-moving 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."

§ 11.46 Seasonal 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."