Text reproduction of TTB's official HTML publication; formatting added for readability
This reproduction is not an agency-issued PDF. The ruling text is reproduced in full; spacing and hyphen typography are normalized.

Source: https://www.ttb.gov/laws-regulations-and-public-guidance/rulings/2017-2
Accessed November 20, 2026. Source page last updated May 14, 2025.

TTB Ruling

September 29, 2017
Number: 2017-2

Revised - Freshness Dating and Allowable Returns of Malt Beverage Products under the FAA Act

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has been asked to clarify the circumstances under which trade buyers[1] may return to industry members[2], and under which industry members may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the Federal Alcohol Administration Act (FAA Act) and TTB regulations. TTB Ruling 2012-4 is superseded.

TTB RULING 2017-2

Background

Some brewers assign a coded "pull date" to their products to prevent stale or outdated products from remaining in the market. Brewers who assign pull date coding ask that wholesalers remove malt beverage products based on the pull date and replace them with fresh product. These brewers believe that relying on the wholesaler to monitor the pull date will ensure that only fresh products are in the retail market and that consumers do not purchase stale or spoiled malt beverages.

Brewers who include a "freshness date" on their products believe that such statements allow consumers to make purchasing decisions based on the freshness date. These brewers also assert that freshness dating is a quality control tool that offers some assurance that if the consumer purchases a malt beverage before that date, the product will not be deteriorated or spoiled.

On November 19, 2012, TTB issued Ruling 2012-4, which clarified the circumstances under which retailers may return to wholesalers, and under which wholesalers may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the FAA Act. Subsequently, TTB has received questions from industry members about whether the holding in TTB Ruling 2012-4 also applies to transactions between a wholesaler and a brewer. Accordingly, this Ruling modifies and supersedes TTB Ruling 2012-4 and clarifies the circumstances under which trade buyers may return to industry members, and under which industry members may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the FAA Act and the TTB regulations. TTB Ruling 2012-4 is restated below in its entirety, with only clarifying changes.

Authority

The Secretary of the Treasury is authorized to prescribe regulations regarding unfair competition and unlawful trade practices involving the sale of wine, distilled spirits, and malt beverage products under 27 U.S.C. 205. In the case of malt beverages, trade practice provisions of the FAA Act apply only if the laws of the State into which the malt beverage products are sold or shipped impose similar requirements. TTB uses rulings to clarify the provisions of the FAA Act and implementing regulations, when appropriate.

Discussion

The consignment sales provision of the FAA Act, 27 U.S.C. 205(d), makes it unlawful for an industry member (such as a producer, importer, or wholesaler of malt beverages, wines, or distilled spirits) to sell, offer for sale, or contract to sell to any trade buyer (a wholesaler or retailer), or for a trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of products from the trade buyer or the agreement to acquire other products from the trade buyer. However, section 205(d) does not prohibit transactions involving the bona fide return of products for "ordinary and usual commercial reasons arising after the merchandise has been sold".

TTB regulations promulgating allowable (that is, ordinary and usual) reasons for returns under section 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 through 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 through 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.

Sections 11.45 and 11.46 of Subpart D (27 CFR 11.45 and 11.46) indicate that 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 Determination

Under the following conditions, 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.

TTB believes this policy addresses the realities of modern marketing practices while minimizing the possibility that the industry will use freshness dating returns as a subterfuge for disposing of slow-moving products.

However, if TTB determines that, under the pretext that the trade buyer may exchange the product based upon freshness, an industry member is encouraging, requiring, or forcing a trade buyer to overstock its products (i.e., purchase more of its products than it may otherwise reasonably expect to sell), or if a trade buyer agrees to purchase more of an industry member's products than it may otherwise reasonably expect to sell, TTB may investigate the industry member and trade buyer for violating the consignment sales and/or tied house provisions. (*See* 27 U.S.C. 205(b)(7) and (d), as implemented under 27 CFR 6.71, 11.21(c), 11.31, and 11.45.) Moreover, if industry members re-introduce into the retail marketplace malt beverages that were returned or exchanged for freshness purposes, TTB may investigate whether the purported freshness purpose was a mere subterfuge to violate these same consignment sales and/or tied house provisions.

Held, subject to the conditions described above, TTB considers the exchange of an identical quantity of the same brand or the return for cash or credit against outstanding indebtedness for freshness concerns as a return by a trade buyer for ordinary or commercial reasons under 27 CFR 11.32.

Date Approved: September 29, 2017

[1] Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages. (*See* 27 CFR 11.11.)

[2] Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits. (*See* 27 CFR 11.11.)

John J. Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau