

(c) *Burden of proof.* When it appears that a loss occurred due to theft, the burden of proof shall be on the proprietor or other person liable for the tax to establish to the satisfaction of the regional director (compliance) that the loss did not result from connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignator, consignee, bailee, or carrier, or the employees or agents of any of them.

(d) *Claims* for losses allowable under this section shall be filed in accordance with applicable provisions of subpart C of this part.

(e) *Limitations.* The abatement, remission, credit, or refund of taxes on spirits, denatured spirits, or wines lost by theft shall be allowed only to the extent that the claimant is not indemnified against or recompensed for the taxes.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

**§ 19.562 Determination of losses in bond.**

(a) *General.* (1) Losses (whether by theft, unauthorized voluntary destruction, or otherwise) of spirits, denatured spirits, and wines shall be determined by the proprietor:

(i) Each time a tank or bulk conveyance is emptied;

(ii) On the basis of required physical inventories; and

(iii) Upon discovery of accidents or unusual variations in gauges.

(2) When it appears that any container in bond has sustained a loss resulting from theft or unauthorized voluntary destruction, such loss shall be taxpaid or the container shall be segregated (as necessary) with the loss reported promptly to the area supervisor.

(3) In any instance in which spirits, denatured spirits or wines are lost or destroyed in bond, whether by theft, unauthorized voluntary destruction, or otherwise, the regional director (compliance) may require the proprietor or other person liable for the tax to file a claim for relief from the tax in accordance with § 19.41.

(b) *Missing packages.* Whenever any packages of spirits, denatured spirits, or wine recorded as deposited on bond-

ed premises cannot be located or otherwise accounted for, the proprietor shall promptly report such fact to the area supervisor, and the proprietor shall either pay the tax on the lost spirits, denatured spirits, or wines, or file a claim with respect thereto under the provisions of § 19.41.

(c) *Tampering, material deficiency, or loss of proof.* When it is found that spirits, denatured spirits, or wines in a container have been tampered with, or when a material deficiency in the recorded quantity of such products is found without evidence of loss by leakage or casualty, or when there is a loss of proof of such products not attributable to variations in gauging, the proprietor shall segregate the container (as necessary) and shall promptly report such fact to the area supervisor, unless the proprietor acknowledges liability for the tax on the loss and elects to pay the tax on the quantity lost.

(d) *Excessive in-transit losses.* Losses of spirits, denatured spirits, or wines received in bond in bulk conveyances which exceed one percent of the quantity of a product consigned shall be considered as excessive in-transit losses. However, in the case of transcontinental transfers in bond of wine, only losses in excess of two percent of the quantity of wine consigned shall be considered as excessive in-transit losses. The proprietor shall promptly report all such excessive in-transit losses to the area supervisor.

(e) *Storage account loss limitation.* When the quantity of spirits lost from all the storage tanks and bulk conveyances exceeds 1½ percent of the total quantity contained in the tanks and bulk conveyances during the calendar quarter, the loss shall be taxpaid unless a claim for remission is filed in accordance with the provisions of § 19.41 and is allowed by the regional director (compliance).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

**§ 19.563 Loss of spirits from packages.**

(a) *Original quantity.* Where there is evidence satisfactory to the regional director (compliance) that any loss of spirits (including denatured spirits)

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from any package deposited on bonded premises is due to theft (except where the regional director (compliance) has made the finding provided for in §19.561(b)) or is due to unauthorized voluntary destruction, the regional director (compliance) may require the immediate tax payment of the quantity of spirits so lost, except where the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the regional director (compliance), the regional director (compliance) may credit the tax on the loss so established against the tax on the original quantity.

(b) *Alternative method.* Where there is evidence satisfactory to the regional director (compliance) that there has been access, other than as authorized by law, to the contents of packages entered for deposit on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the regional director (compliance) may (in lieu of the procedure prescribed in paragraph (a) of this section) assess an amount equal to the tax on 5 proof gallons of spirits on each of the total number of such packages as determined by him.

(c) *Applicability to packages filled after entry.* The provisions of this section apply to spirits (including denatured spirits) which are filled into casks or packages as authorized by law, after entry and deposit on bonded premises, whether by recasking, filling from tanks, mingling, or otherwise. The quantity filled into those casks or packages is considered to be the original quantity for the purpose of this section in the case of loss from those casks or packages.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

## § 19.564 Losses after tax determination.

(a) *Applicability.* Pursuant to a claim, the tax on spirits which are lost after determination of tax and before completion of physical removal from bonded premises, may be abated or remitted or refunded or credited without inter-

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est to the proprietor of the bonded premises where the loss occurred.

(b) *Conditions.* (1) Claims for losses under this section shall be filed in accordance with subpart C of this part.

(2) This section shall not apply if the tax would have been collectible by reason of 26 U.S.C. 5008(a)(1) if the loss occurred on bonded premises before determination of tax.

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

### SHORTAGES

## § 19.565 Shortages of bottled distilled spirits.

An unexplained shortage of bottled distilled spirits shall be taxpaid: (a) Immediately on a prepayment return on Form 5000.24, or (b) on the semi-monthly return on Form 5000.24 for the return period during which the shortage was ascertained. Unexplained shortages shall be determined by comparing the spirits recorded to be on hand with the results of the quantitative determination of the spirits found to be on hand by actual count during the physical inventory required by §19.402. When the recorded quantity is greater than the quantity determined by the physical inventory, the difference is an unexplained shortage. The records shall be adjusted to reflect the physical inventory.

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

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51388, Dec. 17, 1985]

## Subpart R—Containers and Marks

### CONTAINERS

## § 19.581 Authorized containers.

(a) *General.* Proprietors shall use for any purpose of containing, storing, transferring, conveying, removing, or withdrawing spirits or denatured spirits under this part only containers which are authorized by, or under the provisions of this part for such purpose, and a container so authorized will be deemed to be an approved container for such purpose. Except where stated otherwise, the provisions of part 20 of this chapter apply to containers used