

be submitted within 45 days of receipt of the written notice of contemplated revocation and must be submitted electronically through means specified in such notice. Any representative of the foreign producer in these proceedings must be authorized by the foreign producer pursuant to a duly executed power of attorney or other document deemed acceptable to the appropriate TTB officer. If the foreign producer does not submit a response within 45 days, the appropriate TTB officer will issue an order of revocation as set forth in paragraph (d) of this section.

(d) *Revocation determination.* Following receipt of a foreign producer's response to a contemplated revocation, the appropriate TTB officer will consider the arguments raised in the response and issue an order either dismissing the contemplated revocation or imposing a revocation as authorized under paragraph (a) of this section. Any order imposing revocation will set forth the facts and analysis supporting the revocation, taking into consideration any response provided by the foreign producer under paragraph (c) of this section. The order will be provided electronically to the foreign producer or the foreign producer's representative in the matter.

(e) *Review—(1) Appeal.* A foreign producer may appeal an order of revocation issued under paragraph (d) of this section by submitting a written appeal to the appropriate TTB officer within 45 days of receipt of such order. The appeal must explain why the foreign producer believes its revocation is in error, supported by facts and analysis. The appeal must be submitted electronically through the means specified in the order of revocation. The appropriate TTB officer will issue a final decision by notifying the foreign producer within 90 days of receipt of the appeal whether the appeal is granted or denied, and the reasons for the determination. The appropriate TTB officer may extend this period of time once by an additional 90 days if the appropriate TTB officer requires additional time to consider the issues presented by an appeal and must notify the foreign producer of the extension within the initial 90-day period. If the appropriate TTB officer fails to issue a decision

granting or denying the appeal within the applicable deadline, the appeal is denied and such denial will be considered a final decision.

(2) *Judicial review.* A final decision from the appropriate TTB officer following appeal is required prior to application to the Federal courts for review of any order of revocation.

(f) *Notice to affected importers.* In any instance where an order imposing revocation of a foreign producer's eligibility for CBMA tax benefits is issued under paragraph (d) of this section, the appropriate TTB officer will notify any importer having an assignment of CBMA tax benefits from that foreign producer of the revocation. In the event that the revocation is appealed and the appeal is granted pursuant to paragraph (e) of this section, the appropriate TTB officer will notify any importer having an assignment from that foreign producer of the dismissal of such revocation.

PART 28—EXPORTATION OF ALCOHOL

Subpart A—Scope

Sec.

- 28.1 General.
- 28.2 Forms prescribed.
- 28.3 Related regulations.
- 28.4 Delegations of the Administrator.

Subpart B—Definitions

- 28.11 Meaning of terms.

Subpart C—Miscellaneous Provisions

WITHDRAWAL OR LADING FOR USE ON CERTAIN VESSELS AND AIRCRAFT

- 28.20 Alternate methods or procedures; and emergency variations from requirements.
- 28.21 General.
- 28.22 Vessels employed in the fisheries.
- 28.23 Reciprocating foreign countries.

MANUFACTURING BONDED WAREHOUSES

- 28.25 General.

CUSTOMS BONDED WAREHOUSES

- 28.26 Entry of distilled spirits into customs bonded warehouses.
- 28.27 Entry of wine into customs bonded warehouses.
- 28.28 Withdrawal of wine and distilled spirits from customs bonded warehouses.

FOREIGN-TRADE ZONES

28.30 Export status.

VOLUNTARY DESTRUCTION OF LIQUORS AFTER
RECEIPT IN A FOREIGN-TRADE ZONE

- 28.35 General.
- 28.36 Application.
- 28.37 Action by appropriate TTB officer.
- 28.38 Action by district director of customs.

EVIDENCE OF EXPORTATION AND USE

- 28.40 Evidence of exportation: distilled spirits and wine.
- 28.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.
- 28.42 Evidence of deposit.
- 28.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

RETENTION OF RECORDS

- 28.45 Retention of records.

PENALTIES OF PERJURY

- 28.48 Execution under penalties of perjury.

Subpart D—Bands and Consents of Surety

- 28.51 General.
- 28.52 Corporate surety.
- 28.52a Filing of powers of attorney.
- 28.52b Execution of powers of attorney.
- 28.53 Deposit of securities or cash (including cash equivalent) in lieu of corporate surety.
- 28.54 Consents of surety.
- 28.55 Authority to approve bonds and consents of surety.
- 28.56 Disapproval of bonds or consents of surety.
- 28.57 Appeal to Administrator.
- 28.58 Operations or unit bond—distilled spirits.
- 28.59 Bond, Form 5120.36.
- 28.60 Brewer's bond, Form 5130.22.
- 28.61 Bond, Form 5100.25.
- 28.62 Bond, Form 5100.30.
- 28.63 Bond, Form 5100.12.
- 28.64 Bond, Form 5110.67.
- 28.65 [Reserved]
- 28.66 Strengthening bonds.
- 28.67 Superseding bonds and new bonds for previously exempt persons.

TERMINATION OF BONDS

- 28.70 Termination of Bonds, Forms 5120.25 and 5100.12.
- 28.71 Termination of bonds, Forms 5100.30 and 5110.67.
- 28.72 Application of surety for relief from bond.
- 28.73 Relief of surety from bond.
- 28.74 Release of pledged securities or cash (including cash equivalents).

CHARGES AND CREDITS

- 28.80 Charges and credits on bonds.

Subpart E—Withdrawal of Distilled Spirits Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone, or Transportation to a Manufacturing Bonded Warehouse

- 28.91 General.
- 28.92 Application or notice, TTB Form 5100.11.
- 28.93 Carrier to be designated.
- 28.94 Containers.
- 28.95 Change of packages for exportation.
- 28.96 Approval of application.
- 28.97 [Reserved]
- 28.98 Inspection and regauge.
- 28.100 [Reserved]
- 28.101 Packages to be stamped.
- 28.102 Bottles to have closures affixed.
- 28.103 Export marks.
- 28.104 Certificates of origin.
- 28.105 Report of inspection and tax liability.
- 28.106 Consignment, shipment, and delivery.
- 28.107 Disposition of forms.

LOSSES

- 28.110 Losses.

RETURN OF SPIRITS TO BONDED PREMISES

- 28.115 General.
- 28.116 Notice of return of spirits withdrawn without payment of tax.
- 28.117 Responsibility for return of spirits.
- 28.118 Receipt of spirits.

Subpart F—Withdrawal of Wine Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone or to a Customs Bonded Warehouse, or Transportation to a Manufacturing Bonded Warehouse

- 28.121 General.
- 28.122 Application or notice, TTB Form 5100.11.
- 28.123 Export marks.
- 28.124 Consignment, shipment, and delivery.
- 28.125 Disposition of forms.
- 28.126 Proprietor's report.
- 28.127 Losses.

RETURN OF WINES TO BONDED WINE CELLAR

- 28.130 General.
- 28.131 Application for return of wines withdrawn without payment of tax.
- 28.132 Responsibility for return of wine.

Pt. 28

27 CFR Ch. I (4–1–23 Edition)

28.133 Disposition of forms.

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

28.141 General.
28.142 Notice, Form 1689.
28.143 Containers.
28.144 Export marks.
28.145 Consignment, shipment and delivery.
28.146 Disposition of forms.
28.147 Return of beer or beer concentrate.
28.148 Brewer's report.
28.149 Losses.
28.150 Charges and credits on bond.

Subpart H—Withdrawal of Specially Denatured Spirits, Free of Tax, for Exportation or Transfer to a Foreign-Trade Zone

28.151 General.
28.152 Notice, TTB Form 5100.11.
28.153 Withdrawal procedure.
28.154 Export marks.
28.155 Consignment, shipment, and delivery.
28.156 Losses.
28.157 Exportation by dealer in specially denatured spirits.

RETURN OF SPECIALLY DENATURED SPIRITS TO BONDED PREMISES

28.160 General.
28.161 Notice of return of specially denatured spirits.
28.162 Responsibility for return of specially denatured spirits.
28.163 Receipt of specially denatured spirits.

Subpart I—Exportation of Distilled Spirits With Benefit of Drawback

28.171 General.

FILING OF NOTICE AND REMOVAL

28.190 Notice, TTB Form 5110.30.
28.191 [Reserved]
28.192 Packages of distilled spirits to be gauged.
28.193 Export marks.
28.194–28.195 [Reserved]
28.195b Claims on spirits tax determined on and after January 1, 1980.
28.196 Consignment, shipment, and delivery.
28.197 Return of spirits withdrawn for export with benefit of drawback.
28.198 Notice of return.
28.199 Responsibility for return of spirits withdrawn for export with benefit of drawback.

Subpart J [Reserved]

Subpart K—Exportation of Wine With Benefit of Drawback

28.211 General.
28.212 Persons authorized.
28.213 [Reserved]
28.214 Notice and claim, Form 5120.24.
28.215 Certificate of tax determination, Form 2605 (5120.20).
28.216 Export marks.
28.217 Consignment, shipment, and delivery.
28.218 Disposition of Forms 1582–A (5120.24).
28.219 Return of wine withdrawn for export with benefit of drawback.
28.220 Notice of return.
28.220a Responsibility for return of wine withdrawn for export with benefit of drawback.

Subpart L—Exportation of Beer With Benefit of Drawback

28.221 General.
28.222 Claim, Form 1582–B (5130.6).
28.223 Export marks.

EXECUTION OF CLAIMS

28.225 Removals of beer by brewer.
28.226 Removals of beer by agent on behalf of brewer.
28.227 Removals of beer by persons other than the brewer or agent of the brewer.

CONSIGNMENT, SHIPMENT, AND DELIVERY

28.230 Consignment, shipment, and delivery.

Subpart M—Shipment or Delivery for Export

CONSIGNMENT

28.241 Shipment for export, or for use on vessels.
28.242 Shipment for use on aircraft.
28.243 Shipment to armed services.
28.244 Shipment to manufacturing bonded warehouse.
28.244a Shipment to a customs bonded warehouse.
28.245 Shipment to foreign-trade zone.
28.246 Delivery for shipment.
28.247 Change in consignee.

BILLS OF LADING

28.250 Bills of lading required.
28.251 Railway express receipts.
28.252 Air express or freight bills of lading.
28.253 Certificate by export carrier.

Subpart N—Proceedings at Ports of Export

28.261 Notice to district director of customs.
28.262 Delay in lading at port.
28.263 [Reserved]
28.264 Lading for exportation.
28.265 Evidence of fraud.
28.266 Release of detained merchandise.
28.267 Exportation from interior port.

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.2

- 28.268 Receipt for liquors for use on vessels or aircraft.
28.269 Certification by district director of customs.

RECEIPT BY ARMED SERVICES

- 28.275 Receipt by armed services.

LADING FOR USE ON AIRCRAFT

- 28.280 Distilled spirits and wines.
28.281 Certificate of use for distilled spirits and wines.
28.282 Beer.

RECEIPT IN MANUFACTURING BONDED WAREHOUSE

- 28.285 Receipt in manufacturing bonded warehouse.

RECEIPT IN CUSTOMS BONDED WAREHOUSE

- 28.286 Receipt in customs bonded warehouse.

RECEIPT IN FOREIGN-TRADE ZONE

- 28.290 Receipt in foreign-trade zone.

CUSTOMS GAUGE

- 28.291 Customs Form 6001.

ALTERNATE PROCEDURES

- 28.295 Exception for export of beer.

Subpart O—Losses

DISTILLED SPIRITS

- 28.301 Loss of distilled spirits in transit.
28.302 Notice to exporter.
28.303 Filing of claims.
28.304 Action on claim.

SPECIALLY DENATURED SPIRITS

- 28.310 Loss of specially denatured spirits in transit.

WINE

- 28.315 Loss of wine in transit.
28.316 Notice to exporter.
28.317 Filing of claims.
28.318 Action on claim.

BEER AND BEER CONCENTRATE

- 28.320 Loss of beer and beer concentrate in transit.
28.321 Tax assessed on loss not accounted for.

Subpart P—Action on Claims

- 28.331–28.332 [Reserved]
28.333 Claims for drawback.
28.334 Credit allowance.
28.335 Disallowance of claim.

AUTHORITY: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054,

5061, 5121, 5122, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6109, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

SOURCE: 25 FR 5734, June 23, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004

EDITORIAL NOTE: Nomenclature changes to part 28 appear by T.D. ATF-477, 67 FR 18087 through 18090, Apr. 15, 2002.

Subpart A—Scope

§ 28.1 General.

The regulations in this part relate to exportation, lading for use on vessels and aircraft, and the transfer to a foreign-trade zone or a manufacturing bonded warehouse, class 6, of distilled spirits (including specially denatured spirits), beer, and wine, and in the case of distilled spirits and wine only, transfer to a customs bonded warehouse as provided for in 26 U.S.C. 5066 and 5362, whether without payment of tax, free of tax, or with benefit of drawback, and includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

[T.D. ATF-88, 46 FR 39814, Aug. 5, 1981]

§ 28.2 Forms prescribed.

(a) The Appropriate TTB officer is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF-92, 46 FR 46921, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5963, Feb. 27, 1987; T.D. ATF-372, 61 FR 20725, May 8, 1996; T.D. ATF-477, 67 FR 18087, Apr. 15, 2002; T.D. TTB-8, 69 FR 3831, Jan. 27, 2004; T.D. TTB-91, 76 FR 5479, Feb. 1, 2011]

§ 28.3

27 CFR Ch. I (4–1–23 Edition)

§ 28.3 Related regulations.

Regulations relating to this part are listed below:

19 CFR Chapter I—Customs Regulations
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 19—Distilled Spirits Plants
27 CFR Part 21—Formulas for Denatured Alcohol and Rum
27 CFR Part 24—Wine
27 CFR Part 25—Beer
27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
27 CFR Part 30—Gauging Manual
27 CFR Part 31—Alcohol Beverage Dealers
31 CFR Part 225—Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986, as amended by T.D. ATF-299, 55 FR 25033, June 19, 1990; T.D. TTB-25, 70 FR 19883, Apr. 15, 2005; T.D. TTB-91, 76 FR 5479, Feb. 1, 2011; T.D. TTB-146, 82 FR 1135, Jan. 4, 2017]

§ 28.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.28, Delegation of the Administrator's Authorities in 27 CFR Part 28, Exportation of Alcohol. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16946, Apr. 4, 2006]

Subpart B—Definitions

§ 28.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms “includes” and

“including” do not exclude things not enumerated which are in the same general class.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.28, Delegation of the Administrator's Authorities in 27 CFR Part 28, Exportation of Alcohol.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted. This term includes premises described in the preceding sentence even if the distilled spirits plant proprietor, as authorized under the exemption set forth in § 19.151(d) of this chapter, has not provided a bond for the premises.

Bonded wine cellar. Premises established under part 24 of this chapter for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of untaxpaid wine. This term includes premises described in the preceding sentences even if the proprietor, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the premises.

Brewer. A proprietor of a brewery.

Brewery. Premises established under part 25 of this chapter for the production of beer.

Bulk container. any container having a capacity of more than 1 gallon.

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, or any form of package, bottle, can, tank, or pipeline used, or capable of being used, for holding, storing, transferring, or conveying liquors.

Customs bonded warehouse. A customs bonded warehouse, class 2, 3, or 8, established under the provisions of Customs Regulations (19 CFR chapter I).

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform the duties of an officer of the Customs Service.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, NY), the area directors of customs in the district of New York, NY, and the port director at a port not designated as a headquarters port.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits.

Distilled spirits plant. An establishment qualified under the provisions of part 19 of this chapter for the production, warehousing, or processing of spirits, or for authorized combinations of such operations.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration:

I declare under the penalties of perjury that this _____ (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

Exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things be-

longing to some foreign country and shall include shipments to any possession of the United States. The export character of any shipment shall be determined by the intention with which it is made, and it assumes an export character only when destined for use in a foreign country or in a possession of the United States. For the purposes of this part, shipments to the Commonwealth of Puerto Rico, to the territories of the Virgin Islands, American Samoa and Guam, and to the Panama Canal Zone shall also be treated as exportations.

Foreign-trade zone or zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Liquor. Distilled spirits, wines, and/or beer.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. Milliliter or milliliters may be abbreviated as "ml".

Manufacturing bonded warehouse. A manufacturing bonded warehouse, class six, established under the provisions of Customs Regulations (19 CFR, chapter I).

Package. Any cask, keg, barrel, drum, or similar portable container.

Person. An individual, a trust, an estate, a partnership, an association, a company, or a corporation.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person who operates the brewery, distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, or manufacturing bonded warehouse, as the case may be, referred to in this part.

Secretary. The Secretary of the Treasury or his delegate.

Specially denatured spirits. Alcohol or rum, as defined in part 21 of this chapter, denatured pursuant to the formulas authorized in part 21 for specially denatured alcohol or rum.

Tank truck. A tank-equipped semi-trailer, trailer, or truck.

Tax. The distilled spirits tax, the beer tax, or the applicable wine tax, as the case may be, imposed by 26 U.S.C. chapter 51.

U.S.C. The United States Code.

Wine. All kinds and types of wine having not in excess of 24 percent of alcohol by volume.

Zone operator. The person to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205))

[T.D. ATF-48, 43 FR 13552, Mar. 31, 1978, as amended by T.D. ATF-51, 43 FR 24243, June 2, 1978; 44 FR 55854, Sept. 28, 1979; T.D. ATF-62, 44 FR 71720, Dec. 11, 1979; T.D. ATF-199, 50 FR 9201, Mar. 6, 1985; T.D. ATF-224, 51 FR 7698, Mar. 5, 1986; T.D. ATF-477, 67 FR 18088, Apr. 15, 2002; T.D. TTB-8, 69 FR 3831, Jan. 27, 2004; T.D. TTB-146, 82 FR 1135, Jan. 4, 2017]

Subpart C—Miscellaneous Provisions

WITHDRAWAL OR LADING FOR USE ON CERTAIN VESSELS AND AIRCRAFT

§ 28.20 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures*—(1) *Application.* An exporter, after receiving approval from the appropriate TTB officer, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. An exporter wishing to use an alternate method or procedure may apply to the appropriate TTB officer. The exporter shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by appropriate TTB officer.* The appropriate TTB officer may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The appropriate TTB officer will not authorize an alternate method or procedure relating to the giving of a bond or the payment of tax.

(4) *Conditions of approval.* An exporter may not employ an alternate method or procedure until the appropriate TTB officer has approved its use. The exporter shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements*—(1) *Application.* When an emergency exists, an exporter may apply to the appropriate TTB officer for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The exporter shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by appropriate TTB officer.* The appropriate TTB officer may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* An exporter may not employ an emergency variation from the requirements until the appropriate TTB officer has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the exporter fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation

from requirements is automatically terminated and the exporter is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* If the appropriate TTB officer finds the revenue is jeopardized or the effective administration of this part is hindered by the approval, such TTB officer may withdraw approval for an alternate method or procedure or for an emergency variation from requirements, approved under paragraph (a) or (b) of this section.

(Act of August 16, 1954, Ch. 736, 68A Stat. 917 (26 U.S.C. 7805); sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

[T.D. ATF-199, 50 FR 9201, Mar. 6, 1985, as amended by T.D. ATF-477, 67 FR 18088, Apr. 15, 2002; T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

§ 28.21 General.

Liquors may be withdrawn without payment of tax for lading, and liquors on which the tax has been paid or determined may be laden with benefit of drawback of tax, subject to this part, for use on vessels and aircraft as follows:

(a) Vessels or aircraft operated by the United States;

(b) Vessels of the United States employed in the fisheries as provided in § 28.22 or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(c) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(d) Vessels of war of any foreign nation;

(e) Foreign vessels employed in the fisheries as provided in § 28.22 or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between

Alaska and any other part of the United States; where such trade by foreign vessels is permitted; or

(f) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found such foreign country allows, or will allow, substantially reciprocal privileges in respect to aircraft registered in the United States.

(46 Stat. 690, as amended; 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 6588, 27 FR 773, Jan. 26, 1962. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

§ 28.22 Vessels employed in the fisheries.

Liquors may be withdrawn or laden under the provisions of paragraphs (b) and (e) of § 28.21 relating to vessels employed in the fisheries, only for use on vessels of the United States documented to engage in the fisheries and foreign fishing vessels of 5 net tons or over if the district director of customs is satisfied by reason of the quantity requested in the light of (a) whether the vessel is employed in substantially continuous fishing activities, and (b) the vessel's complement, that none of the liquors to be withdrawn or laden are intended to be removed from the vessel in, or otherwise returned to, the United States. Such withdrawal or lading shall be conditioned upon compliance with the applicable provisions of this part. Lading of such liquors for use on such vessels shall be subject to approval by the district director of customs of a special written application by the withdrawer or the vessel's master on customs Form 5125 (in duplicate) and a statement by the withdrawer in his application or notice on the required TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, that the liquors are to be laden for use as supplies on a vessel employed in the fisheries. The

§ 28.23

original application on customs Form 5125, after approval, shall be stamped with the serial number of the TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, and the date thereof, and shall be returned by the district director of customs to the withdrawer or vessel's master for use as prescribed below. Approval of each such application shall be subject to the condition that the original shall be presented thereafter by the withdrawer or the vessel's master to the district director of customs within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the liquors until the district director of customs is satisfied that they have been consumed on board, or landed under customs supervision, and takes up the authorization. The approval of customs Form 5125 shall be subject to the further condition that any such liquors remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the director of the port or place of arrival shall deem necessary. When such liquors have been accounted for to the satisfaction of the district director of customs, he shall execute his certificate of lading and use on both copies of the TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, and forward the original of the form according to its instructions. In the event of a failure on the part of the withdrawer or the master of the vessel to comply with the conditions of this section or upon receipt of evidence that the liquors were not lawfully used as supplies on the vessel, the district director of customs shall advise the appropriate TTB officer of all the facts in the case for determination of any liability incurred. In the case of liquors withdrawn without payment of tax, assessment of tax liability found to have been incurred shall be made against the principal on the bond or, if no bond is required, against the person liable for the tax. In the case of taxpaid or tax determined liquors, the appropriate TTB officer shall determine as to whether to make

27 CFR Ch. I (4-1-23 Edition)

demand upon the principal and the surety on the bond or to disallow the claim as the case may be.

NOTE: As used in this section, the word "withdrawer" shall mean the person executing the application or notice, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 28.23 Reciprocating foreign countries.

The appropriate TTB officer may approve applications relating to the withdrawal or lading of liquors for use on aircraft of those foreign countries which will allow, to aircraft registered in the United States and engaged in foreign trade, privileges substantially reciprocal to the privileges allowed herein to aircraft of a foreign country. Where application is made to withdraw or lade liquors for use on aircraft of other countries, which it is claimed reciprocate similar privileges to aircraft of the United States, the applicant must first establish the right of such withdrawal or lading. In appropriate cases, the applicant should request the Secretary of Commerce to find and advise the Secretary of the Treasury that such foreign country or countries allow, or will allow, substantially reciprocal privileges to aircraft of the United States.

(46 Stat. 690, as amended; 19 U.S.C. 1309)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

MANUFACTURING BONDED WAREHOUSES

§ 28.25 General.

The proprietor of a duly constituted manufacturing bonded warehouse, established in accordance with law and the regulations in 19 CFR chapter I, may withdraw distilled spirits or wine

from any distilled spirits plant or bonded wine cellar, as the case may be, without payment of tax, for use in the manufacture of products for export, or for shipment in bond to Puerto Rico, or for use by foreign governments, organizations, and individuals, as authorized by 26 U.S.C. 5066, 5214(a)(6) and 5362; and 19 U.S.C. 1311. The proprietor of the manufacturing bonded warehouse shall furnish bond in accordance with the provisions of § 28.63 or § 28.64.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-88, 46 FR 39814, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

CUSTOMS BONDED WAREHOUSES

§ 28.26 Entry of distilled spirits into customs bonded warehouses.

(a) *Distilled spirits withdrawn without payment of tax.* (1) Bottled distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry pending withdrawal as provided in § 28.27. Withdrawals from bonded premises under the provisions of this paragraph shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(4).

(2) Distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse from which distilled spirits may be exported. These withdrawals shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(9).

(b) *Bottled distilled spirits eligible for export with benefit of drawback.* Bottled distilled spirits eligible for export with benefit of drawback may, subject to this part, be transferred to customs bonded warehouses in which imported distilled spirits are permitted to be stored, and entered pending withdrawal as provided in § 28.28, as if such spirits were for exportation.

(c) *Time deemed exported.* For the purpose of this part, distilled spirits en-

tered into a customs bonded warehouse as provided in this section shall be deemed exported at the time so entered.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1381, 1382, (26 U.S.C. 5214); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371; 26 U.S.C. 7805))

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-206, 50 FR 23956, June 7, 1985; T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

§ 28.27 Entry of wine into customs bonded warehouses.

Upon filing of the application or notice prescribed by § 28.122(a), wine may be withdrawn from a bonded wine cellar for transfer to any customs bonded warehouse for entry pending withdrawal as provided in § 28.28. Such withdrawal from bonded wine cellars is governed by the provisions of subpart F of this part. Wine so transferred to customs bonded warehouses shall be entered, stored, and accounted for in such warehouses under the appropriate provisions of 19 CFR chapter I.

(Sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

§ 28.28 Withdrawal of wine and distilled spirits from customs bonded warehouses.

Wine and bottled distilled spirits entered into customs bonded warehouses as provided in § 28.26 (a) or (b) and § 28.27 may, under the appropriate provisions of 19 CFR chapter I, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of foreign governments, organizations, and individuals who are entitled to withdraw imported wine and distilled spirits from a warehouse free of tax. Distilled spirits and wine entered into customs bonded warehouses under the provisions of §§ 28.26(a)(2) and 28.27 may be withdrawn for exportation, subject to the provisions of 19 CFR chapter I. Distilled spirits and wine transferred to customs bonded warehouses shall be entered into, stored and accounted for

§ 28.30

in, and withdrawn from, such warehouses under the appropriate provisions of 19 CFR chapter I. Wine and bottled distilled spirits, originally transferred to customs bonded warehouses for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law, may be withdrawn from such warehouses for domestic use, in which event they shall be treated as American goods exported and returned.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

FOREIGN-TRADE ZONES

§ 28.30 Export status.

(a) Distilled spirits and wines manufactured, produced, bottled in bottles packed in containers, or packaged in casks or other bulk containers in the United States, and beer brewed or produced in the United States may be transferred to a foreign-trade zone for the sole purpose of exportation, or storage pending exportation. Liquors deposited in a foreign-trade zone under this part solely for such purposes are considered to be exported. Export status is not acquired until application on Form 214 for admission of the liquors into the zone has been approved by the district director of customs under the appropriate provision of 19 CFR chapter I, and the required certification of deposit has been made on the TTB form prescribed in this part.

(b) The provisions of subpart H of this part do not apply to specially denatured spirits transferred to a foreign-trade zone for use in the manufacture of articles pursuant to the provisions of 19 U.S.C. 81c(c). Transfer of domestic specially denatured spirits to a qualified user in a foreign-trade zone is made free of tax under the provisions of part 20 of this chapter. Such transfer does not place the domestic specially denatured spirits in an export status.

(48 Stat. 999, as amended (19 U.S.C. 81c))

[T.D. ATF-274, 53 FR 25157, July 5, 1988, as amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

27 CFR Ch. I (4-1-23 Edition)

VOLUNTARY DESTRUCTION OF LIQUORS AFTER RECEIPT IN A FOREIGN-TRADE ZONE

§ 28.35 General.

Liquors may not, under the law, be transferred to a foreign-trade zone for the purpose of destruction. However, liquors transported to and deposited in a foreign-trade zone for exportation or for storage pending exportation may be destroyed under the supervision of the district director of customs, where it is shown to the satisfaction of the appropriate TTB officer that the liquors, after deposit in a zone, have become unmerchantable or unfit for export.

(48 Stat. 999, as amended; 19 U.S.C. 81c)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

§ 28.36 Application.

Liquors deposited in a foreign-trade zone from the United States which have become unmerchantable or unfit for export may be destroyed. The exporter shall prepare a letter application, in duplicate, and submit it to the appropriate TTB officer. The application shall identify the name and address of the exporter and contain the following information:

(a) The kind and quantity of the liquor, the serial numbers, if any, of the containers thereof, and identification of the zone in which the liquor is stored;

(b) The name and address of the producer bottler or packager of the liquor, and the name, registry number, if any, and location of the plant, warehouse or other establishment from which such liquors were withdrawn for transportation to and deposit in the foreign-trade zone;

(c) The date, form, and serial number of the TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be; and, in the case of liquors on which drawback of internal revenue tax has been allowed, the TTB assigned claim number;

(d) Whether the liquor has become unmerchantable or unfit for export after deposit in the zone, together with all the known facts relating thereto; and

(e) Whether the unmerchable or unfit liquor is covered by valid insurance in excess of the market value thereof, exclusive of tax. If the liquor is insured, the application shall show its market value, the amount and date of each and every policy of insurance, the name and location of the company by which each and every policy was issued, the name and address of the bona fide owner of the liquor, and to the best of the affiant's knowledge, whether any other person or party is indemnified against the loss of the liquor by reason of its spoilage or destruction.

Such application shall be signed by the exporter or his authorized agent and be executed under the penalties of perjury. The appropriate TTB officer may require any further evidence as is deemed necessary. The operator of the foreign-trade zone shall countersign the application or otherwise indicate thereon his knowledge of and concurrence in the application to destroy the liquor. The exporter shall file the application with the district director of customs in whose district the foreign-trade zone is located; at the same time the exporter shall likewise file Zone Form E in accordance with Customs Regulations (19 CFR chapter I). On receipt of the application the district director of customs shall determine the completeness thereof and shall report any facts relating to the condition of the liquor of which he may have knowledge. The original application shall be forwarded to the appropriate TTB officer and the district director of customs shall retain the copy for his files.

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.36, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 28.37 Action by appropriate TTB officer.

The appropriate TTB officer shall carefully examine the application to see that all the required information has been furnished and shall cause an investigation to be made or require any additional evidence, including samples,

to be submitted if necessary. If the appropriate TTB officer finds that the liquors were transported to and deposited in a foreign-trade zone in good faith for the purpose of exportation or storage pending exportation, and that the liquors, after deposit in the zone, have become unmerchable or unfit for export, he may approve the application and authorize the destruction of the liquor described therein under the supervision of the district director of customs. On approval or disapproval of the application, the appropriate TTB officer shall advise the district director of customs of his action.

[T.D. ATF-51,43 FR 24244, June 2, 1978, as amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

§ 28.38 Action by district director of customs.

On receipt of the appropriate TTB officer's authorization for destruction of the liquor, or his disapproval of the application for destruction, the district director of customs shall act upon the exporter's application on Zone Form E and dispose of it in accordance with the applicable provisions of Customs Regulations (19 CFR chapter I). Where the appropriate TTB officer has authorized the destruction of the liquor, such destruction shall be accomplished under customs supervision.

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

EVIDENCE OF EXPORTATION AND USE

§ 28.40 Evidence of exportation: distilled spirits and wine.

The exportation of any shipment of distilled spirits or wine may be evidenced by:

- (a) A copy of the export bill of lading (§ 28.250); or
- (b) A copy of the railway express receipt (§ 28.251); or
- (c) A copy of the air express receipt (§ 28.252); or
- (d) A copy of the through bill of lading where exportation is to a contiguous foreign country (§ 28.250); or

§ 28.41

(e) A certificate by the export carrier, as provided for in § 28.253.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-224, 51 FR 7698, Mar. 5, 1986; T.D. TTB-8, 69 FR 3831, Jan. 27, 2004]

§ 28.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.

The lading of distilled spirits or wine for use on vessels or aircraft may be evidenced by submission of a receipt procured under the provisions of § 28.268.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.42 Evidence of deposit.

The deposit of distilled spirits in a customs bonded warehouse or distilled spirits and wines in a foreign-trade zone with benefit of drawback may be evidenced by a copy of the transportation bill of lading obtained under the provisions of § 28.250.

(48 Stat. 999, as amended, 84 Stat. 1965; 19 U.S.C. 81c, 26 U.S.C. 5066)

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

(a) *Exportation.* The exportation of beer to a foreign country or possession will be fully evidenced by any of the following documents:

(1) Customs certification of lading and clearance on Form 1582-B (5130.6) or Form 1689 (5130.12) under subpart M of this part; or

(2) For shipment to the armed forces, certification by a military officer on Form 1582-B (5130.6) or Form 1689 (5130.12) under § 28.275; or

(3) A bill of lading (§ 28.250), a railway express receipt (§ 28.251), or an air express or air freight bill of lading (§ 28.252), when such bills of lading or

27 CFR Ch. I (4-1-23 Edition)

receipt show exportation to a foreign country or possession; or

(4) A certificate issued by an export carrier under § 28.253 attesting to exportation to a foreign country or possession; or

(5) A landing certificate issued by an official of the country or possession where the beer has actually landed; or

(6) Any other evidence of exportation approved by the appropriate TTB officer.

(b) *Use as supplies on vessels and aircraft.* The lading of beer for use on vessels or aircraft will be fully evidenced by:

(1) For fishing vessels only, customs certification of lading and use on Form 1582-B (5130.6) or Form 1689 (5130.12) under § 28.23; or

(2) Customs certification of lading on Form 1582-B (5130.6) or Form 1689 (5130.12) under §§ 28.264 or 28.282; or

(3) Any other evidence of exportation approved by the appropriate TTB officer.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5055))

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

RETENTION OF RECORDS

§ 28.45 Retention of records.

File copies of forms required by this part to be retained by any proprietor or claimant, and all records, documents, or copies of records and documents supporting such forms, shall be preserved by such proprietor or claimant for a period of not less than two years, and during such period shall be

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.52

available, during business hours, for inspection and the taking of abstracts therefrom by appropriate TTB officers.

(Approved by the Office of Management and Budget under control number 1512-0385)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1381, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5114, 5367, 5415, 5555); sec. 807, Pub. L. 96-39, 93 Stat. 283 (26 U.S.C. 5207))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979; T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

PENALTIES OF PERJURY

§ 28.48 Execution under penalties of perjury.

When a return, form, or other document called for under this part is required by this part or in the instructions on or with the return, form, or other document to be executed under penalties of perjury, it shall be so executed, as defined in subpart B of this part, and shall be signed by the proprietor, or other duly authorized person.

(68A Stat. 749 (26 U.S.C. 6065))

Subpart D—Bonds and Consents of Surety

§ 28.51 General.

(a) *Bond requirements.* Every person required by this part to file a bond or consent of surety must prepare and execute it on the prescribed form and file it in accordance with its instructions and the procedures of this part. The procedures in parts 19, 24 or 25 of this chapter govern bonds covering distilled spirits plants, bonded wine cellars and breweries, respectively.

(b) *Exemption from bond requirements.* If a taxpayer described in this paragraph exports distilled spirits, wine, or beer for which a bond is otherwise required under this part, the taxpayer is not required to file a bond for the exportation if all the following are true:

(1) In the case of exportation of distilled spirits or wine, the distilled spirits or wine is for nonindustrial use; and

(2) The taxpayer:

(i) Reasonably expects to be liable for not more than \$50,000 in taxes de-

scribed in 26 U.S.C. 5061(d)(4) during the current calendar year;

(ii) Was liable for not more than \$50,000 in such taxes in the preceding calendar year; and

(iii) Pays such taxes on a deferred basis using a semimonthly, quarterly, or annual return period as described in 26 U.S.C. 5061(d).

(c) *Definitions.* For purposes of paragraph (b) of this section, the following terms have the meanings indicated:

Nonindustrial use. The nonindustrial uses of distilled spirits and wine are defined in subpart D of part 1 of this chapter.

Reasonably expects. When used with reference to a taxpayer, *reasonably expects* means that there is no existing or anticipated circumstances known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit.

Taxpayer. A *taxpayer* is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number (EIN) as defined in 26 CFR 301.7701-12.

[T.D. ATF-477, 67 FR 18089, Apr. 15, 2002, as amended by T.D. TTB-146, 82 FR 1135, Jan. 4, 2017]

§ 28.52 Corporate surety.

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary as set forth in the current revision of Treasury Department Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies).

(b) Department of the Treasury Circular 570 is published in the FEDERAL REGISTER annually on the first business day in July, and supplemental changes are published periodically thereafter. The most recent circular and any supplemental changes to it may be viewed on the Bureau of the Fiscal Service Web site at <https://>

§ 28.52a

www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (6 U.S.C. 6, 7))

[T.D. ATF-92, 46 FR 46921, Sept. 23, 1981, as amended by T.D. TTB-146, 82 FR 1135, Jan. 4, 2017]

§ 28.52a Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to so act on behalf of the surety. The appropriate TTB officer who is authorized to approve the bond, may, when he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or consent.

(61 Stat. 648; 6 U.S.C. 6, 7)

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.52b Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it shall be accompanied by certification of its validity.

(61 Stat. 648; 6 U.S.C. 6, 7)

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 28.53 Deposit of securities or cash (including cash equivalent) in lieu of corporate surety.

(a) *Deposit of securities.* In lieu of corporate surety, the principal may pledge and deposit, as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR part 225.

(b) *Deposit of cash (including cash equivalent).* In lieu of corporate surety, a person may file a bond that guarantees payment of the liability by submitting cash or its equivalent (including a money order, cashier's check, or personal check). Cash or its equivalent must be no less than the penal sums of

27 CFR Ch. I (4-1-23 Edition)

the required bonds. Cash equivalents must be payable to the Alcohol and Tobacco Tax and Trade Bureau.

(61 Stat. 650; 6 U.S.C. 15)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004, and as amended by T.D. TTB-146, 82 FR 1135, Jan. 4, 2017]

§ 28.54 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on TTB Form 5000.18 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004, and as amended by T.D. TTB-146, 82 FR 1135, Jan. 4, 2017]

§ 28.55 Authority to approve bonds and consents of surety.

Appropriate TTB officers are authorized to approve all bonds and consents of surety required by this part.

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.56 Disapproval of bonds or consents of surety.

The appropriate TTB officer may disapprove any bond prescribed by this part, or any consent of surety submitted in respect thereto, if the principal or any person owning, controlling, or actively participating in the management of the business of the principal shall have been previously convicted, in a court of competent jurisdiction, of:

(a) Any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of spirits, wines, or beer, or if such offense shall have been compromised with the person on payment of penalties or otherwise; or

(b) Any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(72 Stat. 1336, 1352, 1353, 1394; 26 U.S.C. 5062, 5175, 5177, 5551)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.57 Appeal to Administrator.

Where a bond or consent of surety is disapproved by the appropriate TTB officer, the person giving the bond may appeal from such disapproval to the Administrator, who will hear such appeal. The decision of the Administrator shall be final.

(72 Stat. 1394; 26 U.S.C. 5551)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.58 Operations or unit bond—distilled spirits.

(a) *Spirits*. Where, as authorized in § 28.91, spirits are withdrawn without payment of tax, from the bonded premises of a distilled spirits plant on notice of the proprietor thereof, the approved operations or unit bond must cover such withdrawals if the proprietor is required to give a bond under part 19 of this chapter.

(b) *Wine*. Where the provisions of part 19 of this chapter require an operations or unit bond to be given and approved to cover the operations of a distilled spirits plant and an adjacent bonded wine cellar, such bond will cover the withdrawal of wine without payment of tax, as authorized in § 28.121, from such bonded wine cellar on application for such withdrawal by the proprietor.

(c) *Specially denatured spirits*. Where specially denatured spirits are withdrawn free of tax, as authorized in § 28.151, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the proprietor shall file a consent of surety extending the terms of the operations or unit bond, which consent shall be in the following form:

The obligors agree to extend the terms of said bond to cover all liability that may be incurred on all specially denatured spirits withdrawn by the principal for exportation or transfer to a foreign-trade zone, for which satisfactory evidence of exportation, or of deposit in a foreign-trade zone, as required by law and regulations, is not submitted to the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1362, as amended (26 U.S.C. 5175, 5214); Sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066); Sec. 805, Pub. L. 96-39, 93 Stat. 276 (26 U.S.C. 5173))

[T.D. ATF-62, 44 FR 71721, Dec. 11, 1979, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1135, Jan. 4, 2017]

§ 28.59 Bond, Form 5120.36.

Where the operations of a bonded wine cellar are covered by bond, Form 5120.36, as provided in part 24 of this chapter, such bond shall cover the withdrawal of wine without payment of tax, as authorized in § 28.121, from such bonded wine cellar by the proprietor of the bonded wine cellar.

(72 Stat. 1379, 1380; 26 U.S.C. 5354, 5362, as amended by T.D. ATF-299, 55 FR 25033, June 19, 1990; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.60 Brewer's bond, Form 5130.22.

When beer or beer concentrate is removed from a brewery without payment of tax for any of the purposes authorized in § 28.141, the brewer's bond, Form 5130.22, will cover the removals if a bond is required to be furnished under the provisions of part 25 of this chapter.

(49 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1388, as amended (26 U.S.C. 5053, 5401))

[T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.61 Bond, Form 5100.25

If a specific lot of distilled spirits or wine is to be withdrawn without payment of tax, as authorized in § 28.91(a)(1), (2), (3), (5), or § 28.121(a), (b), (c), or (d), by a person other than the proprietor of the bonded premises, a specific bond on TTB Form 5100.25 shall be filed by the exporter, as provided in § 28.51. The penal sum of the bond shall not be less than the tax prescribed by law on the quantity of spirits or wine to be withdrawn. However, the maximum penal sum of the bond shall not

§ 28.62

exceed \$200,000 but in no case shall the penal sum be less than \$1,000.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1362, as amended, 1380, as amended, 1381, 1382 (26 U.S.C. 5175, 5214, 5362) sec. 3. Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.62 Bond, Form 5100.30.

(a) *Requirement for bond.* If a person other than the proprietor of the bonded premises withdraws distilled spirits or wine without payment of tax, as authorized by § 28.91(a)(1), (2), (3), (5), or § 28.121(a), (b), (c), or (d), the exporter shall file a continuing bond, TTB Form 5100.30, as provided in § 28.51.

(b) *Penal sum of bond.* The penal sum of the bond shall be sufficient to cover the tax on the maximum quantity of distilled spirits and wine that may remain unaccounted for at any one time. However, the maximum penal sum of the bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000. Distilled spirits and wine withdrawn for exportation, use on vessels or aircraft, transfer to a customs bonded warehouse, or transfer to and deposit in a foreign-trade zone, shall remain unaccounted for until the evidence of exportation, use, deposit, transfer, or loss in transit has been filed with the appropriate TTB officer.

(c) *Apportioning bonds.* If the bond, Form 5100.30, is in less than the maximum penal sum, the principal shall apportion the bond, in accordance with the requirements on the bond form. The exporter may reapportion the bond coverage, if changing conditions make this necessary, by filing a consent of surety, TTB Form 5000.18, in accordance with its instructions.

(d) *Withdrawal of wine for transfer to a customs bonded warehouse; consent of surety.* An exporter with a bond on Form 5100.30 executed before April 1, 1981, shall obtain a consent of surety on Form 5000.18 before withdrawing wine without payment of tax from a bonded wine cellar for transfer to a customs bonded warehouse. The consent shall be executed in accordance with § 28.54 and filed in accordance with instructions on the form. Exporters with

27 CFR Ch. I (4-1-23 Edition)

bonds executed on or after April 1, 1981, do not need this consent of surety, because such bonds automatically apply to withdrawals for transfer to customs bonded warehouses.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1362, as amended, 1380, as amended, 1381, 1382 (26 U.S.C. 5175, 5214, 5362) sec. 3. Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1991, as amended by T.D. ATF-413, 64 FR 46845, Aug. 27, 1999; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.63 Bond, Form 5100.12.

Where the proprietor of a manufacturing bonded warehouse desires to withdraw a specific lot of distilled spirits or wines without payment of tax, as authorized in § 28.25, he shall file, as provided in § 28.51, a specific bond, on Form 5100.12, to cover the transportation of the distilled spirits or wines from the bonded premises from which withdrawn to the manufacturing bonded warehouse. The penal sum of such bond shall be not less than the tax prescribed by law on the quantity of distilled spirits or wines to be withdrawn: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.64 Bond, Form 5110.67.

(a) *General.* Where the proprietor of a manufacturing bonded warehouse desires to withdraw distilled spirits and wines from time to time without payment of tax, as authorized in § 28.25, he shall file, as provided in § 28.51, a continuing bond on Form 5110.67. The bond shall be executed in a penal sum sufficient to cover the tax at the rates prescribed by law on the maximum quantity of distilled spirits and wines which may remain unaccounted for at any one time: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000, but in no case shall the

penal sum be less than \$1,000. Distilled spirits and wines withdrawn for transfer to a manufacturing bonded warehouse shall remain unaccounted for until the evidence of deposit in such warehouse, as required by this part, has been filed. The proprietor shall, at the time of executing Form 5110.67, designate the premises from which the withdrawals are to be made, provided that, as to any one bond on Form 5110.67, such premises shall be located in the same internal revenue region.

(b) *Apportioning bonds.* If the bond, Form 5110.67 is in less than the maximum penal sum, the principal shall apportion the bond, in accordance with the requirements on the bond form. The principal may reapportion the bond coverage, if changing conditions make this necessary, by filing a consent of surety, Form 5000.18, in accordance with its instructions.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.65 [Reserved]

§ 28.66 Strengthening bonds.

In all cases where the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of any bond to less than its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

(72 Stat. 1352, 1394; 26 U.S.C. 5175, 5551)

§ 28.67 Superseding bonds and new bonds for previously exempt persons.

(a) *Superseding bonds.* Superseding bonds will be required in case of insolvency or removal of any surety, and may, at the discretion of the appro-

priate TTB officer, be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, must execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 28.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business or operations to which such bond relates, he must file a valid superseding bond to be effective on or before the date specified in the surety's notice. If the principal does not file a superseding bond when required, he must discontinue the operations intended to be covered by such bond forthwith. Superseding bonds must show the date of execution and the effective date.

(b) *New bonds for previously exempt persons.* If a person has not furnished a bond as provided in this subpart because the person was exempt from bond requirements under § 28.51(b), the person must furnish the required bond for any exportation that occurs during any period to which any of the exemption criteria in § 28.51(b) do not apply to the person.

(72 Stat. 1336, 1362; 26 U.S.C. 5062, 5214)

[T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

TERMINATION OF BONDS

§ 28.70 Termination of Bonds, Forms 5120.25 and 5100.12.

Bonds, Forms 5120.25 and 5100.12, covering a specific lot of distilled spirits or wines withdrawn without payment of tax under this part, will be canceled by the appropriate TTB officer on receipt by him of TTB Form 5100.11 properly executed by the appropriate customs official or armed services officer, as required by this part, evidencing that the distilled spirits or wines have been duly exported, laden for use on vessels or aircraft, deposited in a foreign-trade zone, or deposited in a manufacturing bonded warehouse, as the case may be, or of evidence satisfactory to him that the distilled spirits or

§ 28.71

wines have been otherwise lawfully disposed of or accounted for: *Provided*, That all liability under the bond to be canceled has been terminated.

(72 Stat. 1352; 26 U.S.C. 5175)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.71 Termination of bonds, Forms 5100.30 and 5110.67.

(a) *General*. Continuing bonds, Forms 5100.30 and 5110.67, covering distilled spirits and/or wines withdrawn from time to time without payment of tax under this part, may be terminated as to liability for future withdrawals under the following circumstances:

(1) Pursuant to application of surety as provided in § 28.72;

(2) On approval of a superseding bond as provided in § 28.67; or

(3) On written notification to the appropriate TTB officer by the principal of the discontinuance of withdrawals under the bond (including discontinuance of withdrawals under the bond because the proprietor has become exempt from bond requirements under § 28.51(b)).

(b) *Cancellation*. When no further withdrawals are to be made under a bond on Form 5100.30 or 5110.67 under the circumstances specified in paragraph (a), the bond will be canceled by the appropriate TTB officer in the manner and subject to the conditions provided in § 28.70.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

[T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.72 Application of surety for relief from bond.

A surety on any bond given on Forms 5100.30 or 5110.67, may at any time in writing notify the principal and the appropriate TTB officer that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 90 days after the date the notice is received by the appropriate TTB officer. The surety shall also file with the appropriate TTB officer an acknowledgment or other proof

27 CFR Ch. I (4-1-23 Edition)

of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved from liability to the extent set forth in § 28.73(b).

(68A Stat. 749, as amended (26 U.S.C. 6065); Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1352, as amended (26 U.S.C. 5062, 5175))

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.73 Relief of surety from bond.

(a) *Bonds, Forms 5120.25 and 5100.12*. The surety on a bond given on Form 5120.25 or Form 5100.12 will be relieved from his liability under the bond when the bond has been canceled as provided for in § 28.70.

(b) *Bonds, Forms 5100.30 and 5110.67*. Where the surety on a bond given on Form 5100.30 or Form 5110.67 has filed application for relief from liability, as provided in § 28.72, the surety will be relieved from liability for withdrawals made wholly subsequent to the date specified in the notice, or on the effective date of a superseding bond, if one is given. Notwithstanding such relief, the liability of the surety will continue until the spirits and/or wines withdrawn without payment of tax under the bond have been properly accounted for.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

[T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.74 Release of pledged securities or cash (including cash equivalents).

Securities of the United States, pledged and deposited as provided in § 28.53, will be released only in accordance with the provisions of 31 CFR part 225. Securities and cash (including cash equivalents) will not be released by the appropriate TTB officer until liability under the bond for which they were pledged has been terminated. When the appropriate TTB officer is satisfied that they may be released, he will fix the date or dates on which a part or all

of such securities and cash (including cash equivalents) may be released. At any time prior to the release, the appropriate TTB officer may extend the date of release for such additional length of time as he deems necessary.

(61 Stat. 650; 6 U.S.C. 15)

[T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

CHARGES AND CREDITS

§ 28.80 Charges and credits on bonds.

The withdrawal of liquors without payment of tax or of specially denatured spirits free of tax, under the provisions of this part shall constitute a charge against the bond under which the withdrawal is made of (a) the tax on the liquors withdrawn or (b) of an amount equal to the tax on specially denatured spirits withdrawn that will be due in the event of failure to account for the specially denatured spirits as provided in this part. The tax on liquors so withdrawn, or an amount equal to the tax on specially denatured spirits so withdrawn that would be due as set forth above, shall, on the required accounting for such liquors or specially denatured spirits, constitute a credit to the bond of such tax or amount equal to the tax, as the case may be.

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004, and 25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004, and as amended by T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

Subpart E—Withdrawal of Distilled Spirits Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone, or Transportation to a Manufacturing Bonded Warehouse

§ 28.91 General.

(a) Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to this part, be withdrawn from the bonded premises of a distilled spirits plant without payment of tax for:

(1) Exportation;

(2) Use on the vessels or aircraft described in § 28.21;

(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation;

(4) Transportation to and deposit in a manufacturing bonded warehouse; or

(5) Transfer to and deposit in a customs bonded warehouse as provided for in § 28.26.

(b) Except as provided in § 28.51(b), all withdrawals shall be made under the applicable bond prescribed in subpart D of this part.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-51, 43 FR 24244, June 2, 1978, as amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.92 Application or notice, TTB Form 5100.11.

(a) *Export, use on vessels and aircraft, and transfer to a foreign-trade zone or a customs bonded warehouse.* Application for or notice of the withdrawal of distilled spirits without payment of tax for exportation from the United States, or for use on vessels and aircraft, or for transfer to a customs bonded warehouse or a foreign-trade zone, shall be made by the exporter on TTB Form 5100.11. If the exporter is not the proprietor of the bonded premises of the distilled spirits plant from which the spirits are to be withdrawn, the exporter shall prepare TTB Form 5100.11 as an application, in accordance with the instructions on the form, and shall forward all copies of the form in accordance with instructions for the form. If the exporter is the proprietor of the bonded premises of the distilled spirits plant from which the spirits are withdrawn, the exporter shall prepare TTB Form 5100.11 as a notice in accordance with the instructions on the form.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of distilled spirits without payment of tax for transportation to and deposit in a manufacturing bonded warehouse shall be made by the proprietor of such

§ 28.93

warehouse on TTB Form 5100.11, in accordance with the instructions on the form.

(Approved by the Office of Management and Budget under control number 152-0190)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); Sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-198, 50 FR 8559, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.93 Carrier to be designated.

The name of the carrier or carriers to be used in transporting the distilled spirits from the bonded premises of the distilled spirits plant to the port of export, or to the customs bonded warehouse, or to the manufacturing bonded warehouse, or to the foreign-trade zone, as the case may be, shall be shown in the application. If the spirits are shipped on a through bill of lading and all carriers handling the spirits while in transit are not known, the name of the carrier to whom the distilled spirits are to be delivered at the shipping premises shall be shown.

(72 Stat. 1362, 84 Stat. 1965; 26 U.S.C. 5214, 5066)

[T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979]

§ 28.94 Containers.

Distilled spirits authorized to be withdrawn without payment of tax from the bonded premises of a distilled spirits plant under the provisions of this subpart may be withdrawn from such establishment in such containers as may be authorized in part 19 of this chapter. Except as otherwise provided in this part, the gauging, packing, bottling, casing, marking, closing and reporting of distilled spirits prior to withdrawal shall be in accordance with the provisions of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

[T.D. ATF-62, 44 FR 71722, Dec. 11, 1979, as amended by T.D. ATF-206, 50 FR 23956, June 7, 1985]

27 CFR Ch. I (4-1-23 Edition)

§ 28.95 Change of packages for exportation.

Whenever the exporter desires to transfer distilled spirits from packages filled on the bonded premises of a distilled spirits plant to such other suitable packages as may be desired for exportation, such change of packages shall be made under the procedures of part 19 of this chapter, prior to the preparation of TTB Form 5100.11 covering the removal of the distilled spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

[T.D. ATF-62, 44 FR 71722, Dec. 11, 1979, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.96 Approval of application.

When filed as an application, and TTB Form 5100.11 has been properly executed, and the bond (if required) has been filed in a sufficient amount, the appropriate TTB officer shall approve the application on all copies of the form and send them to the proprietor of the bonded premises from which the spirits will be withdrawn.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF-62, 44 FR 71722, Dec. 11, 1979, as amended by T.D. ATF-198, 50 FR 8559, Mar. 1, 1985; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.97 [Reserved]

§ 28.98 Inspection and regauge.

The proprietor shall inspect all containers to be withdrawn pursuant to TTB Form 5100.11 and shall regauge all packages, except those which are to be withdrawn on the filling or production gauge as authorized in 27 CFR part 19. If the withdrawal is to be made subject to regauge, the proprietor shall prepare a package gauge record as provided in 27 CFR part 19, enter the total proof gallons regauged on TTB Form 5100.11, and attach a copy of the package gauge record to each copy of TTB Form 5100.11. If a proprietor wishes to reduce the proof of spirits contained in packages to be withdrawn pursuant to TTB Form 5100.11, he shall make such proof

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.106

reduction incident to regauge of the packages.

(Approved by the Office of Management and Budget under control number 1412-0190 and 1512-0250)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF-198, 50 FR 8559, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.100 [Reserved]

§ 28.101 Packages to be stamped.

Each package and authorized bulk conveyance of spirits (including tank cars and tank trucks but not pipelines) withdrawn without payment of tax under the provisions of this subpart shall be marked with the word “EXPORT” in accordance with the provisions of 27 CFR part 19 prior to its removal from the bonded premises.

(Approved by the Office of Management and Budget under control number 1512-0189)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985, as amended by T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 28.102 Bottles to have closures affixed.

Every bottle containing distilled spirits to be withdrawn under the provisions of this subpart shall have a closure or other device affixed in accordance with the provisions of part 19 of this chapter.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 28.103 Export marks.

(a) *General.* In addition to the marks and brands required to be placed on packages and cases of distilled spirits at the time they are filled under the provisions of part 19 of this chapter, the proprietor shall mark the word “Export” on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart.

(b) *Exception.* When containers are being removed to a contiguous manu-

facturing bonded warehouse, the proprietor need not place the word “Export” on the containers if the appropriate TTB officer finds the omission will not jeopardize the revenue.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-82, 46 FR 21158, Apr. 9, 1981, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.104 Certificates of origin.

The entry of distilled spirits at ports in certain foreign countries is permitted only upon the filing by the importer of an official certificate showing the origin and age of such spirits. An appropriate TTB officer may, on request of the applicant, furnish a certificate showing the origin and age of the spirits described on TTB Forms 5100.11 or 5110.30. Such officer may require supporting documentation to be provided by the applicant. Certificates of origin and age shall be furnished on Form 2177 (5110.58). Form 2177 (5110.58) may also be issued for distilled spirits removed to a foreign-trade zone, in which case the number and location of the foreign-trade zone shall be shown on the form in lieu of the name of the foreign country.

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.105 Report of inspection and tax liability.

When the spirits are ready for shipment, the proprietor shall execute his report of inspection and tax liability on all copies of TTB Form 5100.11.

(72 Stat. 1362; 26 U.S.C. 5214)

[T.D. ATF-46, 42 FR 44773, Sept. 6, 1977, as amended by T.D. ATF-62, 44 FR 71723, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.106 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits withdrawn

§ 28.107

without payment of tax under this subpart shall be made under the provisions of subpart M.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 28.107 Disposition of forms.

TTB Form 5100.11 and any accompanying package gauge record shall be distributed by the proprietor in accordance with the instruction on TTB Form 5100.11.

(Approved by the Office of Management and Budget under control number 1512-0250)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

LOSSES

§ 28.110 Losses.

Where there has been a loss of distilled spirits while in transit from the bonded premises of a distilled spirits plant to a port of export, a customs bonded warehouse, a manufacturing bonded warehouse, a vessel or aircraft, or a foreign-trade zone, the provisions of subpart O of this part, with respect to losses of spirits after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(72 Stat. 1323, as amended, 84 Stat. 1965; 26 U.S.C. 5008, 5066)

[T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

RETURN OF SPIRITS TO BONDED PREMISES

§ 28.115 General.

Spirits which have been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for deposit in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or for use on vessels and aircraft may, subject to the requirements of § 28.116, be returned:

- (a) To the bonded premises of a distilled spirits plant for redistillation; or
- (b) To the bonded premises from which withdrawn, pending subsequent removal for lawful purposes. However, such spirits may only be returned be-

27 CFR Ch. I (4-1-23 Edition)

fore they are exported, deposited in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or laden as supplies upon or used on vessels or aircraft, as the case may be.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365 as amended (26 U.S.C. 5214, 5223); Sec. 3, Pub. L. 91-659, 84 Stat. 1365, as amended (26 U.S.C. 5066))

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3832, Jan. 27, 2004]

§ 28.116 Notice of return of spirits withdrawn without payment of tax.

If a proprietor of a distilled spirits plant desires to return spirits to his plant as provided in § 28.115, he shall file a notice with the appropriate TTB officer. A copy of the notice shall be prepared for submission to the customs official, as required by § 28.117. The notice shall be executed under the penalties of perjury and shall show:

- (a) Name, address, and plant number of the distilled spirits plant to which the spirits are to be returned.
- (b) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits.
- (c) Name, address, and plant number of the distilled spirits plant from which the spirits were withdrawn.
- (d) Name and address of the person who withdrew the spirits.
- (e) Serial number of the TTB Form 5100.11 and the date withdrawn.
- (f) Present location of spirits to be returned.
- (g) Kind of spirits to be returned.
- (h) Number, kind, and serial numbers of the containers to be returned. In case of bottled spirits, the number and size of the bottles in each case.
- (i) Total quantity in proof gallons of spirits to be returned.
- (j) Reason for return of spirits.
- (k) Disposition to be made of returned spirits, i.e., redistillation or return to bonded storage.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71723, Dec. 11, 1979; T.D. TTB-8, 69 FR 3832, Jan. 27, 2004; T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.117 Responsibility for return of spirits.

The person who withdrew the spirits without payment of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The person or his agent shall submit a copy of the notice required by § 28.116 to the appropriate customs official. If the spirits are returned before the TTB Form 5100.11 has been filed with the customs official, the person shall submit the form with the notice. The customs officer shall, if the spirits are eligible for return under § 28.115, accept the notice as authority for the return of the spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of TTB Form 5100.11 “Canceled”, note the date thereon, return both copies to the person, and, if the spirits are in customs custody, release them for return. The person shall retain one copy of the canceled TTB Form 5100.11 and file one copy with the appropriate TTB officer identified on the form.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71723, Dec. 11, 1979, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004; T.D. TTB-146, 82 FR 1136, Jan. 4, 2017]

§ 28.118 Receipt of spirits.

The receipt, gauge, and disposition of the distilled spirits at the distilled spirits plant shall be in accordance with the applicable provisions of subpart Q of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71723, Dec. 11, 1979, as amended by T.D. TTB-92, 76 FR 9171, Feb. 16, 2011]

Subpart F—Withdrawal of Wine Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone or to a Customs Bonded Warehouse, or Transportation to a Manufacturing Bonded Warehouse**§ 28.121 General.**

Wine may, subject to this part, be withdrawn from a bonded wine cellar, without payment of tax, for:

- (a) Exportation;
- (b) Use on the vessels and aircraft described in § 28.21;
- (c) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation;
- (d) Transfer to and deposit in a customs bonded warehouse as provided in § 28.27; or
- (e) Transportation to and deposit in a manufacturing bonded warehouse.

Except as provided in § 28.51(b), all such withdrawals shall be made under the applicable bond prescribed in subpart D.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1380; 19 U.S.C. 1309, 81c, 26 U.S.C. 5362, 7805; (sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371)))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71723, Dec. 11, 1979; T.D. ATF-88, 46 FR 39816, Aug. 5, 1981; 47 FR 20303, May 12, 1982; T.D. TTB-8, 69 FR 3831, Jan. 27, 2004; T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.122 Application or notice, TTB Form 5100.11.

- (a) *Export, use on vessels and aircraft, transfer to a customs bonded warehouse, and transfer to a foreign-trade zone.* Where the exporter is not the proprietor of the bonded wine cellar from which the wine is to be withdrawn, the exporter must make an application on TTB Form 5100.11 for approval of the withdrawal. Where the exporter is the proprietor of the bonded wine cellar from which the wine is to be withdrawn, the exporter must, at the time of withdrawal of the wine, prepare a notice of the withdrawal and shipment on TTB Form 5100.11. TTB approval is

§ 28.123

not required if the exporter is the proprietor of the bonded wine cellar from which the wine is to be withdrawn.

(b) *Manufacturing bonded warehouse.* The proprietor of the manufacturing bonded warehouse must make an application on TTB Form 5100.11 to withdraw wine without payment of tax for transportation to and deposit in such warehouse before withdrawal of the wine.

(c) *Action by appropriate TTB officer.* Where, under the provisions of paragraphs (a) and (b) of this section, a TTB Form 5100.11 is submitted to the appropriate TTB officer for approval, the appropriate TTB officer shall, if satisfied that the application is in order and that the applicant has on file a good and sufficient bond, approve the application and forward it to the proprietor of the premises from which the wines are to be withdrawn.

(d) *Restriction on shipment.* Where, under the provisions of paragraphs (a) and (b) of this section, prior approval of TTB Form 5100.11 by the appropriate TTB officer is required, the proprietor of the bonded wine cellar may not ship the wine until the approved TTB Forms 5100.11 have been received by him. In such cases, the proprietor of the bonded wine cellar shall, on removal of the wines, execute his certificate of removal on TTB Form 5100.11.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.122, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 28.123 Export marks.

(a) *General.* In addition to the marks and brands required to be placed on packages or cases of wine at the time they are filled under the provisions of part 24 of this chapter, the proprietor shall mark the word “Export” on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart, including withdrawals under 26 U.S.C. 5362(c)(4).

(b) *Exception.* When containers are being removed to a contiguous manu-

27 CFR Ch. I (4-1-23 Edition)

facturing bonded warehouse, the proprietor need not place the word “Export” on the containers if the appropriate TTB officer finds the omission will not jeopardize the revenue.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1380, as amended (26 U.S.C. 5362, 7805))

[T.D. ATF-82, 46 FR 21158, Apr. 9, 1981, as amended by T.D. ATF-88, 46 FR 39816, Aug. 5, 1981; 47 FR 20303, May 12, 1982; T.D. ATF-299, 55 FR 25033, June 19, 1990; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.124 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines withdrawn without payment of tax under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 28.125 Disposition of forms.

On removal of the wines from the premises of the bonded wine cellar, the proprietor shall forward one copy of TTB Form 5100.11 to the appropriate TTB officer, retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M. Where the shipment is for delivery for use on aircraft, the copy marked “Consignee’s Copy”, provided for in § 28.122, shall be forwarded to the airline company at the airport.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.126 Proprietor’s report.

The records of the proprietor of the bonded wine cellar shall reflect the quantity of wine removed without payment of tax under this subpart, and he shall report the quantity of wine so removed on TTB F 5120.17.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-299, 55 FR 25033, June 19, 1990; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.127 Losses.

Where there has been a loss of wine while in transit from a bonded wine cellar to a port of export, a foreign-trade zone, a vessel or aircraft, a customs bonded warehouse, or a manufacturing bonded warehouse, the provisions of subpart O of this part, with respect to losses of wine after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382, (26 U.S.C. 5370, 5371))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

RETURN OF WINES TO BONDED WINE
CELLAR

§ 28.130 General.

On application of the proprietor of a bonded wine cellar, wine which has been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for use on vessels and aircraft, or for deposit in a foreign-trade zone, in a manufacturing bonded warehouse, or in a customs bonded warehouse, may for good cause be returned to the bonded wine cellar from which withdrawn, for storage pending subsequent removal for lawful purposes. However, such wine must be returned before being exported, laden as supplies or used aboard vessels or aircraft, or deposited in a foreign-trade zone, in a manufacturing bonded warehouse, or in a customs bonded warehouse, as the case may be.

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

§ 28.131 Application for return of wines withdrawn without payment of tax.

Where a proprietor of a bonded wine cellar desires to return wines to his bonded wine cellar as provided in § 28.130, he shall submit a written application, in duplicate, to the appropriate TTB officer, for approval of the return of the wines. The application shall show.

- (a) Name, address, and registry number of the bonded wine cellar.
- (b) Name and address of the person who withdrew the wines.
- (c) Serial number of the TTB Form 5100.11 and the date withdrawn.

(d) Present location of wines to be returned.

(e) Kind of wines to be returned.

(f) Number, kind, and serial numbers of the containers to be returned. In the case of bottled wines, the number and size of the bottles in each case.

(g) Total quantity in wine gallons for each separate tax class of wines to be returned.

(h) Reason for return of the wines.

The application shall be executed under the penalties of perjury. On approval of the application the appropriate TTB officer shall return both copies to the proprietor, who, in turn, shall deliver them to the exporter.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004; T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.132 Responsibility for return of wine.

The person who withdrew the wines without payment of tax shall be responsible for arranging the return of the wines to the bonded wine cellar from which they were withdrawn. In case of emergency, the person may arrange the return of wines to bonded premises without an approved application, but such wines shall be kept separate at the bonded premises and shall not be recorded in the records and reports of the proprietor until an approved application for such return has been obtained as provided in § 28.131. Such person or his agent shall present to the appropriate customs official the two copies of the approved application authorizing the return unless the wines are returned before the TTB Form 5100.11 has been filed with the customs official. The customs officer shall, if he finds that the wines are eligible for return under § 28.130, accept the approved application as authority for the return of the wines to the bonded wine cellar noted on the application and shall mark each copy of TTB Form 5100.11 "Canceled", note the date thereon, affix a copy of the approved application to each of the canceled TTB Forms 5100.11, return both TTB Forms 5100.11 to the person, and, where the wines are in his custody, release them for return.

§ 28.133

27 CFR Ch. I (4–1–23 Edition)

The canceled TTB Forms 5100.11, with attachments, shall be delivered by such person or his agent to the proprietor of the bonded wine cellar. When wines have been returned before the TTB Forms 5100.11 were filed with customs officials, the two copies of the approved application shall be submitted, by the person or his agent, to the proprietor of the bonded wine cellar who shall cancel and date each copy of TTB Form 5100.11 and affix copies of the approved application thereto.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004; T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.133 Disposition of forms.

On receipt of the wines at the bonded wine cellar, the proprietor shall endorse, on each copy of the approved application to return the wines, the date received, the total amount in wine gallons of each tax class of wine returned, and affix his signature. He shall forward the original TTB Form 5100.11, with attached application, to the appropriate TTB officer, and retain the remaining copy for his files. The storage, disposition, and records pertaining to such returned wines shall be in accordance with the applicable provisions of part 24 of this chapter.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

SOURCE: T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, unless otherwise noted.

§ 28.141 General.

(a) *Beer*. Beer may, subject to this part, be removed from the brewery without payment of tax for:

- (1) Export to a foreign country;

(2) Use as supplies on the vessels and aircraft described in § 28.21; or

(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(b) *Beer concentrate*. Concentrate, produced from beer under the provisions of subpart R of part 25 of this chapter may, subject to this part, be removed from the brewery without payment of tax for:

- (1) Export to a foreign country; or

(2) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(c) *Bond*. Except where the brewer is not required to hold a bond under § 25.91(e) of this chapter, all removals of beer or beer concentrate will be made by the brewer under the provisions of the brewer's bond, Form 5130.22 as prescribed in § 28.60.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004; T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.142 Notice, Form 1689 (5130.12).

When a brewer intends to remove beer or beer concentrate without payment of tax from a brewery for exportation or for transportation to and deposit in a foreign-trade zone, or remove beer for use as supplies on vessels and aircraft, the brewer shall prepare a notice on Form 1689 (5130.12) for each withdrawal. The brewer shall execute Form 1689 (5130.12) in quadruplicate, except when the shipment is for use on aircraft the brewer shall execute an extra copy which will be marked "Consignee's Copy."

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 28.143 Containers.

(a) *Beer*. Beer being exported, used as supplies on vessels and aircraft, or transferred to and deposited in a foreign-trade zone, without payment of tax, may be removed in bottles, kegs, or bulk containers.

(b) *Beer concentrate.* Concentrate may not be removed for export, or for transfer to and deposit in a foreign-trade zone, in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale.

§ 28.144 Export marks.

(a) *General Requirement.* In addition to the marks and brands required to be placed on containers of beer or beer concentrate under the provisions of part 25 of this chapter, the brewer shall mark the word "Export" on each container or case of beer, or the words "Beer concentrate for export" on each container of beer concentrate, before removal from the brewery for any exportation authorized under this subpart.

(b) *Exceptions.* A brewer need not apply the mark "Export" on cases of beer being exported under the following circumstances:

(1) When beer is being directly exported by the brewer, and the brewer can furnish documentation (such as an ocean or air freight bill of lading, or a foreign landing certificate) that the beer was directly exported to a foreign country;

(2) When cased beer is transferred from a brewery to a foreign-trade zone for export or for storage pending exportation; or

(3) When cased beer is exported to the military.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 28.145 Consignment, shipment and delivery.

The consignment, shipment and delivery of beer or beer concentrate removed from a brewery without payment of tax under this subpart will be in accordance with the applicable provisions of subpart M of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 28.146 Disposition of forms.

On removal of the beer or beer concentrate withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 (5130.12)

to the appropriate TTB officer, retain one copy for the files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M of this part. When the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy," provided for in § 28.142, will be forwarded to the airline company at the airport.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.147 Return of beer or beer concentrate.

Beer or beer concentrate removed without payment of tax under the provisions of this subpart may be returned to the brewery from which removed if lading of the beer or beer concentrate is delayed more than the period provided in § 28.262 or when the brewer has other good cause for return. The brewer shall request the district director of customs to release the beer or beer concentrate for return to the brewery and, on such release, the district director of customs shall endorse both copies of the appropriate Form 1689 (5130.12) to show the release of the beer or beer concentrate and shall return the forms to the brewer. On return of the beer or beer concentrate to the brewery, the brewer shall record the quantity in the brewery daily records, mark the two copies of Form 1689 (5130.12) returned by the district director of customs, "Canceled—Returned to Brewery," and forward one copy to the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5056))

[T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.148 Brewer's report.

The brewer's records shall reflect the quantity of beer or beer concentrate removed without payment of tax under

§ 28.149

this subpart, and the brewer shall report the quantity of beer or beer concentrate so removed on Form 5130.9. The total quantity of beer or beer concentrate involved in all export shipments returned during any reporting period will be reported as a separate entry on Form 5130.9.

(Approved by the Office of Management and Budget under control number 1512-0052)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40358, July 28, 1993]

§ 28.149 Losses.

When there has been a loss of beer or beer concentrate while in transit from the brewery to a port for exportation, or for lading as supplies on a vessel or aircraft, or to a foreign-trade zone, the provisions of subpart O of this part, with respect to losses are applicable.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

§ 28.150 Charges and credits on bond.

The removal of beer concentrate from the brewery without payment of tax under this subpart will constitute a charge against the brewer's bond, Form 5130.22, of an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate which is removed. The satisfactory accounting for concentrate so removed will constitute a credit to the bond.

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986]

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Subpart H—Withdrawal of Specially Denatured Spirits, Free of Tax, for Exportation or Transfer to a Foreign-Trade Zone

§ 28.151 General.

Specially denatured spirits may, under this part, be withdrawn from the

27 CFR Ch. I (4-1-23 Edition)

bonded premises of a distilled spirits plant, free of tax, for:

(a) Exportation; or

(b) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

All such withdrawals shall be made under a consent of surety on the proprietor's operations or unit bond, as prescribed in § 28.58(c).

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.152 Notice, TTB Form 5100.11.

Notice of withdrawal of specially denatured spirits, as authorized in § 28.151 shall be made on TTB Form 5100.11 by the proprietor of the distilled spirits plant from which the denatured spirits are to be withdrawn.

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.153 Withdrawal procedure.

The provisions of §§ 28.93, 28.94, 28.98, 28.105, and 28.117 in respect of method of conveyance, authorized containers, gauging, inspection, approval and shipment, report of removal, and disposition of forms shall be applicable to specially denatured spirits to be withdrawn under the provisions of this subpart.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

[T.D. ATF-46, 42 FR 44774, Sept. 6, 1977, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.154 Export marks.

In addition to the marks and brands required to be placed on packages and cases at the time they are filled under the provisions of part 19 of this chapter, the proprietor shall mark the word "Export" on the Government side of each case or Government head of each container before removal from the

bonded premises for any exportation authorized under this subpart.

(Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981]

§ 28.155 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of specially denatured spirits withdrawn free of tax under this subpart shall be made under the provisions of subpart M of this part.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 28.156 Losses.

Where there has been a loss of specially denatured spirits while in transit from the bonded premises of a distilled spirits plant to a port of export or a foreign-trade zone, the exporter shall file claim for allowance of the loss in accordance with the provisions of subpart O of this part.

§ 28.157 Exportation by dealer in specially denatured spirits.

A dealer in specially denatured spirits who holds a permit under part 20 of this chapter may export specially denatured spirits in accordance with § 20.183 of this chapter.

[T.D. TTB-140, 81 FR 59464, Aug. 30, 2016]

RETURN OF SPECIALLY DENATURED SPIRITS TO BONDED PREMISES

§ 28.160 General.

Specially denatured spirits, which have been lawfully withdrawn free of tax under the provisions of this part for exportation, or for deposit in a foreign-trade zone, may, subject to the requirements of § 28.161, be returned:

(a) To the bonded premises of a distilled spirits plant for redistillation; or

(b) To the bonded premises of any distilled spirits plant pending subsequent lawful withdrawal free of tax. However, such specially denatured spirits may only be returned before they are exported, or deposited in a foreign-trade zone. If the specially denatured spirits are to be returned to bonded premises for storage without redistillation, the proprietor shall also execute a

consent of surety Form 5000.18 to extend the terms of his operations or unit bond to cover the return and storage of such specially denatured spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.161 Notice of return of specially denatured spirits.

If a proprietor of a distilled spirits plant desires to return specially denatured spirits to his plant as provided in § 28.160, he shall file a notice with the appropriate TTB officer. A copy of the notice shall be prepared for submission to the customs official, as required by § 28.162. The notice shall be executed under the penalties of perjury and shall show:

(a) Name, address, and plant number of the distilled spirits plant to which the specially denatured spirits are to be returned.

(b) Name, address, and plant number of the distilled spirits plant from which the specially denatured spirits were withdrawn.

(c) Serial number of the TTB Form 5100.11 and the date withdrawn.

(d) Present location of specially denatured spirits to be returned.

(e) Description of the specially denatured spirits—kind, serial numbers of containers, and quantity in wine gallons.

(f) Reason for return of the specially denatured spirits.

(g) Disposition to be made of specially denatured spirits, i.e. redistillation or return to processing on the bonded premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979; T.D. ATF-198, 50 FR 8561, Mar. 1, 1985; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.162 Responsibility for return of specially denatured spirits.

The principal on the bond under which the specially denatured spirits

§ 28.163

were withdrawn free of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The principal or his agent shall submit a copy of the notice required by § 28.161 to the appropriate customs official. If the specially denatured spirits are returned before the TTB Form 5100.11 has been filed with the customs official, the principal shall submit the form with the notice. The customs officer shall, if the specially denatured spirits are eligible for return under § 28.160, accept the notice as authority for the return of the specially denatured spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of TTB Form 5100.11 "Canceled", note the date thereon, return both copies to the principal, and, if the spirits are in customs custody, release them for return. The principal shall retain one copy of the canceled TTB Form 5100.11 and file one copy with the appropriate TTB officer identified on the form.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71724, Dec. 11, 1979, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.163 Receipt of specially denatured spirits.

The receipt, gauge, and disposition of the specially denatured spirits at the distilled spirits plant shall be in accordance with the applicable provisions of subpart U of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

Subpart I—Exportation of Distilled Spirits With Benefit of Drawback

§ 28.171 General.

Distilled spirits manufactured, produced, bottled in bottles, packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which have been marked under the provisions of 27 CFR part 19 and of this

27 CFR Ch. I (4-1-23 Edition)

part, as applicable, especially for export with benefit of drawback may be:

- (a) Exported;
- (b) Laden for use on the vessels or aircraft described in § 28.21; or
- (c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation; or
- (d) Transferred to and deposited in a customs bonded warehouse as provided for in § 28.26(b).

On receipt by the appropriate TTB officer of required evidence of exportation, lading for use, or transfer, there shall be allowed to the bottler (or packager) of the spirits, drawback equal in amount to the tax found to have been paid or determined on the spirits.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[25 FR 5734, June 23, 1960, as amended by T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.171, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

FILING OF NOTICE AND REMOVAL

§ 28.190 Notice, TTB Form 5110.30.

Notice of shipment of distilled spirits for export, for use as supplies on vessels or aircraft, for deposit in a foreign-trade zone, or for deposit in a customs bonded warehouse, shall be prepared by the exporter on TTB Form 5110.30, in accordance with the instructions on the form.

(48 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.191 [Reserved]

§ 28.192 Packages of distilled spirits to be gauged.

Except for spirits which may be tax determined on the basis of the original gauge, spirits in packages which are to be removed for export with benefit of

drawback, shall be gauged by the distilled spirits plant proprietor prior to preparation of notice on TTB Form 5110.30. When spirits in packages are gauged, a package gauge record shall be prepared by the proprietor, as provided in 27 CFR part 19, and a copy of the package gauge record shall be attached to each copy of TTB Form 5110.30 and considered a part of the claim.

(Approved by the Office of Management and Budget under control number 1512-0250 and 1512-0199)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.193 Export marks.

In addition to the marks and brands required to be placed on packages or other bulk containers and cases under the provisions of part 19 of this chapter, the exporter shall mark the word "Export" on the Government side of each case or Government head of each container before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone or a customs bonded warehouse.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981]

§§ 28.194-28.195 [Reserved]

§ 28.195b Claims on spirits tax determined on and after January 1, 1980.

(a) *Preparation.* Claims for drawback of tax on spirits tax determined on and after January 1, 1980, and withdrawn for any purpose authorized by § 28.171, shall be prepared in duplicate by the bottler or packager on parts II and III of TTB Form 5110.30.

(b) *Supporting documents.* Each claim shall be supported by an invoice, bill of lading or other document which identifies the date of tax determination, unless the bill of lading required by § 28.250 identifies this date. Additional supporting documents are required if the claim covers distilled spirits prod-

ucts on which the claimed drawback rate exceeds the rate of tax imposed by 26 U.S.C. 5001 or 7652 on each proof gallon or part thereof of distilled spirits produced in or imported into the United States (e.g., a product containing alcoholic flavoring materials on which drawback has been claimed by the manufacturer of the material under 26 U.S.C. 5131-5134). For each such product, the additional supporting documents shall consist of a copy of each related dump and batch record, package gauge record as prescribed in 27 CFR part 19, and/or bottling and packaging record. The appropriate TTB officer may also require these or other supporting documents for any distilled spirits product.

(c) *Filing.* One copy of the claim, with supporting documents, if required, shall be filed with the appropriate TTB officer. The bottler or packager shall retain the other copy on file.

(Approved by the Office of Management and Budget under control number 1512-0198)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. ATF-212, 50 FR 34123, Aug. 23, 1985; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.196 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits removed under this subpart for export, use on vessels or aircraft, transfer to a customs bonded warehouse, or transfer to a foreign-trade zone, shall be in accordance with the applicable provisions of subpart M of this part.

(72 Stat. 1336, 84 Stat. 1965; 26 U.S.C. 5062, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 28.197 Return of spirits withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 28.198, spirits on which the tax has been paid or determined, and which were withdrawn especially for export with benefit of drawback as provided in § 28.171, but which spirits have not been laden for export, laden for use, or deposited in a customs bonded

§ 28.198

warehouse or foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR part 19:

- (a) To the bonded premises of the distilled spirits plant for purposes authorized under 26 U.S.C.; or
- (b) To a wholesale liquor dealer; or
- (c) To a taxpaid storeroom.

The export marks on spirits returned under this section shall be removed by obliteration, relabeling or recasing.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. ATF-206, 50 FR 23956, June 7, 1985; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.198 Notice of return.

If an exporter desires to return spirits to a distilled spirits plant, wholesale liquor dealer or taxpaid storeroom, as provided in § 28.197, he shall file a notice, executed under the penalties of perjury, with the appropriate TTB officer. The notice shall be prepared in triplicate for submission to the customs official as required in § 28.199. The notice shall show the:

- (a) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits;
- (b) Date and serial number of the TTB Form 5110.30 on which the spirits were withdrawn;
- (c) Present location of the spirits to be returned;
- (d) Number, size and identification of the containers;
- (e) Proof of spirits;
- (f) Reason for the return; and
- (g) Planned disposition of the returned spirits.

(Approved by the Office of Management and Budget under control number 1512-0206)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985, as amended at T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.199 Responsibility for return of spirits withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of the spirits under this subpart to the proprietor or wholesale liquor dealer who will re-

27 CFR Ch. I (4-1-23 Edition)

ceive them. The exporter or his agent shall submit the original and copies of the notice required by § 28.198 to the appropriate customs official. If the spirits are returned before TTB Form 5110.30 has been filed with the customs official, the exporter shall submit Form 5110.30 with the notice. The customs officer shall, if the spirits are eligible for return under § 28.197, accept the notice as authority for the return of the spirits to the premises identified in the notice. The customs official shall acknowledge receipt on the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy of the notice and file the original of the notice with the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

Subpart J [Reserved]

Subpart K—Exportation of Wine With Benefit of Drawback

§ 28.211 General.

Wines manufactured, produced, bottled in bottles packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which are filled on premises qualified under this chapter to package or bottle wines, may, subject to this part, be:

- (a) Exported;
- (b) Laden for use on the vessels or aircraft described in § 28.21; or
- (c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

On receipt by the appropriate TTB officer of required evidence of exportation, lading for use, or transfer, there shall be allowed a drawback equal in amount

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.218

to the tax found to have been paid or determined on the wines.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-51, 43 FR 24245, June 2, 1978; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.212 Persons authorized.

Persons who have qualified under this chapter as proprietors of distilled spirits plants, bonded wine cellars, or taxpaid wine bottling houses, and persons who are wholesale liquor dealers (as defined in § 31.32 of this chapter) and have registered as a wholesale liquor dealer in accordance with part 31 of this chapter, are authorized to remove wines under the provisions of this subpart.

(26 U.S.C. 5062)

[T.D. TTB-79, 74 FR 37406, July 28, 2009]

§ 28.213 [Reserved]

§ 28.214 Notice and claim, Form 5120.24.

Claim for allowance of drawback of internal revenue taxes on wines removed under the provisions of § 28.211 and § 28.212, shall be prepared by the exporter on Form 5120.24, in quadruplicate: *Provided*, That where the withdrawal is for use on aircraft, an extra copy, marked "Consignee's Copy", shall be prepared. Each Form 5120.24 shall be given, by the exporter, a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(46 Stat. 690, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 26 U.S.C. 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004; T.D. TTB-146, 82 FR 1134, Jan. 4, 2017]

§ 28.215 Certificate of tax determination, Form 5120.20.

Every claim for drawback of tax on Form 5120.24 shall be supported by a certificate, Form 5120.20, which shall be executed, in duplicate, (a) by the per-

son who withdrew the wine from bonded premises on tax determination, certifying that all taxes have been properly determined on such wine, or (b) where the wine was bottled or packaged after tax determination, by the person who did such bottling or packaging, certifying that the wines so bottled or packaged were received in taxpaid status and specifying from whom they were so received. The appropriate TTB officer may require other evidence of tax payment whenever such officer deems it necessary. The exporter is responsible for securing Form 5120.20, properly executed, and submitting the original of such form with the claim. The exporter shall retain the copy of Form 5120.20 for his files.

(72 Stat. 1336; 26 U.S.C. 5062)

[25 FR 5734, June 23, 1960, as amended by T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.216 Export marks.

In addition to the marks and brands required to be placed on packages or other bulk containers and cases under the provisions of parts 24 of this chapter, the exporter shall mark the word "Export" on the Government side of each case or Government head of each container before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981, as amended by T.D. ATF-299, 55 FR 25034, June 19, 1990; T.D. ATF-372, 61 FR 20725, May 8, 1996]

§ 28.217 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines removed under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 28.218 Disposition of Forms 1582-A (5120.24).

On removal of the wines from the premises, the exporter shall forward one copy of Form 1582-A (5120.24) to the appropriate TTB officer, retain one

§ 28.219

copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M of this part. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 28.214, shall be forwarded to the airline company at the airport.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.219 Return of wine withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 28.220, wine on which the tax has been paid or determined, and which was withdrawn especially for export with benefit of drawback as provided in § 28.211, but which wine has not been laden for export, laden for use, or deposited in a foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR part 24:

(a) To a taxpaid storeroom at a bonded wine cellar; or

(b) To a wholesale liquor dealer.

The export marks on wines returned under this section shall be removed from the containers.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985, as amended by T.D. ATF-344, 58 FR 40355, July 28, 1993; T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.220 Notice of return.

If an exporter desires to return wine to a bonded wine cellar or wholesale liquor dealer as provided in § 28.219, he shall file a notice, executed under the penalties of perjury, with the appropriate TTB officer. The notice shall be prepared in triplicate for submission to the customs official as required in § 28.220a. The notice shall show the:

(a) Name, address, and registration number of the bonded wine cellar from which withdrawn;

(b) Date and serial number of the Form 1582-A (5120.24) on which the wine was withdrawn;

27 CFR Ch. I (4-1-23 Edition)

(c) Present location of the wine to be returned;

(d) Number, size and identification of the containers;

(e) Total wine gallons for each tax class of wine; and

(f) Reason for the return.

(Approved by the Office of Management and Budget under control number 1512-0292)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985; 50 FR 23410, June 4, 1985, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

§ 28.220a Responsibility for return of wine withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of wine under this subpart to the proprietor or wholesale liquor dealer receiving the wine. The exporter or his agent shall submit the original and copies of the notice required by § 28.220 to the appropriate customs official. If the wine is returned before Form 1582-A (5120.24) has been filed with the customs official, the exporter shall submit TTB Form 1582-A with the notice. The customs officer shall, if the wine is eligible for return under § 28.219, accept the notice as authority for the return of the wine to the premises identified in the notice. The customs officer shall acknowledge receipt of the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy and file the original of the notice with the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

Subpart L—Exportation of Beer With Benefit of Drawback

§ 28.221 General.

Beer brewed or produced in the United States and on which the internal revenue tax has been paid may, subject to this part, be:

(a) Exported;

(b) Delivered for use as supplies on the vessels and aircraft described in § 28.21; or

(c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

Claim for drawback of taxes found to have been paid may be filed only by the producing brewer or his duly authorized agent. On receipt by the appropriate TTB officer of required evidence of such exportation, delivery for use, or transfer, there shall be allowed a drawback equal in amount to the tax found to have been paid on such beer.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975. Redesignated and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.222 Claim, Form 1582-B (5130.6).

Claim for allowance of drawback of internal revenue taxes on beer brewed or produced in the United States shall be prepared on Form 1582-B (5130.6), in quadruplicate, as required by this part. Each Form 1582-B (5130.6) shall be given, by the person initiating the form, a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(72 Stat. 1335; 26 U.S.C. 5055)

§ 28.223 Export marks.

In addition to the marks and brands required to be placed on kegs, barrels, cases, crates or other packages under the provisions of part 25 of this chapter, the exporter shall mark the word "Export" on each container or case before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5055))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981, as amended by T.D. ATF-224, 51 FR 7700, Mar. 5, 1986]

EXECUTION OF CLAIMS

§ 28.225 Removals of beer by brewer.

Where a brewer removes taxpaid beer from the brewery or from its place of storage elsewhere for exportation, for lading for use as supplies on vessels or aircraft, or for deposit in a foreign-trade zone, he shall execute the notice and claim on Form 1582-B (5130.6). On removal of the beer for shipment the brewer shall file one copy of Form 1582-B with the appropriate TTB officer, retain one copy for his files, and immediately forward the original and one copy of the form:

(a) In case of shipments for export or for use as supplies on vessels or aircraft, to the district director of customs at the port of export; or

(b) In the case of shipments to the armed services of the United States for export, to the commanding or supply officer to whom the shipment is consigned; or

(c) In the case of shipments to a foreign-trade zone, to the customs officer in charge of the zone.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-85, 69 FR 3834, Jan. 27, 2004]

§ 28.226 Removals of beer by agent on behalf of brewer.

Where proper power of attorney authorizing an agent to execute a claim on behalf of the brewer has been filed with the appropriate TTB officer, such agent may, for any of the purposes authorized in § 28.221, remove taxpaid beer from the brewery where produced or from its place of storage elsewhere, and execute the notice and claim on Form 1582-B (5130.6) on behalf of the brewer. On removal of the beer, such agent shall dispose of Form 1582-B in accordance with the applicable procedure set forth in § 28.225.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975. Redesignated and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.227

§ 28.227 Removals of beer by persons other than the brewer or agent of the brewer.

Where there is a removal of taxpaid beer by a person other than the brewer or the agent of the brewer for any of the purposes authorized in § 28.221, such person shall execute the notice, only, on Form 1582-B (5130.6). Where the removal consists of the products of more than one brewer, separate Forms 1582-B shall be prepared for the products of each brewer. On removal of the beer for shipment such person shall forward two copies of Form 1582-B (5130.6) to the producing brewer, and immediately forward the original and one copy of the form as prescribed in § 28.225(a), (b), or (c), as the case may be. On receipt of the two copies of Form 1582-B (5130.6) from the exporter, the brewer shall, if he wishes to claim drawback on the beer covered thereby, execute the claim for drawback on both copies of the form, file one copy of the claim with the appropriate TTB officer, and retain the remaining copy for his files.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975. Redesignated and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

CONSIGNMENT, SHIPMENT, AND DELIVERY

§ 28.230 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of taxpaid beer removed under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1335; 26 U.S.C. 5055)

Subpart M—Shipment or Delivery for Export

CONSIGNMENT

§ 28.241 Shipment for export, or for use on vessels.

All liquors and specially denatured spirits intended for export or liquors intended for use as supplies on vessels shall be consigned to the district director of customs at the port of exportation, or port of lading for supplies on

27 CFR Ch. I (4–1–23 Edition)

vessels, except that when the shipment is for export to a contiguous foreign territory it shall be consigned to the foreign consignee at destination in care of the district director of customs at the port of export.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 28.242 Shipment for use on aircraft.

(a) *Distilled spirits and wine.* All distilled spirits and wines intended for use on aircraft shall be consigned to the airline at the airport from which the aircraft will depart in international travel, in care of the district director of customs. On receipt of the distilled spirits or wines they shall be stored at the airport under customs custody until laden on aircraft.

(b) *Beer.* Beer intended for use on aircraft shall be consigned to the district director of customs at the port of lading.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5214, 5362)

[25 FR 5734, June 23, 1969, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 28.243 Shipment to armed services.

On removal of distilled spirits, wines, or beer for export to the armed services of the United States, the shipment shall be consigned to the commanding officer or supply officer at the supply base or other place of delivery.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 28.244 Shipment to manufacturing bonded warehouse.

Distilled spirits and wines withdrawn for shipment to a manufacturing bonded warehouse shall be consigned to the proprietor of such warehouse in care of the customs officer in charge of the warehouse.

(72 Stat. 1362, 1380; 26 U.S.C. 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71725, Dec. 11, 1979]

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.250

§ 28.244a Shipment to a customs bonded warehouse.

Distilled spirits and wine withdrawn for shipment to a customs bonded warehouse shall be consigned in care of the customs officer in charge of the warehouse.

(Sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

§ 28.245 Shipment to foreign-trade zone.

Where distilled spirits (including specially denatured spirits), wines, or beer, are transferred to a foreign-trade zone for exportation or for storage pending exportation, the shipment shall be consigned to the Zone Operator in care of the customs officer in charge of the zone.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 81c, 26 U.S.C. 5214, 5362)

§ 28.246 Delivery for shipment.

The proprietor or exporter may deliver the shipment directly to the consignees designated in §§ 28.241 through 28.245, or he may deliver it to a carrier for transportation and delivery to such consignees, or, when the exportation is to a contiguous foreign country, to the foreign consignee.

(72 Stat. 1334, 1335, 1336, as amended, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1599, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.247 Change in consignee.

Where a change of consignee is desired after the liquors (including specially denatured spirits) have been removed from the shipping premises, the exporter shall notify the appropriate officer to whom the shipment is required by §§ 28.241-28.245 to be consigned or in whose care it is required to be shipped, and forward a copy of such notification to the appropriate TTB officer. Such notice shall identify the

withdrawal or claim form, as the case may be, covering the shipment.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1599, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

BILLS OF LADING

§ 28.250 Bills of lading required.

A copy of the export bill of lading covering transportation from the port of export to the foreign destination, or a copy of the through bill of lading to the foreign destination, if so shipped, covering the acceptance of the shipment by a carrier for such transportation, shall be obtained and filed by the claimant or exporter with the appropriate TTB officer. Where the shipment consists of distilled spirits for deposit in a customs bonded warehouse, or distilled spirits or wines, for deposit in a foreign-trade zone, with benefit of drawback, a copy of the transportation bill of lading covering the shipment shall be obtained and filed by the claimant or exporter with the appropriate TTB officer: *Provided*, That such transportation bill of lading will not be required when delivery is made directly to the foreign-trade zone or the customs bonded warehouse by the shipper. Bills of lading shall be signed by the carrier or by an agent of the carrier and shall contain the following minimum information:

(a) As to spirits specially denatured spirits, and wines:

(1) The name of the exporter (if different from the shipper),

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading),

(3) The number of packages or cases,

(4) The serial number of the TTB Form 5100.11, 5110.30, or 5120.24, as the case may be, and

(5) The total quantity in wine gallons or liters,

(b) As to beer:

(1) The name of the shipper,

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading), and

(3) The number and size of containers.

§ 28.251

Where a copy of an export bill of lading or a copy of the through bill of lading is required and is not obtainable, a certificate given by an agent of such carrier, as prescribed in § 28.253, may be procured and transmitted by the claimant or exporter to the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, 1335, 1336, as amended, 1362, 1380, (26 U.S.C. 5053, 5055, 5062, 5214, 5362); sec. 3(a), Pub. L. 91-659, 84 Stat. 1965 (26 U.S.C. 5066))

[T.D. 7002, 34 FR 1599, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.250, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 28.251 Railway express receipts.

Where the exportation is to a contiguous foreign country and the shipment is by railway express, a receipt issued by the railway express agency may be accepted in lieu of an export bill of lading if the receipt furnishes all of the information required in an export bill of lading.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 28.252 Air express or freight bills of lading.

Where the exportation is made by air express or air freight, a bill of lading issued by the conveying airline is considered for the purpose of this part to be an export bill of lading if it otherwise conforms to the requirements of § 28.250.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1599, Feb. 1, 1969, as amended by 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.253 Certificate by export carrier.

A certificate, executed under the penalties of perjury, by an agent or representative of the export carrier, showing actual exportation of the liquors (including specially denatured spirits) may be furnished by an exporter as evidence of exportation. The certificate shall contain a description of the shipment, including the serial number of

27 CFR Ch. I (4-1-23 Edition)

the withdrawal form, or the claim and entry form, as the case may be, the name of the exporter, the name of the consignee, the date received, the place where received by such carrier, and the name of the carrier from which received.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

Subpart N—Proceedings at Ports of Export

§ 28.261 Notice to district director of customs.

On arrival at the port of exportation, of distilled spirits (including specially denatured spirits), wines, or beer, withdrawn or shipped for exportation or for use on vessels or aircraft, the exporter or his agent shall immediately notify the director of the port. At the same time, or prior thereto, the exporter or his agent shall file with the director two copies of the application, claim, or notice, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, covering the shipment: *Provided*, That where the shipment is for direct exportation, such forms shall be filed at least six hours prior to lading.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.261, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 28.262 Delay in lading at port.

If, on arrival of a shipment withdrawn for export without payment of tax or free of tax, the exporting vessel is not prepared to receive the shipment, the district director of customs may permit such shipment to remain in possession of a carrier for a period not exceeding 30 days. Storage elsewhere for a like cause, and not exceeding the same period, may be approved by the district director of customs. In the event of further delay, the facts shall be reported to the appropriate

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.266

TTB officer, who shall issue appropriate instructions concerning the disposition of the shipment.

(72 Stat. 1334, 1362, 1380; 26 U.S.C. 5053, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.263 [Reserved]

§ 28.264 Lading for exportation.

On receipt of the notification required in § 28.261, the district director of customs shall deliver both copies of the application, claim, or notice, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, covering the shipment, together with any forms which may be attached thereto, to a customs officer for inspection and supervision of lading. Such shipment shall be subject to the same requirements for inspection and supervision of lading at the port of exportation as may be required by Customs Regulations (19 CFR chapter I) in the case of similar shipments of imported merchandise to be exported in customs bond. When an inspection of the shipment is made before it is laden on board the exporting carrier and such inspection discloses any discrepancy, the customs officer shall make note of the nature and extent of the discrepancy on each copy of the application, claim, or notice, TTB Form 5110.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, and where the discrepancy involves one or more packages of distilled spirits or wine, he shall prepare customs Form 6001 in accordance with the instructions in § 28.291, and attach the original and copy of customs Form 6001 to the original and copy of the appropriate transaction form. The forms shall be disposed of according to the instructions thereon.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended, 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5053, 5055, 5062, 5214, 5362))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.264, see the List of CFR Sections Affected, which appears in the

Finding Aids section of the printed volume and at www.govinfo.gov.

§ 28.265 Evidence of fraud.

If the customs inspection discloses evidence of fraud, the customs officer shall detain the merchandise and notify the district director of customs who shall report the facts forthwith to the appropriate TTB officer. The appropriate TTB officer shall make investigation and take such action as the facts may warrant. Where the detained merchandise has been withdrawn for transfer and deposit in a manufacturing bonded warehouse, the merchandise shall be deemed not to have been deposited in said warehouse, and the designated officer shall hold in abeyance the processing of TTB Form 5100.11 until advised by the district director of customs that the detained merchandise may be entered for deposit. Where the detained merchandise has been withdrawn or entered for deposit in a foreign-trade zone or a customs bonded warehouse, it shall be deemed to not have been deposited in the zone or the warehouse and the customs officer shall hold in abeyance the processing of the application, notice, or claim, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, and Zone Form D, until advised by the district director of customs that the detained merchandise may be entered for deposit.

(48 Stat. 999, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380, 84 Stat. 1965; 19 U.S.C. 81c, 26 U.S.C. 5053, 5055, 5062, 5214, 5362, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71725, Dec. 11, 1979; T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.266 Release of detained merchandise.

When any merchandise has been detained under the provisions of § 28.265, the district director of customs shall not release such merchandise until he is advised so to do by the appropriate TTB officer.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.267 Exportation from interior port.

Where a shipment made under this part is to be exported to a contiguous foreign country through a frontier port, and it is desired to avoid the delay of customs inspection at such port, the shipment may, subject to approval of the district director of customs, be entered for exportation at an interior customs port. Subject to such approval, the inspection and supervision of lading, and the affixing of customs seals, shall be done by a customs officer in accordance with the provisions of U.S. Customs regulations (19 CFR chapter I). On completion of the lading, the seals shall be affixed and the customs officer shall execute the certificate of lading on both copies of the application, notice, or claim, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6) or 1689 (5130.12), as the case may be, and forward them, with attachments (if any), to the district director of customs at the interior port of entry. The district director of customs shall forward both copies of the form, with attachments (if any), to the customs officer at the frontier port. When the customs officer at the frontier port is satisfied that the shipment as described on the appropriate form has been exported, he shall execute his certificate on both copies of the form and return them with attachments (if any), to the district director of customs at the interior port of entry.

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.268 Receipt for liquors for use on vessels or aircraft.

Where liquors are withdrawn or removed for use on vessels or aircraft, the exporter shall procure and forward to the appropriate TTB officer, a receipt executed under the penalties of perjury by the master or other authorized officer of the vessel, steamship company, or airline, as the case may be. The receipt shall give the number of containers (if any), and the quantity received, and shall show that the liquors are in customs custody and have been or will be laden on board the vessel or aircraft, that they will be law-

fully used on board the vessel or aircraft, and that no portion of the shipment has been or will be unladen in the United States or any of its territories or possessions. A receipt is not required, in the case of any shipment for use on vessels, when the liquors are laden on vessels of war, or, in cases other than supplies for vessels employed in the fisheries, where the amount of the tax on the liquors does not exceed \$200. In the case of supplies for vessels employed in the fisheries, compliance with the provisions of § 28.22 is also required.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, as amended, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1600, Feb. 1, 1969, Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.269 Certification by district director of customs.

(a) *Exportation.* When the district director of customs is satisfied that merchandise described on the application, notice, or claim, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, has been laden and cleared for export, he shall execute his certificate of lading and clearance on both copies of the form.

(b) *Distilled spirits and wines as supplies on vessels and aircraft.* When the district director of customs is satisfied that the distilled spirits and wines described on TTB Form 5100.11, 5110.30, or 1582-A (5120.24), as the case may be, have been duly laden for use on vessels and aircraft, and that proper accounting for such spirits or wines has been submitted to him as required by this part, he shall execute his certificate of lading for use on both copies of the form.

(c) *Disposition of forms.* After executing his certificate, the district director of customs shall forward the original of TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be, with attachments (if any), to the appropriate TTB officer designated on the form,

and retain the remaining copy, with any attached forms, for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.269, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

RECEIPT BY ARMED SERVICES

§ 28.275 Receipt by armed services.

When liquors which have been withdrawn or removed for export to the armed services of the United States are received at the supply base or other designated place of delivery, the officer to whom consigned, or other authorized supply officer, at the supply base or other place of delivery shall enter the quantity of liquors received on both copies of the application, notice, or claim, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be. After signing the form, he shall forward the original with attachments, if any, to the appropriate TTB officer designated on the form, and retain the other copy for his records.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979; T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

LADING FOR USE ON AIRCRAFT

§ 28.280 Distilled spirits and wines.

When an airline desires to withdraw distilled spirits or wines from its stock being held at the airport under customs custody, for use on a particular aircraft, a requisition in triplicate shall be prepared for presentation to the customs officer. The requisition shall show the flight number, the registry number of the aircraft on which the distilled spirits or wines are to be laden, the country for which the aircraft is to be cleared, the date of departure of the aircraft, and the brand, kind, and quantity of distilled spirits

or wines. Where the distilled spirits or wines are contained in kits which have been previously prepared while under customs custody, the kit number shall also be shown on the requisition. Where the kits are not prepared and the distilled spirits or wines are withdrawn for direct lading on aircraft, the requisition shall be serially numbered in lieu of the insertion of the kit number. When the distilled spirits or wines are withdrawn and laden aboard the aircraft, the lading shall be verified by the customs officer by an appropriate stamp or notation on the requisition. One copy of the requisition shall be retained by the customs officer who certifies to the lading for attachment to the outgoing manifest. The other two copies shall be delivered to the airline which shall retain both copies until the return of the flight. In case any of the distilled spirits or wines are removed from the aircraft on its return, they shall be returned to customs custody, appropriate notation made on both copies of the requisition retained by the airline and one copy shall be delivered to the customs officer for attachment to the incoming manifest. The remaining copy shall be retained by the airline.

(Approved by the Office of Management and Budget under control number 1512-0384)

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984]

§ 28.281 Certificate of use for distilled spirits and wines.

When all of the distilled spirits or wines represented by a single application, notice, or claim, TTB Form 5100.11, 5110.30, or 1582-A (5120.24), as the case may be, have been withdrawn from customs custody and laden and used on aircraft, the airline shall prepare a certificate of use on which are itemized all the requisitions pertaining to such distilled spirits or wines. The certificate shall be executed under the penalties of perjury by an officer of the airline and shall show the name of the exporter, the entry number, the brand and kind of distilled spirits or wines,

§ 28.282

and the number of bottles to be accounted for; and, as to each requisition, the requisition (or kit) number, the date laden, the registry number of the aircraft, the country for which the aircraft was cleared, and the number of bottles used. When completed, the certificate shall be presented to the customs officer at the airport who shall then execute his certificate on both copies of the appropriate application, notice, or claim, TTB Form 5100.11, 5110.30, or 1582-A (5120.24), as the case may be, noting thereon any exception, such as shortages or breakage. The customs officer shall then attach the certificate of use to the copy of the appropriate form and forward both copies of the form to the district director of customs.

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 28.281, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 28.282 Beer.

When beer has been laden on board the aircraft for use as supplies, the customs officer shall execute his certificate on both copies of the Form 1582-B (5130.6) or Form 1689 (5130.12), as the case may be, forward the original to the appropriate TTB officer designated on the form, and retain the copy for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

RECEIPT IN MANUFACTURING BONDED WAREHOUSE

§ 28.285 Receipt in manufacturing bonded warehouse.

On receipt of the distilled spirits or wines, the related TTB Form 5100.11 (with any attachments), such inspection as is necessary will be made to establish that the shipment corresponds with its description on TTB Form 5100.11 (and any attachments) and cus-

27 CFR Ch. I (4-1-23 Edition)

toms Form 6001 will be prepared according to § 28.291. Any discrepancy disclosed by the inspection and gauge will be noted on each copy of TTB Form 5100.11. When the shipment corresponds with the description of TTB Form 5100.11 (and any attachments), the certificate of deposit will be executed on both copies of TTB Form 5100.11 and the original of TTB Form 5100.11 (and any attachments) and the original of his customs Form 6001 will be forwarded to the appropriate TTB officer. The remaining copies shall be kept on file.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

RECEIPT IN CUSTOMS BONDED WAREHOUSE

§ 28.286 Receipt in customs bonded warehouse.

On receipt of the distilled spirits or wine and the related TTB Form 5100.11 or 5110.30 as the case may be, the customs officer in charge of the customs bonded warehouse shall make such inspection as is necessary to establish to his satisfaction that the shipment corresponds with the description thereof on the appropriate form. The customs officer shall note on each copy of the Form 5100.11 or 5110.30, as the case may be, any deficiency in quantity or discrepancy between the merchandise inspected and that described on the form. Where the inspection discloses no loss, or where a loss is disclosed and there is no evidence to indicate fraud, the officer shall execute his certificate of deposit on both copies of the form, forward the original as required by the instructions on the form, and retain the remaining copy for his files.

(Sec. 3(a), Pub. L. 91-659, 84 Stat. 1965 (26 U.S.C. 5066); sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.301

RECEIPT IN FOREIGN-TRADE ZONE

§ 28.290 Receipt in foreign trade zone.

On receipt at the zone, the shipment shall be inspected by the customs officer in charge of the zone who shall determine if the shipment agrees with the description thereof on the application, notice, or claim, TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be. If the customs officer regauges spirits or wine in the course of his inspection, he shall prepare customs Form 6001 according to § 28.291. The customs officer shall note on both copies of the TTB Form 5100.11, 5110.30, 1582-A (5120.24), 1582-B (5130.6), or 1689 (5130.12), as the case may be any deficiency in quantity or discrepancy between the merchandise inspected or gauged and that described in the form. Where the inspection or gauge discloses no loss, or where a loss is disclosed by such inspection or gauge and there is no evidence to indicate fraud, the officer shall execute his certificate on both copies of the form covering the deposit, and forward to the appropriate TTB officer:

(a) Original of the deposit from (with any attachments); and

(b) Original of the officer's customs Form 6001, if any. The remaining copy of the deposit form (with any attachments), and the copy of any customs Form 6001, shall be retained by the customs officer for his files.

(48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5062, 5214, 5362))

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

CUSTOMS GAUGE

§ 28.291 Customs Form 6001.

When spirits or wines are gauged as required in § 28.264, § 28.285, or § 28.290, the customs officer shall prepare in duplicate customs Form 6001 to show:

- (a) Date;
- (b) Name of exporter;
- (c) Serial number and designation of the related transaction form;

(d) Kind of liquor (show whether alcohol, whiskey, brandy, rum, gin, vodka, wine, etc.);

(e) Name and registry number of producer;

(f) If gauged under § 28.264, the location of the port;

(g) If gauged under § 28.285, the location and number of the manufacturing bonded warehouse;

(h) If gauged under 28.290, the location and number of the foreign-trade zone;

(i) Kind and serial numbers or lot identification numbers of containers; and

(j) For each container:

(1) Proof of spirits, or percent of alcohol by volume in wine;

(2) Proof gallons, if spirits;

(3) Wine gallons, if wine; and

(4) Variation from the last gauge (proof, percent of alcohol by volume or wine gallons).

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

ALTERNATE PROCEDURES

§ 28.295 Exception for export of beer.

The provisions of this subpart do not apply in the case of beer when the exporter or claimant obtains proof of exportation other than certification by the military or customs certification of lading and use under § 28.43. Brewers and exporters shall prepare Forms 1582-B (5130.6) or 1689 (5130.12), as applicable, to cover exportation of beer, but customs or military certification on them is not required when other proof of exportation is used.

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

Subpart O—Losses

DISTILLED SPIRITS

§ 28.301 Loss of distilled spirits in transit.

The tax on distilled spirits withdrawn without payment of tax under this part and which are lost during transportation from the bonded premises of the distilled spirits plant from

§ 28.302

which withdrawn to (a) the port of export, (b) the manufacturing bonded warehouse, (c) the vessel or aircraft, (d) the foreign-trade zone, or (e) the customs bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the appropriate TTB officer establishes that such distilled spirits have not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of them: *Provided*, That such remission in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(72 Stat. 1323, as amended, 84 Stat. 1965; 26 U.S.C. 5008, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.302 Notice to exporter.

If, on examination of the TTB Form 5100.11 (and attached gauge reports, if any) received from the officer required to certify the same under the provisions of subpart N of this part, the appropriate TTB officer is of the opinion that the distilled spirits reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

- (a) Of the identity of the containers;
- (b) Of the amount of the loss;
- (c) Of the circumstances indicating diversion or theft;
- (d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of 26 U.S.C. 5008 (a) and (f), and (2) claim for remission of the tax on the spirits so lost; and
- (e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which distilled spirits are lost during transportation, as described in § 28.301, whether by theft or otherwise, the appropriate TTB officer may require the exporter to file a claim for relief in accordance with § 28.303. When circumstances may war-

27 CFR Ch. I (4-1-23 Edition)

rant, extensions of additional time for submission of the proof and claim may be granted by the appropriate TTB officer. Where such proof and claim are not filed within the 30-day period, or such extensions as the appropriate TTB officer may grant, the tax on the distilled spirits diverted or lost will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-62, 44 FR 71726, Dec. 11, 1979; T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.303 Filing of claims.

Claims, for remission of tax on the distilled spirits under § 28.301, shall be filed on 5620.8, in duplicate, and shall set forth the following:

- (a) Name, address, and capacity of the claimant;
- (b) Identification (including serial numbers, if any) and location of the container or containers from which the spirits were lost;
- (c) Quantity of spirits lost from each container, and the total quantity of spirits covered by the claim;
- (d) Total amount of tax for which the claim is filed;
- (e) The date, penal sum, and form number of the bond (as applicable) under which withdrawal and shipment were made;
- (f) Name, number, and address of the distilled spirits plant from which withdrawn without payment of tax;
- (g) Date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;
- (h) Name of the carrier;
- (i) If lost by theft, facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;
- (j) In the case of a loss by theft, whether the claimant is indemnified or recompensed in respect of the tax on the spirits lost, and, if so, the amount

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 28.316

and nature of such indemnity or recompense and the actual value of the spirits, less the tax.

The claim shall be executed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The appropriate TTB officer may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1323; 26 U.S.C. 6065, 5008)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004; T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.304 Action on claim.

The appropriate TTB officer will allow or disallow claims filed under § 28.303 in accordance with existing law and regulations. If the appropriate TTB officer finds that there has been a diversion or theft of the distilled spirits as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them, the tax on the distilled spirits diverted or lost by theft will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(68A Stat. 867, 72 Stat. 1323; 26 U.S.C. 7302, 5008)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

SPECIALLY DENATURED SPIRITS

§ 28.310 Loss of specially denatured spirits in transit.

Losses of specially denatured spirits withdrawn free of tax under this part during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, or (b) the foreign-trade zone, as the case may be, may be allowed if evidence satisfactory to the appropriate TTB officer establishes that such specially denatured spirits have not been unlawfully diverted, or lost by theft as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor,

consignee, bailee, or carrier, or the employees or agents of any of them. The giving of notice to the exporter, filing claims for allowance of loss, and action on the claims shall be, insofar as applicable, in accordance with the procedure prescribed in §§ 28.302 through 28.304.

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

WINE

§ 28.315 Loss of wine in transit.

The tax on wine withdrawn without payment of tax under this part and which is lost during transportation from the bonded wine cellar from which withdrawn to (a) the port of export, (b) the vessel or aircraft, (c) the foreign-trade zone, (d) the manufacturing bonded warehouse, or (e) the customs bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the appropriate TTB officer establishes that such wine has not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of them. However, the remission of tax on wine withdrawn without payment of tax under this part and which is lost while in transit may be allowed only to the extent that the claimant is not indemnified or recompensed for such tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.316 Notice to exporter.

If, on examination of the TTB Form 5100.11 received from the officer required to certify the same under the provisions of subpart N, the appropriate TTB officer is of the opinion that wine reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

- (a) Of the identity of the containers;
- (b) Of the amount of the loss;
- (c) Of the circumstances indicating diversion or theft;

§ 28.317

(d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of 26 U.S.C. 5370, and (2) claim for remission of the tax on the wine so lost; and

(e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which wines are lost during transportation, as described in § 28.315, whether by theft or otherwise, the appropriate TTB officer may require the exporter to file a claim for relief in accordance with § 28.317. Where circumstances may warrant, extensions of additional time for submission of the proof and claim may be granted by the appropriate TTB officer. Where such proof and claim are not filed within the 30-day period, or such extensions as the appropriate TTB officer may grant, the tax on the wine diverted or lost will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-62, 44 FR 71726, Dec. 11, 1979; T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.317 Filing of claims.

Claims, for remission of tax on the wine under § 28.315, shall be filed on Form 5620.8, in duplicate, and shall set forth the following:

(a) The name, address, and capacity of the claimant;

(b) The name, registry number, and location of the bonded wine cellar from which the wine was withdrawn;

(c) The date, penal sum, and form number of the bond (as applicable) under which withdrawal and shipment was made;

(d) Identification (including serial numbers, if any) and location of the container or containers from which the wine was lost;

(e) The quantity of wine lost from each container, and the total quantity of wine covered by the claim;

(f) The total amount of tax for which the claim is filed;

(g) The date of the loss (or, if not known, date of discovery), the cause

27 CFR Ch. I (4-1-23 Edition)

thereof, and all the facts relative thereto;

(h) Name of the carrier;

(i) If lost by theft, the facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and

(j) Whether the claimant is indemnified or recompensed in respect of the tax on the wine lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the wine, less the tax.

The claim shall be signed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The appropriate TTB officer may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1381, 1382; 26 U.S.C. 6065, 5370, 5371)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004; T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.318 Action on claim.

Action on claims filed under § 28.317 shall be, insofar as applicable, in accordance with the procedure prescribed in § 28.304.

(72 Stat. 1381; 26 U.S.C. 5370)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

BEER AND BEER CONCENTRATE

§ 28.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the appropriate TTB officer of Form 1689 (5130.12) from the officer required to certify it under the provisions of subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the

loss was a normal one caused by casualty, leakage, or spillage, the appropriate TTB officer will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the appropriate TTB officer will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the appropriate TTB officer will afford the brewer opportunity to submit a written explanation with respect to the causes of the loss before taking further action.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

§ 28.321 Tax assessed on loss not accounted for.

The appropriate TTB officer shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on; (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

Subpart P—Action on Claims

§§ 28.331–28.332 [Reserved]

§ 28.333 Claims for drawback.

Where a claim for drawback of tax on distilled spirits or wines on TTB Form 5110.30 or 5120.24 is made, and in all cases where claim for drawback of tax on beer is made on Form 5130.6, the appropriate TTB officer shall, on receipt by him of the original of the claim properly executed by the appropriate customs official or armed services offi-

cer, as required by this part, examine the claim to determine that it has been properly completed. He shall then, on receipt of the evidence of exportation required by § 28.40, or of lading for use on vessels or aircraft required by § 28.41, or of deposit in a foreign-trade zone or a customs bonded warehouse as required by § 28.42, as the case may be, and, in the case of claims on Form 5120.24, the certificate of tax determination, Form 2605 (5120.20), allow the claim in the amount of the tax paid on the beer or the tax paid or determined on the distilled spirits or wines on which the claim is based and which were exported, laden as supplies on vessels or aircraft, or deposited in a foreign-trade zone or a customs bonded warehouse, as the case may be.

(46 Stat. 690, 691, as amended, 48 Stat. 999, as amended, 72 Stat. 1335, 1336, 84 Stat. 1965; 19 U.S.C. 1309, 1311, 81c, 26 U.S.C. 5055, 5062, 5066)

[T.D. 7112, 36 FR 8584, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979; T.D. TTB-8, 69 FR 3835, Jan. 27, 2004; T.D. TTB-146, 82 FR 1137, Jan. 4, 2017]

§ 28.334 Credit allowance.

Where the credit relates to internal revenue taxes on beer that have been determined but not yet paid by the claimant, the appropriate TTB officer will notify the claimant in writing. Where the credit relates to tax determined distilled spirits, procedure for taking the credit shall be in accordance with the procedures set forth in part 19 of this chapter. Where the credit relates to tax-determined wines, procedure for taking the credit shall be in accordance with the procedures set forth in part 24 of this chapter. No credit may be given for drawback of the tax on beer nor may one class of tax be credited to another.

(72 Stat. 1336; 26 U.S.C. 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979; T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

§ 28.335

§ 28.335 Disallowance of claim.

If a claim for drawback of tax is not allowed in full, the appropriate TTB officer shall notify the claimant in writing of the reasons for any disallowance.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335, 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055, 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979; T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

PART 29—STILLS AND MISCELLANEOUS REGULATIONS

Subparts A–B [Reserved]

Subpart C—Stills

Sec.

29.41 Scope of subpart.

29.42 Delegations of the Administrator.

29.43 Forms prescribed.

29.45 Meaning of terms.

29.47 Notice requirement; manufacture of stills.

29.49 Notice requirement; setup of still.

29.51 Failure to give notice; penalty.

29.53 Identification of distilling apparatus.

29.55 Registry of stills and distilling apparatus.

29.57 Failure to register; penalty.

29.59 Records.

Subparts D–Y [Reserved]

EDITORIAL NOTE: Nomenclature changes to part 29 appear by T.D. ATF-462, 66 FR 42737, Aug. 15, 2001.

Subparts A–B [Reserved]

Subpart C—Stills

AUTHORITY: 26 U.S.C. 5002, 5101, 5102, 5179, 5291, 5601, 5615, 5687, 7805.

SOURCE: T.D. ATF-207, 50 FR 23682, June 5, 1985, unless otherwise noted. Redesignated by T.D. ATF-462, 66 FR 42737, Aug. 15, 2001.

§ 29.41 Scope of subpart.

The regulations in this subpart relate to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor.

27 CFR Ch. I (4–1–23 Edition)

§ 29.42 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.29, Delegation of the Administrator's Authorities in 27 CFR Part 29, Stills and Miscellaneous Regulations. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16947, Apr. 4, 2006]

§ 29.43 Forms prescribed.

(a) The appropriate TTB officer is authorized to prescribe all forms, including all notices and records, required by this subpart. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this subpart. The form will be filed in accordance with the instructions for the form.

(b) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

(Pub. L. 89-554, 80 Stat. 383, as amended (5 U.S.C. 552))

[T.D. ATF-207, 50 FR 23682, June 5, 1985; 50 FR 28572, July 15, 1985; T.D. ATF-439, 66 FR 8769, Feb. 2, 2001; T.D. TTB-44, 71 FR 16947, Apr. 4, 2006]

§ 29.45 Meaning of terms.

When used in this subpart and in the forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words in the masculine shall include the feminine. The terms “includes” and “including” do not exclude things