

FROM: Trade Investigations Division Southeast District Field Office 4300 W. Cypress Street, Suite 340 Tampa, FL 33607

DATE: August 28,2008

This is in response to your request concerning breakage that affects your members. You advise that you reviewed the Federal Alcohol Administration Act, particularly 27 CFR 11.31 through 11.48 and determined that the industry member can exchange defective products if they decide to do so. You provided copies of letters you received in 1989 and 1991 from the former Bureau of Alcohol, Tobacco and Firearms Area Supervisor of Compliance Operations (Roger Bowling) and a copy of your August 26, 2008 letter to the Director of the Miscellaneous Tax Division, Mississippi State Tax Commission (Charmin Tillman). These letters address the breakage issue.

You specifically ask if TTB has issued an opinion that deals with a beer distributor. who picks up breakage after delivery to a retailer where the breakage occurs after the retailer takes possession. and the beer distributor is not at fault.

TTB has had no changes to federal laws or regulations regarding breakage. The only returns/exchanges that are lawful under the Federal Alcohol Administration Act (FAA) are those described in 27 CFR 11.32- 11.39. 27 CFR Part 11 - Consignment Sales does not list product breakage as a reason for product return or exchange. Consequently, TTB does not consider product breakage as a defective product or eligible for credit/return.

If a wholesaler gives credit/exchange for broken products to a retailer, TTB considers it a prohibited inducement under 27 CFR Part 6 - Tied House. We would also consider the wholesaler's labor cost for the breakage return an unlawful inducement under Tied House.

Further, if a credit/exchange outside of 27 CFR Part 11 occurs, it makes no difference if the originator of the transaction is the wholesaler or the retailer for us to categorize the transaction as a wholesaler prohibited inducement under Tied House.

I hope that this answers your question. If there is any way my office can be of further assistance to you and your membership, please contact Investigator Cathy Wycoff at 205-683-0840 or contact me at 813-348-1610.

Breakage,Opinion