



State of Arizona
Department of Liquor Licenses and Control

Industry Notice

January 5, 2017

Returned Spirituous Liquors

The Department of Liquor Licenses and Control has received several inquiries regarding breakage, returning spirituous liquors, and stocking services. Arizona Administrative Code (AAC) R-19-1-321 covers this practice; in addition, guidelines are set forth by federal statutes (27 U.S.C. § 205) and the Code of Federal Regulations (27 CFR 6.99 and 11.32 through 11.39). For your convenience, the following pages include the relevant state regulations and federal statutes, with a link to a continually updated website.

Arizona Administrative Code Rule 19-1-321: Practices Permitted by a Wholesaler

Section H; Accepting returned spirituous liquor products:

1. A wholesaler may allow a licensed retailer that intends to be closed for at least 30 days to exchange beer or other malt beverage products purchased from the wholesaler or to receive a credit for or refund of the amount paid for the malt beverage products;
2. With permission from the Director, a wholesaler may allow a licensed retailer that is discontinuing sale of a particular beer or other malt beverage product to exchange the product purchased from the wholesaler or to receive a credit for or refund of the amount paid for the beer or other malt beverage product; and
3. A wholesaler may exchange or accept return of other spirituous liquors as permitted under 27 U.S.C. 205(d) and 27 C.F.R. Subchapter A, Part 11.

Moreover, TTB regulations defining allowable (that is, ordinary and usual) reasons for returns under § 205(d) are found in 27 CFR part 11, Subpart D – Rules for the Return of Distilled Spirits, Wine, and Malt Beverages. Sections 11.32 through 11.39 (27 CFR 11.32 - 11.39) of this subpart specify what are considered “ordinary and usual commercial reasons” for the return of products, and outline the conditions and limitations for such returns. The ordinary and usual commercial reasons listed under §§ 11.32-11.39 include:

- Defective product;
- Shipment error;
- A change in the law preventing sale of the product;
- Termination of the buyer’s business or franchise;
- Change in product from that in inventory;
- Product in inventory is discontinued; or
- Possible spoilage of product during the off-season of a seasonal retail dealer.

While industry members have the option to accept exchanges and returns for the ordinary and usual commercial reasons listed in §§ 11.32 through 11.39, they are under no obligation to do so.

As found under TTB regulations (27 CFR 11.45 – 11.46), returns or exchanges of products that are merely overstocked, slow moving, or are seasonal in nature, such as holiday decanters, and certain distinctive bottles do not constitute returns for ordinary and usual commercial reasons.

TTB Ruling 2012-4: <https://www.ttb.gov/rulings/2012-4.pdf>

Breakage

In reference to breakage the following law covers products that can be returned due to breakage under 27 CFR §11.32.

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.

While industry members have the option to accept exchanges and returns for the ordinary and usual commercial reasons listed in §§ 11.32 through 11.39, they are under no obligation to do so.

Please note that breakage by employees of the licensed retailer, or a customer, are not allowed as an acceptable return under these regulations. Please check your deliveries prior to accepting product to ensure the product is not damaged.

Stocking

Arizona Administrative Code Rule 19-1-321: Practices Permitted by a Wholesaler

Section C; Providing Stocking Services:

A wholesaler may stock any spirituous liquor or other product that the wholesaler sells to a licensed retailer. The stocking service provided by a wholesaler:

1. Shall not alter or disturb any spirituous liquor or other product of another wholesaler;
2. Shall be performed at a point-of-sale area, including a cold box, from which a consumer may purchase spirituous liquor sold by the retailer. A wholesaler may move spirituous liquor to or from the following locations on the licensed premises:
 - a. A designated delivery entrance, and
 - b. A storage area; and
3. May include:
 - a. Rotating, cleaning, or otherwise preparing the spirituous liquor or other product for sale at a point- of-sale area; and

b. Furnishing advertising materials displayed at a point-of-sale area as authorized under R19-1-313.

Additionally, the TTB has an updated Ruling on Tied House prohibitions about stocking, rotation, and pricing services. Please refer to this ruling if you have further questions. Under 27 CFR §6.99, are listed exceptions that are allowed under federal law.

§6.99 Stocking, rotation, and pricing service.

(a) *General.* Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.

(b) *Shelf plan and shelf schematics.* The act by an industry member of providing a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

TTB Ruling 2016-1: <https://www.ttb.gov/rulings/2016-1.pdf>

Remember that retailers are not allowed to ask for items of value from a producer or wholesaler, this includes asking their employee to perform services not allowed in the above statutes. Any violations of this can result in a violation for both parties.

If you have questions, please contact Risa Williams, Trade Practice Officer, at risa.williams@azliquor.gov or 602-542-9071.