

the time prescribed or to pay the just and proper expense of such transfer, as ascertained and determined by the regional director (compliance), such spirits may be seized and sold in the same manner as goods sold on distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expense of such sale and removal, and the balance shall be paid over to the owner of such spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1369, as amended (26 U.S.C. 5236))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

#### AUTHORITIES OF ATF OFFICERS

##### § 19.81 Right of entry and examination.

Any ATF officer may at all times, as well by night as by day, enter any distilled spirits plant, or any other premises where distilled spirits operations are carried on, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any ATF officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, he may at all times, use such force as is necessary for him to gain entry to such premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1357, as amended (26 U.S.C. 5203))

##### § 19.82 Detention of containers.

Any ATF officer may detain any container containing, or supposed to contain, spirits when such officer has reason to believe that the tax imposed by law on such spirits has not been paid or determined as required by law or this part, or that such container is being removed in violation of law or this part. Every such container may be held by the ATF officer at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture. However, such summary detention shall not continue in any case longer than 72

hours without process of law or intervention of the regional director (compliance), unless the person in possession of the container immediately prior to its detention, in consideration of the container being kept on his premises during detention, executes a waiver of the 72-hours limitation on detention of the container.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375 (26 U.S.C. 5311))

##### § 19.83 Samples for the United States.

Any ATF officer is authorized to take samples of spirits, denatured spirits, articles, wines, or any other materials which may be added to such products for analysis, testing, or other determinations to ascertain whether there is compliance with the provisions of law and regulations. When such samples are removed from the bonded premises, the ATF officer shall give the proprietor a receipt covering the sample so removed.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1357, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5201, 5203, 5214, 5362))

##### § 19.84 Gauging and measuring equipment.

All gauging and measuring equipment and means required by 27 CFR part 30 and this part to be furnished by the proprietor for the purpose of ascertaining the quantity, alcoholic content, specific gravity, and producing capacity of any materials, denaturants, mash, wort, or beer, or the quantity and alcoholic content of spirits, denatured spirits, or wines, shall be maintained by the proprietor in accurate and readily usable condition. Any ATF officer may disapprove the use of any equipment or means if such officer finds it would be insufficiently accurate and the proprietor shall promptly provide accurate equipment or means in lieu of the disapproved equipment or means.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1320, as amended, 1358, as amended (26 U.S.C. 5006, 5204))

## § 19.86

### ENTRY AND EXAMINATION OF PREMISES

#### § 19.86 Furnishing facilities and assistance.

On the demand of any ATF officer or agent, the proprietor shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on the distilled spirits plant premises. The proprietor shall also, on demand of an ATF officer or agent, open all doors, and open for examination all containers on the plant premises. The proprietor shall, on request of an ATF officer, furnish the exact locations (including the number of containers at each location) of all packages and similar portable approved containers within a given lot, and locations (i.e., buildings, rooms or areas) where spirits in cases are stored.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1357, as amended (26 U.S.C. 5203); sec. 806, Pub. L. 96-39, 93 Stat. 279 (26 U.S.C. 5202))

### GAUGING OF SPIRITS, WINES OR ALCOHOLIC FLAVORING MATERIALS

#### § 19.91 Gauging.

(a) *Gauging of spirits and wine.* Gauges shall be made by the proprietor. However, the regional director (compliance) may require that such gauges be made in the presence of and be verified by an ATF officer. Gauges of spirits, denatured spirits, or wine shall be made in accordance with 27 CFR part 30 and as provided in this part. However, the gauge for wine that is to be transferred to a bonded wine cellar shall be recorded by kind and percent of alcohol by volume. When bulk spirits, denatured spirits, or wines are to be volumetrically measured, the measurement shall be in a tank or bulk conveyance for which a calibration chart is provided, by a meter approved under § 19.277, or, when approved by the Director, by other devices or methods. Calibration charts shall be certified as accurate by persons qualified to calibrate tanks or bulk conveyances. When spirits in bottles are gauged, the gauge may be established on the basis of legible case markings and label information, if (1) the bottles are full, and (2)

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there is no evidence that the bottles have been tampered with.

(b) *Gauging of alcoholic flavoring materials.* Each alcoholic flavoring material shall be gauged when dumped, except that when received from a manufacturer in a closed nonporous bottle, can, or package such material may be gauged by using the proof derived from the container label or a related statement of the proof from the manufacturer. When proof is determined from a label or manufacturer's statement, the proprietor shall periodically test a sufficient number of samples of the alcoholic flavoring material to verify the accuracy of the proof so determined and shall record the results of those tests on the gauge record. The regional director (compliance) may require that all alcoholic flavoring materials be gauged by the methods provided in 27 CFR part 30.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1396, as amended (26 U.S.C. 5204, 5559))

#### § 19.92 When gauges are required.

(a) *Initial proof.* Except for a gauge required by § 19.383 or § 19.517 or in any case where the proof changes as a result of a storage or processing operation, the initial determination of proof for distilled spirits, wine, or eligible flavors may be used whenever a subsequent gauge is required by this part to be made at the same plant.

(b) *Required gauges.* Spirits, wine and alcoholic flavoring materials shall be gauged whenever required by this part. Such gauges include:

- (1) Entered for deposit,
- (2) Filled into packages from storage tanks,
- (3) Transferred or received in bond,
- (4) Transferred between operational accounts,
- (5) Mixed in the manufacture of a distilled spirits product,
- (6) Reduced in proof prior to commencement of bottling,
- (7) Destroyed,
- (8) Removed or withdrawn from bond,
- (9) Returned to bond, or