

§ 28.20

27 CFR Ch. I (4-1-04 Edition)

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]

**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 al-

ternate 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