



**COLORADO**

**Department of Revenue**

Enforcement Division - Liquor & Tobacco

Physical Address:  
1881 Pierce Street  
Lakewood, CO 80214

Mailing Address:  
P.O. Box 173350  
Denver, CO 80217-3350

## **BULLETIN 15-01**

REFERENCE: REPLACEMENT OR RETURN OF OUT OF CODE MALT LIQUOR PRODUCTS

May 22, 2015

### **Colorado Liquor Enforcement Division**

The Colorado Liquor Enforcement Division (Division) has received several requests for clarification concerning the replacement or return of malt liquor or fermented malt beverages that is a seasonal product and out of code, specifically if it is out of season.

Seasonal Returns: Under Regulation 47-322(F)(4)(b), 1 C.C.R. 203-2, a malt liquor or fermented malt beverage that is seasonal cannot be returned for a credit since it is only seasonal and does not qualify as a return for ordinary and usual commercial reasons.

Replacement: Regulation 47-322(F) allows for the replacement of malt liquor and fermented malt beverages when the product is out of code (past the date of expiration). This practice is well known in Colorado and occurs on a regular basis, to include replacing out of code seasonal product (during the same season).

The specific question is whether a seasonal product can be replaced when it is out of code and out of season?

Regulation 47-322(F)(3)(f)(iv), 1 C.C.R. 203-2, states:

- f. Manufacturer's quality standards: To ensure freshness standards for malt liquor and fermented malt beverages, wholesalers may withdraw product from the retailer's inventory and replace it with new product, without additional charge, under the following conditions:
  - iv. If the wholesaler can substantiate that repeated replacement of the identical type and brand is **ineffective** (e.g. the wholesaler has replaced the same product at least twice), the wholesaler may instead substitute a product from the same brand family that is equal in value to the original purchase.

The question then becomes whether or not the replacement of a seasonal product that is out of code and out of season falls under the definition of "ineffective" in the above regulation? The Division's answer is **Yes**. The regulations concerning replacement of malt liquor and fermented malt beverage provide an avenue to replace these products if the freshness date has passed. This includes seasonal products as well, whether or not they are in season.

**Colorado Liquor Enforcement Division**  
**Bulletin 15-01**  
**page 2**

Therefore, the Division has determined the following (per Regulation 47-322(F)):

1. In order for a product to be out of code, it must have freshness date pre-printed on the actual item.
2. Regulation 47-322(F) does not provide a specific definition for “freshness.” The Division has decided that a wholesaler may not pick up and replace a product (under this regulation) unless it is within 30 days of being out of code. The Division will allow a wholesaler to sell the product nearing out of code to another retailer who is able to sell the product before the out of code date. This can only be done once per product. The Division will follow up with this decision during rulemaking in the summer of 2015.
3. A wholesaler can replace a seasonal product that is out of code and out of season with a product from the same brand family that is equal or less in value to the original purchase.
4. If the seasonal product is still available (whether or not it is in season) at the wholesaler, it must be replaced with the same product.

Questions concerning this bulletin can be sent to [dor\\_led@state.co.us](mailto:dor_led@state.co.us). or call us at 303-205-2306.