

§ 28.291

(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 ex-

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portation 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.

[LT.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The tax on distilled spirits withdrawn without payment of tax under this part and which are lost during transportation from the bonded premises of the distilled spirits plant from which withdrawn to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 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 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 Form 2635 (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 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 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]

§ 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